

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:
D.A. and K.L.,
Children in Need of Services,

H.A. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

May 17, 2023

Court of Appeals Case No.
22A-JC-2381

Appeal from the Madison County
Circuit Court

The Honorable Stephen K.
Koester, Judge

Trial Court Cause No.
48C02-2202-JC-56
48C02-2202-JC-83

Memorandum Decision by Judge May

Judges Mathias and Bradford concur.

May, Judge.

- [1] H.A. (“Mother”) appeals the trial court’s order adjudicating D.A. (“Son”) and K.L. (“Daughter”) (collectively, “Children”) as Children in Need of Services (“CHINS”). Mother argues the trial court’s findings and CHINS determination were clearly erroneous. We affirm.

Facts and Procedural History

- [2] H.A. is the mother¹ of Son, born August 27, 2008,² and Daughter, born October 26, 2018.³ Mother previously was involved with the Department of Child Services (“DCS”) because her two older children, ages seventeen and fourteen (“Older Children”), were adjudicated as CHINS. Older Children remain in foster care and Mother is not permitted to visit with them.⁴
- [3] On December 14, 2021, DCS received a report alleging Son was a victim of neglect because Son had thirteen unexcused absences and had not attended

¹ Mother is divorced from Son’s father, C.A., and she does not know his current whereabouts. Daughter’s father is unknown. Neither father participated in the trial court proceedings or this appeal.

² There was inconsistency in the record about Son’s birthday. The CHINS petition indicated Son’s birthday is August 27, 2008. In later documents that include Daughter, Son’s birthday is stated as October 27, 2008.

³ The record also contains inconsistency about Daughter’s birthday. Court records indicate Daughter’s birthday is August 26, 2018. However, during the dispositional hearing, Mother’s attorney informed the court that Daughter’s birthday is October 26, 2018.

⁴ Mother testified to these facts, and the record contains no other information regarding Older Children.

school since the Thanksgiving holiday. The report indicated “the school has made repeated attempts to communicate these issues to Mother without a response.” (App. Vol. 2 at 51.) On January 18, 2022, DCS received another report that Son was failing his classes and had nineteen unexcused absences. The school also had concerns regarding Son’s hygiene.

[4] In emails between Mother and Son’s school prior to DCS involvement, Mother claimed Son had a “learning disability and no one seems to want to work with him.” (Ex. Vol. 1 at 78.) Son’s school did not have records of Son having a learning disability and requested documentation from Mother so that they could “implement what he needs.” (*Id.* at 77.) Mother repeatedly complained about one of Son’s teachers, stating the teacher was not giving Son grades for completed late work, Son wasn’t “going to pass because of one teacher” (*id.* at 24), and the teacher was “trying to get [Son] kicked out of school.” (*Id.* at 17).

[5] On February 5, 2022, DCS filed a petition alleging Son was a CHINS. On February 11, 2022, the court held the initial hearing. DCS Case Manager Elliot Edwards testified Son previously disclosed “he is sometimes at home alone caring for [Daughter].” (Tr. Vol. 1 at 14.) DCS requested permission to see Mother’s residence and Children, and during the initial hearing, the court granted DCS’s motion to conduct that assessment. DCS arranged with Mother to visit the home immediately following the hearing. The home was dirty and trash covered the floor. There were “random construction materials” around the home and the living room was barely navigable. (Tr. Vol. 1 at 204.) Additionally, there were “several hazards within [Daughter’s] environment

upstairs[,]” (*id.* at 33); there were no outlet covers upstairs; and there was a space heater running upstairs “covered and surrounded by clothing, snack wrappers, and other clutter which posed a serious fire hazard.” (App. Vol. 2 at 83, 86.) Mother lived in the home with Children and an adult friend, John Jarvis. Mother indicated Jarvis watched Daughter while Mother was at work. Jarvis stated that, when watching three-year-old Daughter, he leaves her alone upstairs and checks on her “every twenty minutes.” (*Id.* at 86.)

[6] On February 14, 2022, DCS completed a follow-up visit to the home. The house was cold, so DCS recommended Mother request additional space heaters from Family Preservation. DCS also noted that, while Mother had made progress cleaning the house, Mother “had failed to address the fire safety and electrical outlet risks.” (*Id.* at 87.) On February 23, 2022, Family Preservation attempted to visit Mother’s home, but she did not let them in when they knocked several times. FCM Hutcheson called Mother and made special arrangements for Family Preservation to return to the home. After the visit, Family Preservation reported “the fire hazard and electrical outlet concerns have not been addressed.” (*Id.*) On March 3, 2022, Family Preservation conducted another home visit and subsequently reported, “[t]hough some improvements were observed, [Mother] was observed to be dysfunctional as a parent and disclosed having serious mental illness that she was not receiving any treatment for.” (*Id.*)

[7] On March 4, 2022, DCS filed a petition alleging Daughter was CHINS based on Mother’s failure to provide a safe and stable home, including the allegation

Daughter was left unsupervised for up to twenty minutes at a time. On March 10, 2022, the trial court authorized DCS to take Children into custody. When DCS went to Mother's house, she did not immediately comply with detainment and would not come to the door. While waiting outside the home, police consulted with the prosecutor's office about getting a search warrant to enter the home and arrest Mother for obstruction of justice. Mother eventually opened the door and Family Case Manager ("FCM") Mason Hutcheson asked Mother for Children. DCS detained Children and placed them in foster care. On March 11, 2022, the trial court held a detention hearing and found it was in Children's best interest to be detained because of "an inability, refusal, or neglect to provide shelter, care, and/or supervision at the present time." (*Id.* at 76-77.)

[8] Mother had visits with Children once a week, and she attended all visits. DCS referred Mother to a home-based caseworker to assist her with finding housing and employment. Mother began working with the home-based caseworker on or around April 1, 2022. DCS referred Son to individual and home-based life skills therapies. The trial court held fact-finding hearings on the CHINS petitions on April 25, May 18, June 1, and June 28, 2022.

[9] Mother testified Son had been "diagnosed with ODD [oppositional defiant disorder], ADHD [attention deficit hyperactivity disorder], and anger issues." (Tr. Vol. 1 at 74.) Mother admitted she had a pending Class B misdemeanor criminal charge for violation of the compulsory school attendance law, Ind. Code § 20-33-2-6, based on Son's unexcused absences from school. Mallory

McCullough, the academic dean at Son's school, testified regarding Son's absences, his failing grades, and McCullough's communication with Mother. McCullough explained that, between August 13, 2021, and Children's removal from Mother's custody, Son "had 17 days absent and then 29 tardies." (Tr. Vol. 1 at 249.) Mother's explanation for the absences included: Mother was threatened the night before at work and did not feel safe in the morning; Mother kept Son out of school while waiting for his mental health counseling referral despite receiving no recommendation from the family doctor or counselor to do so; Mother was having "health issues" (Ex. Vol. 1 at 21); Son was sick; Son "was doing community service" (*id.* at 23); Mother struggled to find someone to take Son to school while her car was not working; Son "fell off his bike and they lost two of their guinea pigs" (*id.* at 20); and "[Mother] was struggling to get him out of bed." (Tr. Vol. 1 at 246.)

[10] On May 16, 2022, FCM Hutcheson completed another home visit. FCM Hutcheson found the bathroom floor was still a safety concern because it was "very weak in some spots and there [were] still holes present." (Tr. Vol. 2 at 81.) On June 30, 2022, DCS filed an Affidavit to Report Home Conditions in which FCM Hutcheson reported the home was clean, "had no trash or dirty surfaces with the exception of Mr. Jarvis's bedroom." (App. Vol. 2 at 61.) The home had working utilities. The bathroom floor was patched and strong enough to stand on. There were beds for each child in separate rooms and Mother had placed bedding on the floor in Daughter's room for Mother's bed. Mother confirmed she got her vehicle repaired and was "enjoying her new job."

(*Id.* at 62.) Jarvis agreed to help watch Daughter while Mother is at work. The affidavit ended with DCS’s support of returning Children to the home with continued support and services through an in-home CHINS case.

[11] On July 5, 2022, the court adjudicated the children as CHINS. The court’s order stated: “In support for this conclusion of law, the following findings of fact are found instable housing, unsafe housing conditions, mother and children would benefit from continuing services with the Department of Child Services.” (*Id.* at 63.) DCS thereafter filed a pre-dispositional report that recommended Mother complete a parenting assessment and individual counseling. DCS later recommended, instead of individual counseling, that Mother complete family preservation services when Children were returned to her care. The report also recommended Children remain in foster care “due to [M]other’s history of housing and relationship instability.” (*Id.* at 56.) Around this time, Mother reported to DCS that she could not stay in her home due to “high temperatures” and insufficient air conditioning. (*Id.* at 58.) DCS also reported that, while in foster care, Son successfully completed seventh grade with all passing grades, without an Individual Education Plan (“IEP”).

[12] The trial court held a dispositional hearing on August 26, 2022. FCM Mark Johnson testified DCS was waiting for the dispositional hearing to approve unsupervised visitation for Mother with Children.

[W]e started because of the concerns for educational neglect and concerns about [t]he home conditions. And so that led to concerns about [Mother’s] parenting abilities. We’re just . . .

making sure that as we reiterate [sic] [Children] back into the home that she is up to the standards that need to be met to ensure that [Children's] educational and personal wellbeing needs are met.

(Tr. Vol. 2 at 179.) When asked about completing parenting classes as requested by DCS in its pre-dispositional report, Mother testified she did not want to take parenting classes because she previously completed a parenting assessment and classes. Mother stated the assessment revealed she “needed some work with [S]on.” (*Id.* at 213.) Nevertheless, Mother stated she did not believe she needed to participate because she has read parenting books and books about Son’s diagnoses.

[13] On September 8, 2022, the trial court entered its disposition order requiring Mother to, among other things, continue contact with DCS, maintain suitable housing, participate in recommended counseling, “and successfully complete all recommendations developed as a result of the parenting assessment.” (App. Vol. 2 at 44.) The court denied Mother’s request to dismiss the case and instead ordered Children remain with their current placement.

Discussion and Decision

[14] Mother challenges the trial court’s determination that Children are CHINS. DCS filed the CHINS petitions for Children 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:

(A) when the parent, guardian, or custodian is financially able to do so; or

(B) due to the failure, refusal, or inability of the parent guardian, or custodian to seek financial or other reasonable means to do so; 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.

A CHINS proceeding is a civil action, so DCS must prove by a preponderance of the evidence that a child is a CHINS. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). In support of its CHINS petition as to Son, DCS noted Son was not attending school as required by Indiana Code section 20-33-2-6.

[15] When it adjudicated Children as CHINS, the trial court entered sua sponte findings. "We may affirm a general judgment with findings on any legal theory supported by the evidence." *N.G. Hatton Trust v. Young*, 97 N.E.3d 282 (Ind. Ct.

App. 2018) (quoting *Eisenhut v. Eisenhut*, 994 N.E.2d 274, 276 (Ind. Ct. App. 2013)), *trans. denied*. General judgment findings will be set aside on appeal only if they are clearly erroneous. *Id.* “A finding is clearly erroneous if there are no facts in the record to support it, either directly or by inference.” *Id.* In reviewing a trial court’s CHINS determination, “[w]e neither reweigh the evidence nor judge the credibility of the witnesses.” *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). “Instead, [w]e consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom.” *Id.*

[16] In its order, the trial court indicated: “the following findings of fact are found instable housing, unsafe housing conditions, mother and children would benefit from continuing services with the Department of Child Services.” (App. Vol. 2 at 63.) Mother argues the trial court’s findings and CHINS adjudication are clearly erroneous because DCS did not provide sufficient evidence to prove Children were in need of services.

[17] The court entered its order adjudicating Children as CHINS on July 5, 2022. The last evidence the court received about the condition of Mother’s home was the affidavit filed by FCM Hutcheson on June 30, 2022, which confirmed Mother’s house was clean, the house had utilities, the bathroom floor was safe to stand on, and DCS recommended returning Children to Mother’s house. Given these circumstances, we agree with Mother that the record before the court at the time it adjudicated the Children as CHINS did not support finding “unsafe housing conditions.” (*Id.* at 63.) Nor have we found evidence that

Mother's housing situation was "instable" as of July 5, 2022.⁵ (*Id.*) Despite these unsupported findings, we nevertheless can affirm the CHINS adjudication if the trial court's final finding – that Mother and Children would benefit from continuing services – is supported by the evidence and supports the CHINS adjudication. See *B&S of Fort Wayne, Inc. v. City of Fort Wayne*, 159 N.E.3d 67, 76 (Ind. Ct. App. 2020) (erroneous findings do not require reversal if the judgment is supported by other valid findings), *reh'g denied, trans. denied*.

[18] DCS became involved with Mother and Children due to Son's poor school attendance and failing grades. Between August 13, 2021, and March 7, 2022, Son had twenty-nine tardies and over a dozen unexcused absences. Son's behaviors worsened and performance declined throughout the 2021-2022 school year. Mother provided the school with a myriad of excuses for Son's poor attendance and performance, and the State charged her with Class B misdemeanor criminal violation of the compulsory school attendance law. After being placed in foster care, Son completed seventh grade with passing grades, without an IEP. This evidence supports the trial court finding Mother and Son would benefit from continuing services with DCS to ensure Son gets to school and performs well in school when he is returned to Mother's care.

⁵ That said, Mother's housing did become instable thereafter, as the home where Mother lived had inadequate air conditioning for the high temperatures in July and Mother had to move before the dispositional hearing.

[19] The educational neglect investigation revealed new concerns about home conditions and Mother’s parenting abilities. Daughter was being left unsupervised for twenty-minutes at a time while Mother was at work, and Daughter was spending that time in an area that contained hazards for a small child, including uncovered electrical outlets. By the time of the final hearing, the housing issues appear to have been resolved, but Mother’s new job involved night shifts, which would make finding appropriate childcare a priority for Daughter’s safety. In addition, there were new concerns about Mother experiencing untreated mental illness that impacted her parenting. This evidence supports the trial court finding Mother and Daughter would also benefit from continuing services with DCS to ensure Daughter is properly supervised when returned to Mother’s care.

[20] Mother also asserts that, while “the children may have been endangered, they were not seriously endangered. No actual harm ever came to the children.” (Appellant’s Br. at 10.) The State is not required to delay intervention until “actual harm” occurs to children. *See In re K.B. & M.B.*, 24 N.E.3d 997, 1003 (Ind. Ct. App. 2015) (“the CHINS statute does not require the juvenile court and DCS to wait until a child is physically or emotionally harmed to intervene”). Moreover, Son was at risk of needing to repeat seventh grade due to excessive absences and poor school performance, both of which were remedied simply by placing Son in foster care. Additionally, Daughter was at risk because – as a three-year-old – she was being left alone for up to twenty minutes in an area without covers on electrical outlets and with other hazards

for a small child. We reject Mother’s assertion that the record did not demonstrate serious endangerment to Children.⁶ *See, e.g., id.* at 1004 (affirming trial court’s finding of serious endangerment required for CHINS based on domestic violence between father and girlfriend, which children witnessed and for which father and girlfriend failed to complete therapy).

[21] While the affidavit submitted on June 30, 2022, indicated the issues with Mother’s house had been remedied, the affidavit still requested Children be adjudicated as CHINS because of other concerns. The record supports the court’s finding that Mother and Children could benefit from continued services, and that finding supports the CHINS adjudication. Mother’s arguments are invitations for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Br.B.*, 139 N.E.3d 1066, 1073 (Ind. Ct. App. 2019) (declining a parent’s invitation to reweigh the evidence), *trans. denied*. Because DCS proved by a preponderance of the evidence that Children were seriously endangered and coercive action was needed, we affirm the trial court’s CHINS adjudications of Children. *See, e.g., In re Ar.B.*, 199 N.E.3d 1232, 1238

⁶ Further, Mother argues that she would like this court to “examine if the harm of removal outweighs the potential harm if the child remains in the home without state intervention.” (Appellant’s Br. at 15.) The statutory requirement of a finding of serious endangerment ensures courts are considering whether removal of children is necessary for the children’s best interests. Herein, the trial court indicated it was concerned about whether removal was best for Children: “So again, we need to think about the children and the separation from their mother at this time is a very adverse childhood experience.” (Tr. Vol. 2 at 170.) Accordingly, we find Mother’s argument misplaced.

(Ind. Ct. App. 2022) (Mother failed to provide proper supervision, which was sufficient evidence to support a CHINS adjudication).

Conclusion

[22] The trial court's finding that Mother and Children would benefit from continued services is supported by the evidence, and that finding supported the court's adjudication of the Children as CHINS. Accordingly, we affirm the trial court's judgment.

[23] Affirmed.

Mathias, J., and Bradford, J., concur.