

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of A.S. (Child),  
D.S. (Child), and W.S. (Child)  
Children in Need of Services

A.S. and J.S. (Parents),  
*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner.*

November 17, 2021

Court of Appeals Case No.  
21A-JC-899

Appeal from the Hendricks  
Superior Court

The Honorable Karen M. Love,  
Judge

Trial Court Cause No.  
32D03-2012-JC-59, 32D03-2012-  
JC-60, & 32D03-2012-JC-61

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellants-Respondents, A.S. (Mother) and J.S. (Father) (collectively, Parents), appeal the trial court's adjudication of their minor children, A.S., D.S., and W.S. (collectively, Children), as Children in Need of Services (CHINS).
- [2] We affirm.

## ISSUES

- [3] Parents present this court with two separate issues on appeal, which we restate as:
- (1) Whether the trial court erred when it adjudicated Children as CHINS;  
and
  - (2) Whether the trial court abused its discretion in admitting certain evidence.

## FACTS AND PROCEDURAL HISTORY

- [4] Mother and Father are the biological parents of A.S., born on June 27, 2013, D.S., born on March 12, 2018, and W.S., born on July 29, 2020. Between October and November 2020, the Brownsburg County Department of Child Services (DCS) received multiple reports regarding allegations of homelessness and Parents' substance abuse. On November 4, 2020, family case manager Janai Sarver (FCM Sarver) met with Father at the Brownsburg library. Father had W.S. and D.S. with him. D.S. had matted hair, and W.S. had a very heavy and wet diaper, wore no clothes but was wrapped in a blanket, and his neck and

nails were dirty. FCM Sarver described Father's demeanor as disorganized and inconsistent. Father was speaking fast, and he said that he had not slept in four days. Father stated that he was unemployed and that Mother had just started working at the Hampton Inn. Father admitted that the family did not have stable housing. Father explained that they were living with paternal grandfather (Grandfather), but that they had to move because Grandfather was not allowing Parents to bathe Children at that residence.

- [5] On November 9, 2020, FCM Sarver met with the family at Mother's place of employment, the Hampton Inn. FCM Sarver was meeting with Mother to assess a concern raised by Father regarding an allegation that Mother had been sexually abused by a known acquaintance of Parents. FCM Sarver noticed that Mother did not answer her questions independently, and that Father stood over her and directed her as to how to answer the questions. Father stated that A.S. was present for and saw Mother being sexually abused. The following day, on November 10, 2020, FCM Sarver again met with the family at the Hampton Inn to further discuss the sexual abuse allegations involving Mother. Mother revealed that she had sex with Father's co-worker in October 2020 and that "Children were present for and observed this incident." (Appellant's App. Vol. II, p. 14). After talking to A.S. regarding the sexual abuse allegation she might have witnessed, FCM Sarver scheduled a forensic interview for A.S. Parent's assessment was later transferred to FCM Julie Warner (FCM Warner). Shortly after the parents' case was transferred to FCM Warner, additional child abuse and neglect reports were filed against Parents pertaining to ongoing allegations

of neglect due to homelessness, substance abuse by Parents, and alleged drug sales by Parents.

- [6] On November 11, 2020, FCM Kerri Nelson (FCM Nelson) met with the family at Grandfather's residence. Children did not have any bruises or other marks on them, but they did not wear appropriate jackets. Parents claimed that Grandfather had put all their belongings in storage and that Grandfather's wife had left the home and was not going to return until Parents and Children were gone. In short, Parents told FCM Nelson that Grandfather was kicking them out. During the meeting, Father informed FCM Nelson that he had "power of attorney over [Mother] because she had a learning disability." (Transcript Vol. II, p. 79). Mother admitted to FCM Nelson that she had been sexually assaulted by a co-worker of Father's and that A.S. observed the assault.
- [7] On November 16, 2020, DCS conducted A.S.'s forensic interview at Susie's Place Child Advocacy Center. FCM Warner met with Parents while A.S. was being interviewed. Parents initially denied DCS access to observe Children's home environment and refused to submit to a drug screen. Parents eventually allowed FCM Warner to observe Children's home environment in the family's unit at the Woodspring Suites hotel in Plainfield. Law enforcement arrived with a K-9 unit to search for drugs in Parents' vehicle and dwelling unit. No drugs or drug paraphernalia were found on that day. Parents eventually agreed to complete an instant drug screen, which returned clean results for both. Notwithstanding clean drug screens, Father admitted to FCM Warner that he had used heroin within the last two weeks, and Mother disclosed that she

smoked marijuana but that she did so infrequently. Mother was emotional, and Father did not let FCM Warner talk to Mother directly without his presence. When FCM Warner asked Parents about their employment, Father said that he was doing side jobs, and worked on cars, but he did not supply any other details regarding for whom or where he worked. Mother then stated that she had lost her Hampton Inn employment, and she claimed that her anxiety prevented her from working.

[8] On November 24, 2020, FCM Warner again met with the family at Woodspring Suites after receiving a subsequent report that A.S. had not been attending school. Father admitted that from March 2020 through mid-October 2020, A.S. was not in school and that he had been attempting to homeschool A.S. during that time. Father attempted to demonstrate to FCM Warner that seven-year-old A.S. was not behind in her education by verbally asking A.S. to tell FCM Warner what the answer to “4+3” is. (Appellant’s App. Vol. I, p. 15). Father further explained to FCM Warner that A.S. had been out of school due to ongoing disputes with his family members. Upon further questioning, Father admitted that A.S. had returned to school in the fall of 2020, but that A.S.’s attendance had been sporadic between mid-October through November 2020. Father claimed that A.S. missed school because her school was one hour away from their current residence. When FCM Warner questioned Parents about why they had not pursued e-learning for A.S., Father claimed that e-learning was not feasible since the family frequently changed residences.

[9] On December 3, 2020, DCS filed separate CHINS petitions for each child, but left Children in Parents' care. The following day, on December 4, 2020, FCM Mike Rondon (FCM Rondon) visited Parents' suite at Woodspring to collect drug screens. Parents tested positive for Fentanyl. At that time, Mother was breastfeeding W.S. While FCM Rondon was inside Parents' hotel room conducting the drug tests, Father showed him his gun, which he then placed in the nightstand between the two beds. During his meeting with Parents, FCM Rondon observed one container of pepper spray on the kitchen counter, and an additional container of pepper spray on the foot of one of the beds in the hotel room. The pepper spray on the bed was accessible to D.S. and A.S., and Father's firearm and ammunition in the nightstand drawer were accessible to at least A.S., and potentially to D.S.

[10] The next day, December 5, 2020, home-based therapist Mariah Sexton (Sexton), who works at RainTree Consulting, assessed the family. Father provided a different reason why his family was homeless. Without providing a timeline, Father informed Sexton that the family had been living with Grandfather but that they had to leave because of violence in Grandfather's home. Father also claimed that he and Mother had been working with the "Children's Bureau" and that DCS' involvement disrupted possible housing assistance. (Tr. Vol. II, p. 46). Father also said that Parents did not have the necessary documentation to apply for food stamps or homeless shelters. Father stated that he was unemployed but mentioned that he had worked with "the Brownsburg police in some capacity. And that he had worked as a DJ in some

capacity.” (Tr. Vol. II, p. 47). On a couple of occasions, Father told Sexton, “you don’t – you don’t know who I am. I have- I’m an important person” with a lot of training and work experience. (Tr. Vol. II, p. 47). Mother did not actively participate in the assessment, but she stated that she had prior contact as a child with DCS, she had been in foster care, and that she did not trust DCS. At the conclusion of the assessment, Sexton recommended individual therapy for Mother, Father, and A.S. She additionally recommended that A.S. be evaluated for an Individualized Educational Plan (IEP), parenting education for Parents, and for Parents to obtain stable housing, employment, and address their substance abuse.

[11] On December 9, 2020, at the initial hearing, the trial court granted DCS’s request and ordered Parents to have weapons safely stored while DCS and other service providers were engaging with the family. On December 10, 2020, FCM Nelson met with Parents in their hotel room to conduct drug tests and to complete a safety plan with Parents regarding Father’s gun not being in a lockbox when DCS or service providers visited their hotel room. Father showed FCM Nelson the lockbox he would be using to effectuate the safety plan.

[12] Multiple drug screens were collected from Parents from November 20, 2020, through December 21, 2020. Father consistently tested positive for Fentanyl on November 20, November 26, and December 4, 2020. Father additionally tested positive for Fentanyl, Amphetamine, Methamphetamine, THC, and Opiates on

December 10, 2020. Mother only tested positive for Fentanyl on December 4, 2020, and the rest of her drug screens were clean.

[13] On December 15, 2020, Sexton had a scheduled appointment with Parents at 9:00 a.m., but no one answered when Sexton knocked on the door. Sexton could hear people inside the room, and Parents' car was in the parking lot. Sexton texted Father, and Father responded by stating that they had gone out for a COVID test and were waiting in line. Sexton contacted DCS, and moments later, law enforcement arrived, and accompanied her to Parents' hotel room door. Parents initially did not answer the door, but Mother eventually answered the door after the police banged on it. Upon entering the room, Sergeant Mike Mason (Sergeant Mason) asked Mother if there was a gun inside. Mother claimed that the gun was inside a lockbox, and she pointed towards the beds. Notwithstanding her claim, Sergeant Mason saw the gun on the nightstand between the two beds in the room. The gun was "fully loaded," and the "trigger lock" was not on. (Tr. Vol. II, p. 27). Children were on one of the beds, and the gun was right next to them. Sergeant Mason immediately secured the gun. Also, at that time, FCM Nelson arrived at the Woodspring Suites to discuss Parents' positive drug screen results, and to also collect drug screens. On that same day, FCM Nelson removed the Children from Parents' care. While the Children were being detained, Mother stated to FCM Nelson that the only reason FCM Nelson was detaining the Children was because "February is the deadline for FCM Nelson to receive her pay bonus, and that



removing the Children would help serve that end.” (Appellant’s App. Vol. I, p. 21).

[14] On December 16, 2020, Father tested positive for Amphetamine, Methamphetamine, and Fentanyl, and he refused to take a drug screen on December 21, 2020. On January 4, 2021, DCS contacted Father and Father informed DCS that he “had passed most of his drug screens and claimed that he was working for the CIA and that was why he had drugs in his system.” (Appellant’s App. Vol. I, p. 22). On January 21, 2021, Parents refused to submit to drug screens.

[15] On January 28, 2021, FCM Nelson held a child and family team meeting with Parents. During that meeting, Mother and Father claimed that the firearm located by Sergeant Mason was unloaded and that Sergeant Mason loaded the gun himself prior to reporting to the DCS that the gun was loaded. Parents further disclosed that they had relocated from Woodspring Suites and were residing with a friend. Parents, however, refused to provide FCM Nelson with their new address. FCM Nelson offered Mother and Father substance abuse services at that meeting, but they declined by stating they had “no issues with drug use.” (Appellant’s App. Vol. I, p. 21).

[16] On February 5, 2021, the trial court conducted a factfinding hearing. FCM Nelson testified that Parents needed help with their substance abuse, housing, and on-going education instability for A.S. FCM Nelson opined that until Parents addressed those issues, intervention of the court and the involvement of

DCS were necessary to ensure the Children’s basic needs were being met and that they were safe. The Court Appointed Special Advocate (CASA), who had met with Children, Parents, and foster Parents, opined that Parents loved their Children but lacked understanding of how to meet their basic needs. During the hearing, and over Mother’s objection, the trial court admitted into evidence Mother’s 2017 criminal conviction for false informing, to which she admitted and for which she had successfully completed a diversion program. DCS argued that Mother’s 2017 offense of false informing was relevant to the trial court’s ability to judge Parents’ candor. On March 24, 2021, the trial court issued its Order, adjudicating Children to be CHINS. On April 14, 2021, after a dispositional hearing, the trial court found that it was in the best interests of the Children to continue to be removed from the home and to remain in the care of DCS.

[17] Parents now appeal. Additional facts will be provided if necessary.

## **DISCUSSION AND DECISION**

### *I. CHINS Adjudication*

[18] Father contends that the trial court abused its discretion in adjudicating Children to be CHINS. The CHINS petition was filed pursuant to Indiana Code section 31-34-1-1, which states:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent . . . to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment or rehabilitation that:

(A) The child is not receiving; and

(B) Is unlikely to be provided or accepted without the coercive intervention of the court.

[19] A CHINS adjudication focuses on the needs and condition of the child, and not on the culpability of the parent. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). The purpose of a CHINS adjudication is not to punish the parent, but to provide proper services for the benefit of the child. *Id.* at 106. “[T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* at 105. “A CHINS adjudication can also come about through no wrongdoing on the part of either parent[.]” *Id.*

While we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that - a determination that a child is in need of services. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. Only when the State moves to terminate a particular parent’s rights does an allegation of fault attach. We have previously made it clear that CHINS proceedings are “distinct from” involuntary termination proceedings. The termination of the parent-child relationship is not merely a continuing stage of the

CHINS proceeding. In fact, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child.

*Id.* (internal citations omitted). When a trial court enters findings of fact and conclusions of law in a CHINS decision, we apply a two-tiered standard of review. *In re Des. B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). We first consider whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We may not set aside the findings or judgment unless they are clearly erroneous. *Id.* Findings are clearly erroneous when the record contains no facts to support them either directly or by inference, and a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.* We give due regard to the trial court's ability to assess witness credibility and do not reweigh the evidence; we instead consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.* We defer substantially to findings of fact, but not to conclusions of law. *Id.*

[20] Father argues that the trial court erred in adjudicating Children as CHINS because there was no evidence Children were in any danger, or that their needs would go unmet in the absence of the coercive intervention by the trial court. However, he does not specifically challenge any of the trial court's findings. In his brief, Father argues that he

has been working to help provide for the family. He now no longer lives in a hotel and is staying with a friend. Father has shown that he takes care of the children's needs by proving he changes diapers and bathes his children.

\* \* \* \*

The trial court is focusing more so on the fault of the parents rather than protecting the children. While Father was temporarily homeless, he now has a place to live, has indicated that he is working. DCS has not proven that the children need coercive intervention of the court.

(Father's Br. p. 9). In its Order, the trial court identified multiple findings that Children were endangered in Parents' care. The trial court found that Father's actions of keeping seven-year-old A.S. out of school from March 2020 through October 2020, were neglectful. There were also numerous instances where DCS employees found Children dirty, and not properly clothed.

[21] During the CHINS case, Father remained unemployed despite his claims that he was working for the CIA. Father's other excuse for not working is that "he did not want to work because the family could not afford childcare."

(Appellant's App. Vol. I, p. 14). On another occasion, Father stated that he was doing side jobs and working on cars, but he failed to provide DCS with any specifics. At the time of the factfinding hearing, Father could still not verify his employment with DCS despite his claim that he was employed.

[22] In addition, Parents also lacked stable housing. When DCS became involved in October 2020, Parents and Children were living with Grandfather, but they were evicted and moved to Woodspring Suites. Shortly after the Children were removed from their care in December 2020, Parents became homeless. In spite

of their claim that they were living at a friend's house, Parents refused to give DCS their new address.

[23] The trial court additionally found Parents' home environment unsafe for Children. Despite a safety plan and a trial court order mandating that Father keep his firearm in a lockbox, DCS found a loaded firearm within Children's reach in the Parents' hotel room on the day Children were removed from Parents' care. The trial court found that Father's firearm, which was unsecured during a DCS visit, "exacerbate[d] ongoing safety concerns for Children being in Mother and Father's care without the coercive intervention of the Court." (Appellant's App. Vol. I, p. 23).

[24] Father also admitted to using drugs and failed several drug screens during the pendency of the CHINS case. The record reveals that in November 2020, while Father returned a clean drug screen, Father admitted that he had recently used heroin, and between November 2020 and December 2020, Father consistently tested positive for Fentanyl, Amphetamine, Methamphetamine, THC, and Opiates. Father then refused to submit to drug screens on December 21, 2020, and January 21, 2021. In January 2021, FCM Nelson offered Father substance abuse services, but Father did not believe that he needed services despite testing positive for drugs. At the time of the factfinding hearing, Father had not addressed his substance abuse issues.

[25] Father also failed to cooperate with DCS during the CHINS case. Father was hostile and argumentative toward DCS workers, refused to take drug screens,

and refused DCS access to the family's hotel room. On December 15, 2020, the day of Children's removal, Parents initially did not let Sexton in their hotel room, and Father lied to her in text messages, telling her that they were out obtaining COVID tests, even though the entire family was actually inside the room. The trial court found that Parents' "lack of candor also makes it more difficult for service providers to serve the family's needs without the coercive intervention of the Court." (Appellant's App. Vol. I, p. 23).

[26] Recognizing that a CHINS determination is not a finding of guilt for either parent, but rather a vehicle to ensure the safety of the child, we conclude that the inference of substance abuse, unstable housing, Father's unwillingness to participate in services, including positive drug screens, have seriously endangered Children and without coercive intervention of the court, Children will not receive the safety and care they need. Accordingly, the trial court did not abuse its discretion by adjudicating Children to be CHINS.

## II. *Admission of Evidence*

[27] Mother argue that the trial court committed reversible error by allowing the admission of her past criminal conviction at the CHINS hearing. "We review a trial court's admission or exclusion of evidence for an abuse of discretion. *See In re Des.B*, 2 N.E.3d at 834. This court will reverse only where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* It is well-established that errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. *Id.*

[28] During the factfinding hearing, DCS moved to admit, over Parents' objection, Mother's past criminal conviction for false informing committed in 2017, which she admitted and for which she had successfully completed a diversion program. In response to the objection, DCS argued that Mother's past offense of false informing was relevant to the trial court's ability to judge Parents' candor. The trial court overruled the objection and admitted Mother's past criminal history.

[29] Indiana courts have found that when children are alleged to be CHINS under Indiana Code section 31-34-1-1, which is the statute relied upon in the present case, a parent's character is a material issue in the proceeding. *Matter of J.L. V., Jr.*, 667 N.E.2d 186, 190 (Ind. Ct. App. 1996). To that end, the court in *Matter of J.L. V., Jr.*, reasoned that Indiana Rule of Evidence 405(b) allows admission of specific instances of a parent's character because "a parent's past, present, and future ability to provide sufficient care for his or her child forms the basis for a CHINS adjudication" and "a parent's character is an integral part of assessing that ability." *Id.* at 190-91. In *Matter of Eq. W.*, 124 N.E.3d 1201, 1210 (Ind. 2019), our supreme court agreed with the general proposition that past acts by parents in CHINS proceedings can be relevant but qualified this practice to "new CHINS filings involving the same parents and children." *See also*, I.C. § 31-34-12-5. The nature of a CHINS proceeding is such that a trial court must consider a broad range of evidence to ensure the State has met its burden in proving its case, including "consider[ing] the family's condition not just when the case was filed, but also when it is heard." *In re D.J.*, 68 N.E.3d 574, 580



(Ind. 2017). As this is the first CHINS proceeding pertaining to Children, we conclude that the trial court properly admitted Mother's past criminal history.

## **CONCLUSION**

[30] Based on the foregoing, we hold that the trial court properly adjudicated Children to be CHINS and the trial court properly admitted Mother's past criminal record.

[31] Affirmed.

[32] Najam, J. and Brown, J. concur