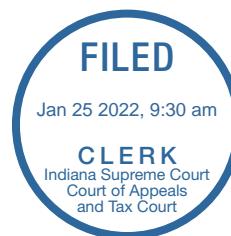


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

J.P. (Minor Child),
Child in Need of Services,

and

S.C. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

January 25, 2022

Court of Appeals Case No.
21A-JC-1776

Appeal from the Wabash Circuit
Court

The Honorable Robert R.
McCallen, III, Judge

Trial Court Cause No.
85C01-2106-JC-22

May, Judge.

- [1] S.C. (“Mother”) appeals the adjudication of J.P. (“Child”) as a Child in Need of Services (“CHINS”). She argues the trial court’s findings do not support its conclusion that Child is a CHINS because Mother’s actions did not endanger Child. We affirm.

Facts and Procedural History

- [1] Mother¹ gave birth to Child on December 9, 2018, and Child lived with Mother prior to these proceedings. In the early morning hours of June 7, 2021, law enforcement was called to “investigate a vehicle that had left the road and was located in the grass” near a church in Wabash County, Indiana. (App. Vol. II at 31.) Law enforcement identified the occupants of the car as Mother, Child, and F.T., who is the ex-husband of Mother’s mother. Law enforcement called the Department of Child Services (“DCS”) because Mother and F.T. were “slurring their words” and seemed to be under the influence of an unidentified substance. (*Id.*)
- [2] The DCS investigator, Hannah Rumsey, arrived on the scene. Rumsey spoke with Mother, who “was unable to properly hold a conversation . . . [or] stay engaged in the conversation.” (Tr. Vol. II at 8.) Mother did not know where

¹ Child’s father, K.P., could not be located during the CHINS proceedings and does not participate in this appeal.

she was or why Rumsey was present, and Mother’s speech was “slurred and not very coherent.” (*Id.*) Rumsey observed F.T., who had been driving the vehicle, “was unable to say awake. He was swaying. His words were also slurred. He was not coherent.” (*Id.* at 9.) Rumsey saw Child in the backseat of the vehicle; Child was “not [] wearing any shoes or a shirt. She was only wearing jeans” even though “it was pretty cold that night.” (*Id.*)

[3] Rumsey attempted to administer a drug screen for Mother, but “it had fallen apart in [Mother’s] mouth and was voided at that time. The second screen [she] attempted to administer, [Mother] placed it in her mouth, then threw it on the ground and stated she would not be taking a drug screen.” (*Id.*) Mother told Rumsey that Mother and F.T. had consumed “THC edible gummies.” (*Id.* at 10.) Law enforcement also discovered Mother, who was a nurse, possessed “medication that she had taken from a dead patient for which she was not authorized.” (App. Vol. II at 32.) Additionally, law enforcement found Adderall after searching Mother,² which Mother told Rumsey she “consumes [] anally.” (Tr. Vol. II at 20.) Police arrested Mother and F.T., and DCS took custody of Child. DCS placed Child in relative care, where she has remained during these proceedings.

[4] On June 8, 2021, DCS filed a petition to adjudicate Child a CHINS based on Mother’s substance abuse issues. The trial court held its initial hearing the

² The Adderall was located in a prescription bottle bearing Mother’s name.

same day and appointed counsel for Mother. Mother denied the allegations. On July 20, 2021, the trial court held a fact-finding hearing. Mother testified during the hearing and denied the allegations. The trial court issued its order adjudicating Child a CHINS the same day. On August 13, 2021, the trial court held its disposition hearing. It entered its dispositional order the same day and required Mother to engage in several reunification services.

Discussion and Decision

[5] A CHINS proceeding is civil in nature, so DCS must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). 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, guardian, or custodian 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.

Under Indiana Code section 31-34-1-2, the State must prove that “the child’s physical or mental health is seriously endangered due to injury by the act or omission of the child’s parent, guardian, or custodian.”

[6] 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 at 105. 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.*

[7] When a juvenile 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.*

Unchallenged findings “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[8] To support its conclusion that Child was a CHINS, the trial court found, in relevant part:

Sometime in the early morning hours of June 7, 2021, law enforcement and a DCS case manager were called to investigate a vehicle that had left the road and was located in the grass toward the rear of the Lincolnville United Methodist Church in Wabash County, Indiana.

Upon arrival, [Child], [Mother], and [F.T.] were located in a vehicle that had left the road. [F.T.], who is [Mother’s] ex step-father, was reported to be driving. Because [F.T.] and [Mother] were being arrested, DCS took custody of [Child].

[Mother] has suffered some type of brain injury which does appear to affect her speech. The DCS caseworker testified that [Mother] and [F.T.] were slurring their words. Part of [Mother’s] slurring may legitimately be due to her brain injury. However, the Court believes the slurring is also attributable to her ingestion of THC edibles. [Mother] told the DCS caseworker she and [F.T.] had consumed THC (the active ingredient in marijuana) edibles earlier. The Court believes [Mother] specifically told the DCS caseworker she consumed THC edibles and not CBD gummies as [Mother] claimed during the hearing and that [Mother] and [F.T.] had, in fact, consumed THC edibles.

The circumstances of this case further lead to the obvious conclusion [Mother] and [F.T.] had consumed THC edibles prior to leaving the road in the early morning hours of June 7, 2021.

[Mother] told the Court she had been in Grand Rapids, Michigan, earlier in the day and that she bought marijuana for her aunt who lives in Indiana. The Court does not believe, for a second, that [Mother] and [F.T.] did not consume THC edibles, as [Mother] told the DCS caseworker they had. Further, the DCS caseworker offered [Mother] two separate oral fluid drug screens, neither of which [Mother] completed. The Court may and does draw a negative inference from that.

[Mother] is a registered nurse. She obviously is intelligent. Despite her prior brain injury, her faculties appear intact. The Court believes she was not honest in her testimony and that:

- Sometime during June 6 and/or June 7, 2021, [Mother] and [F.T.] had consumed THC edibles purchased in Michigan, some of which [Mother] bought for her aunt in Indiana;
- [F.T.] was driving the motor vehicle in which [Mother] and [Child] were passengers;
- The motor vehicle [F.T.], [Mother], and [Child] were travelling in had left the road in the early hours of June 7, 2021;
- That neither [F.T. nor Mother] knew where they were when law enforcement arrived;
- That [Child] had not eaten for quite some time and was dressed inappropriately for the weather;
- [Mother] was in possession of medication that she had taken from a dead patient for which she was not authorized;

- [Mother] was taking Adderall in a manner not prescribed; and
- [Mother] and [F.T.] were arrested and taken to the Wabash County Jail.

[Mother] attempts to minimize or explain the events of that day but her efforts fall short. By doing so, she clearly has no appreciation for the events that unfolded on June 6 and/or June 7, 2021 and how she placed [Child] in danger by her actions.

* * * * *

The Court took judicial notice of two other DCS cases involving [Mother] and [Child], as stated on the record. However, they have little, if any, bearing on this Court's ruling.

(App. Vol. II at 31-2.) Mother argues the trial court's findings do not support its conclusion that she endangered Child.

[9] Mother likens the facts in this case to those in *Ad.M. v. Ind. Dept. of Child Svcs.*, 103 N.E.3d 709 (Ind. Ct. App. 2018), in which we held a mother's marijuana use and a single domestic violence incident between mother and father was not sufficient to adjudicate the child a CHINS because, by the time of the fact-finding hearing: (1) mother had remedied the reasons for DCS's initial involvement, and (2) DCS did not present evidence that the mother's marijuana use endangered her children. *Id.* at 715. In that case, DCS was contacted because mother and father were involved in a domestic violence incident during which children were present. *Id.* at 711. When they arrived at mother's home,

they also observed several marijuana plants and noted the home was “not suitable for children.” *Id.* In the approximately two months between the time DCS filed its CHINS petition and the trial court’s fact-finding hearing, mother remedied the issues that made her home unsuitable for children and filed a protective order against father. However, the mother consistently tested positive for marijuana use, and the trial court adjudicated children CHINS based on mother’s use of marijuana. *Id.* at 712.

[10] The mother appealed, arguing that DCS did not present evidence that her marijuana use endangered the children. *Id.* at 713. We agreed and held:

We must conclude that evidence of one parent’s use of marijuana and evidence that marijuana has been found in the family home, without more, does not demonstrate that a child has been seriously endangered for purposes of Indiana Code Section 31-34-1-1. Indeed, DCS did not present any evidence that either Mother’s drug use or the presence of marijuana in the home have seriously endangered the Children. Rather, when asked to describe how Mother’s marijuana use has impacted the Children, Taylor testified that she “really can’t see the way that it has impacted them.” Further, DCS did not present any evidence that Mother used drugs while the Children were present in the home or while she had care of the Children.

Id. at 713-4 (citation to the record omitted). The facts before us are not like *Ad.M.*

[11] Here, DCS presented evidence that Mother’s drug use endangered Child because, during the incident that prompted DCS intervention, Mother and Child were in a car that had left the roadway and was in a grassy area next to

the road, but yet Mother did not know where she was, did not know why law enforcement was present, and did not know when Child had last eaten.

Additionally, Child was inappropriately dressed for the weather. At the fact-finding hearing, Mother attempted to excuse her behavior on the night of the incident,³ and she did not indicate she was working toward addressing any substance abuse issues. Unlike in *Ad.M.*, DCS presented evidence that Mother's use of marijuana endangered Child on at least one occasion, and thus *Ad.M.* does not control.

[12] The trial court's unchallenged findings of fact indicate that law enforcement responded to a call that Mother, F.T., and Child were in a vehicle parked on the side of the road. Upon investigation, law enforcement and DCS observed Mother and F. T. were under the influence of an intoxicating substance, believed to be THC edibles. Child was dressed in a pair of jeans. Mother did not know where she was, when Child had eaten last, or why law enforcement was at the scene. Based thereon, we conclude the trial court's findings support its conclusion that Child is a CHINS based on Mother's endangerment of Child. *In re Ju.L.*, 952 N.E.2d 771, 783 (Ind. Ct. App. 2011) (mother's actions

³ Mother argues she did not consume THC edibles, but instead CBD gummies. She testified a brain injury she sustained as a teenager causes her "to act, speak and walk like she maybe [sic] impaired[.]" (Mother's Br. at 16.) She also contends Child was not inappropriately dressed for the weather, as "[i]t would not be surprising to find Child without shoes or shirt, in a car, on a summer night." (*Id.* at 15.) Mother's arguments are invitations for us to reweigh the evidence, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court does not reweigh evidence or judge the credibility of witnesses).

endangered child necessitating coercive court intervention and thus CHINS adjudication affirmed).

Conclusion

[13] The trial court's findings support its conclusion that Mother's actions endangered Child such that court intervention was necessary. Therefore, the trial court did not err when it concluded Child is a CHINS. Accordingly, we affirm.

[14] Affirmed.

Brown, J., and Pyle, J., concur.