

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of T.C., A Child in
Need of Services,
S.H., Mother,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

June 9, 2021

Court of Appeals Case No.
20A-JC-2176

Appeal from the
Clark Circuit Court

The Honorable
Vicki L. Carmichael, Judge
The Honorable
Joni L. Grayson, Magistrate

Trial Court Cause No.
10C04-2006-JC-59

Kirsch, Judge.

[1] S.H. (“Mother”) appeals the juvenile court’s order adjudicating her minor child, T.C., to be a Child in Need of Services (“CHINS”). Mother argues that the juvenile court abused its discretion in issuing the Dispositional Order and Order of Parental Participation because there was insufficient evidence to support several of the requirements she was ordered to complete and because she was ordered to perform services at a particular service provider and not her preferred service provider.

[2] We affirm.

Facts and Procedural History

[3] Mother and J.C. (“Father”) (together, “Parents”) are the parents of T.C. (“Child”), who was born on February 19, 2018. *Appellant’s App. Vol. II* at 2. On April 8, 2020, the Indiana Department of Child Services (“DCS”) received multiple reports concerning Parents and their drug use and lack of supervision of Child. *Id.* at 3. After that date, DCS had difficulty getting in touch with Parents for about three weeks because Parents were deliberately avoiding DCS’s offer of involvement. *Id.* When Parents finally agreed to meet with DCS, it was determined that no action on the behalf of DCS was necessary at that time. *Id.*

[4] On May 22, 2020, Parents, who were passengers in a vehicle, were observed to be unconscious in the vehicle as it was stopped at a stoplight, and Child was observed to be in the backseat of the vehicle. *Id.*; *Tr. Vol. 2* at 6. A photograph was taken of Parents’ unconscious state and was given to the police, who ran

the license plate of the vehicle and discovered it was stolen; the driver, who is not a party to this case, was later arrested. *Appellant's App. Vol. II* at 3; *Tr. Vol. 2* at 6. When the police later located Parents, an ambulance was called because Father was still unconscious, and he was transported to the hospital. *Appellant's App. Vol. II* at 3; *Tr. Vol. 2* at 6-7. The next day, on May 23, 2020, DCS interviewed Father, and he admitted that he overdosed on heroin the day before; a drug screen was administered, and Father tested positive for heroin metabolite, morphine, methadone, EDDP, fentanyl, and norfentanyl. *Appellant's App. Vol. II* at 3.

[5] On June 2, 2020, Father¹ and Child were observed outside of their home, and Father appeared to be under the influence of a mind-altering substance and seemed to leave Child unsupervised. *Id.* Child was observed walking away and was near or in the street, which raised the concern that Child could be struck by a vehicle. *Id.* An ambulance was again called because of Father's apparent state of mind and because he appeared to have hit his head on the pavement. *Id.* For several weeks after that date, Parents refused the attempts of DCS to discuss Child's welfare with them. *Id.*

[6] On June 15, 2020, DCS filed its petition alleging Child was a CHINS based on Mother's substance abuse and failure to properly supervise Child and the resulting risk to Child. *Id.* at 2-3. On June 30, 2020, the juvenile court held the

¹ Father does not join in this appeal. Therefore, we focus on the facts as they relate to Mother.

initial hearing on the CHINS petition, appointed Mother and Father public defenders, and entered denials on their behalf. *Tr. Vol. 2* at 4, 12-13. At that time, Child remained in Mother's care. *Appellant's App. Vol. II* at 29-30.

- [7] On August 6, 2020, the juvenile court held a detention hearing after it had signed an emergency custody order on August 4, 2020 for Child's removal from Mother's care. *Tr. Vol. 2* at 23-24; *Appellant's App. Vol. II* at 41-43. The juvenile court had signed the emergency order because, among other reasons, Mother had been in an automobile accident in late July with Child in the car. *Appellant's App. Vol. II* at 41. Mother was the sole cause of the accident, and she and Child were injured in the accident, but neither were taken to the hospital. *Id.* Further, the emergency order was also signed because Mother continued to have positive drug screens for "alarming amounts of fentanyl" suggesting "chronic abuse." *Id.* at 42. Out of five drug screens submitted since late July, Mother tested positive three times for fentanyl and trace amounts of heroin, which indicated Mother was consistently using drugs. *Tr. Vol. 2* at 26, 28. Before the August 6 detention hearing, Mother's last positive fentanyl screen was on July 29, 2020. *Id.* at 37. After hearing the evidence, the juvenile court found that it was in Child's best interest to continue to be removed from Mother's care because Mother was not providing Child appropriate care, and Mother's drug use placed "child in imminent risk of serious physical and/or mental harm." *Appellant's App. Vol. II* at 42-43; *Tr. Vol. 2* at 38. The juvenile court ordered supervised parenting time for Mother. *Tr. Vol. 2* at 41.

- [8] On September 3, 2020, the juvenile court held the CHINS fact-finding hearing. *Id.* at 45. At the hearing, the juvenile court took judicial notice of the emergency custody order that had been entered on August 4, 2020, and all other pleadings filed in the CHINS case. *Id.* at 48. Halfway through the presentation of the evidence, Mother admitted Child was a CHINS due to her substance abuse and behavioral concerns, which were established by the testimony of the DCS family case manager Candance Orman (“FCM Orman”) and Mother’s visitation supervisor/parenting instructor Kaitlyn Keppel (“Keppel”) of Family Ark. *Tr. Vol. 2* at 81; *Appellant’s App. Vol. II* at 68.
- [9] At the fact-finding hearing, FCM Orman testified that she had been working with Mother and Child since early July 2020 and had difficulties getting in contact with Mother since she took over the case. *Tr. Vol. 2* at 48, 49-50. FCM Orman also had difficulties monitoring Mother’s drug use. *Id.* at 51-52. In late July 2020, Mother admitted to FCM Orman that she was using fentanyl, and Father admitted he and Mother were drug addicts. *Id.* at 52-53. Mother told FCM Orman that she regularly goes to the methadone clinic, but Mother refused to sign releases so that FCM Orman could verify Mother’s participation and receive updates on Mother’s treatment. *Id.* at 53-54. At the time of the hearing, Mother had not engaged in the DCS recommended substance use assessment. *Id.* at 54.
- [10] Since July 21, 2020, Mother continued to test positive for illegal substances, although FCM Orman was only able to get a few drug screens from her on the following dates: (1) on July 22, Mother tested positive for THC, methadone,

and fentanyl; (2) on July 27, Mother tested positive for methadone and fentanyl; (3) on July 29, Mother tested positive for methadone and fentanyl; and (4) on August 5, the day after Child was removed, Mother tested positive for methadone, Xanax, and fentanyl. *Id.* at 57-58. FCM Orman testified that Mother's positive drug screens also were positive for trace amounts of heroin. *Id.* at 55. FCM Orman testified she had attempted to perform a drug screen on Mother on August 13, 17, and 20, 2020, but Mother did not contact her. *Id.* at 62. FCM Orman tried to reach out to Mother by telephone on August 27, 28, and 31, but was unsuccessful. *Id.* at 63. FCM Orman showed up unannounced at Mother's residence on September 1, 2020 and was able to perform a drug screen on Mother; however, the test result was not yet back from the lab at the time of the hearing. *Id.* at 58.

[11] FCM Orman believed Mother's housing situation was unstable because Mother had to leave her current residence by September 14, 2020. *Id.* at 55.

Additionally, Mother had moved one previous time during the CHINS case. *Appellant's App. Vol. II* at 50. FCM Orman testified that she was unaware that Mother had any other housing "lined up" for herself after the September 14 move. *Tr. Vol. 2* at 55. Later, at the time of the dispositional hearing on October 29, 2020, Mother stated that she was staying at Catalyst, which is a rescue mission. *Id.* at 105. FCM Orman testified that she had not been able to confirm if Mother was in substance abuse treatment and that Mother needed to engage in a substance abuse assessment, even if she could prove that she was already at another facility. *Id.* at 58-59. Because of Mother's substance use and

potential homelessness, among other things, FCM Orman testified that Mother should, among other services, participate in a substance use/detox program and home-based services, which could also help her address her potential homelessness. *Id.* at 55-56.

[12] Keppel, of Family Ark, was assigned as the visitation supervisor and was Mother's case manager, and prior to Child's removal on August 4, 2020, Keppel also worked with Mother as her family preservation case manager. *Id.* at 66. Since Child's removal, Keppel was also supposed to work with Mother on her parenting skills but had been unsuccessful in arranging regular supervised visits or providing Mother with parenting skills. *Id.* at 66-68. Keppel testified that Mother failed to set up visits or follow through with them, and she had not scheduled a case management session with Keppel, despite Keppel's attempts to get Mother to do so. *Id.* At the time of the fact-finding hearing, Keppel had only seen Mother twice since Child's removal on August 4, 2020. *Id.* at 67.

[13] Mother also "usually brushed off" Keppel's attempts to address Mother's case management. *Id.* at 68. Keppel was concerned about Mother's positive fentanyl screens and the stability of her housing. *Id.* at 67. Mother had moved from job to job since July, was currently working a temporary job, and Mother offered her job as "a reason or excuse" for not visiting Child. *Id.* at 69. Since Child's removal, Mother had only visited Child twice, which included one visit on the morning of the fact-finding hearing. *Id.* at 72. Keppel recommended

that Mother complete a substance abuse assessment and a parenting assessment, home-based services, and case management services. *Id.* at 73, 74.

[14] After FCM Orman and Keppel testified, Mother entered into an agreed order in which she admitted to the CHINS allegations, and specifically that Child was a CHINS due to Mother's substance abuse and behavior issues. *Id.* at 81; *Appellant's App. Vol. II* at 68. In the agreed order, the juvenile court found that "the agreed upon findings of fact are based on the testimony of witnesses, Candance Orman and Kaitlyn Keppel, regarding *substance abuse* and *behavioral concerns* on behalf of parents. It is agreed by the parties that the testimony is sufficient basis on which that the child is a [CHINS], per I.C. [31-34-1-1]." *Appellant's App. Vol. II* at 68 (emphasis added).

[15] On October 29, 2020, the dispositional hearing was held. *Tr. Vol. 2* at 96. The juvenile court admitted the Pre-Dispositional Report into evidence, and at the end of the hearing, incorporated and accepted the recommendations in the DCS report as the juvenile court's ordered services. *Id.* at 99, 103. In the Pre-Dispositional Report, DCS requested, among other services, that Mother engage in a substance use assessment and follow any resulting recommendations, home-based services, a clinical assessment, random drug screens, and a parenting assessment. *Id.* at 99; *Appellant's App. Vol. II* at 61-64, 67. FCM Orman testified that DCS preferred that Family Ark do all of Mother's assessments and services but that Mother was giving DCS "push back" because she wanted some of her services to be at Life Springs or Catalyst. *Tr. Vol. 2* at 101, 102, 105. FCM Orman stated that she had put in referrals for

Mother at Family Ark and Life Springs, but Mother had not yet engaged in any services. *Id.* at 98. Mother had informed FCM Orman that she wanted to work through “haven house” for home-bases services and that she would work with a social worker there to help her get a job, housing, and go back to school. *Id.* at 98-99. Mother testified that she had already connected with Life Springs, but Life Springs could only do a psychological and drug assessment for her. *Id.* at 102. Mother had filled out the paperwork for Life Springs, but her first appointment was not set until November 4, 2020. *Id.* 102-03. She testified that Life Springs was going to help her get back into school, help her get daycare, as well as help her obtain discounts on daycare. *Id.* at 102.

[16] The juvenile court verified with Mother that she had not yet started services at Life Springs and then ordered Mother to do her assessments at Family Ark, because Family Ark could address all Mother’s needs and services. *Id.* at 103. Mother then asked if she could do her services through Catalyst because she was staying there. *Id.* at 105. The juvenile court stated that Catalyst does not provide the services that Mother needed and told Mother that there are “very limited providers that do that.” *Id.* The juvenile court reiterated that it agreed with DCS’s recommendation that Mother do all her assessments at Family Ark. *Id.* at 106. Mother stated, “I agree with it being through Family Ark but okay.” *Id.*

[17] On November 6, 2020, the juvenile court issued the participation order and the dispositional order, which set out the programs and services that Mother was

required to comply with as part of the CHINS adjudication. *Appellant's App. Vol. II* at 81-84, 85-89. Mother now appeals.

Discussion and Decision

[18] Mother argues that there was insufficient evidence to support several of the requirements contained in the juvenile court's participation order and dispositional order ("Dispositional Order"). Following a CHINS determination and a dispositional hearing, the trial court issues a dispositional order that details the plan of care, treatment, or rehabilitation required to address the needs of the Child, which includes the entry of findings and conclusions. *See* Ind. Code §§ 31-34-19-1, 31-34-19-10. Indiana Code section 31-34-20-3 provides,

If the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, the court may order the parent, guardian, or custodian to do the following:

- (1) Obtain assistance in fulfilling the obligations as a parent, guardian, or custodian.
- (2) Provide specified care, treatment, or supervision for the child.
- (3) Work with a person providing care, treatment, or rehabilitation for the child.
- (4) Participate in a program operated by or through the department of correction.

(5) Participate in a mental health or addiction treatment program.

“Although the [trial] court has broad discretion in determining what programs and services in which a parent is required to participate, the requirements must relate to some behavior or circumstance that was revealed by the evidence.” *In re A.C.*, 905 N.E.2d 456, 464 (Ind. Ct. App. 2009). This court has recognized that forcing unnecessary requirements on parents whose children have been determined to be CHINS can set them up for failure and can result in failed reunification of the family and even the termination of parental rights. *Id.* at 464-65.

[19] Mother argues that the juvenile court’s Dispositional Order was an abuse of discretion because sufficient evidence was not presented to support several of the requirements. She contends that the trial court abused its discretion by imposing requirements on her in the Dispositional Order that were unrelated to the behavior or circumstances revealed by the evidence. Mother asserts that the CHINS adjudication was based only on her substance abuse issues, and the Dispositional Order contained many other issues unrelated to her substance issues and that those requirements should be stricken. Specifically, Mother contends that the following requirements of the dispositional order were erroneously included in the Dispositional Order:

f. If a program or programs is/are recommended by the Family Case Manager or other service provider, enroll in that program [in] a reasonable time, not to exceed thirty (30) days and participate in the program as scheduled by that program without delay or missed appointments. If required to obtain an

assessment, arrange to complete that assessment within thirty (30) days.

. . . .

j. Maintain suitable, safe and stable housing with adequate bedding, functional utilities, adequate supplies of food and food preparation facilities. Keep the family residence in a manner that is structurally sound, sanitary, clean, free from clutter and safe for the child.

k. Secure and maintain a legal and stable source of income, which may include employment, public assistance, Social Security and/or child support payments that are adequate to support all the household members, including the child.

l. Assist in the formulation and implementation of a protection plan which protects the child from abuse or neglect from any person.

m. Ensure that the child is properly clothed, fed and supervised. If they are of school age, ensure the child is properly registered/enrolled in and attending school or provide verification that the child is participating in an approved educational program. Fully cooperate with each child's school regarding any issues concerning that child.

. . . .

q. Obey the law.

. . . .

u. Complete a psychological evaluation(s) as referred and approved by DCS and successfully complete any recommendations that result from the evaluation(s).

. . . .

v. Meet with medical/psychiatric personnel, as directed by medical/psychiatric personnel and shall take all prescribed medications in the doses and frequencies specified in the prescriptions.

. . . .

y. Not commit any acts of domestic violence on anyone including the child, and agree that if an instance of domestic violence occurs immediately report it to the Family Case Manager.

. . . .

ab. Provide child with a safe, secure and nurturing environment that is free from abuse and neglect and be an effective caregiver who possesses the necessary skills, knowledge and abilities to provide the child with this type of environment on a long-term basis to provide the child with permanency.

Appellant's App. Vol. II at 86-88.

[20] DCS maintains that Mother has waived her challenges to the Dispositional Order's requirements by failing to object to the imposition of the requirements or any of the proposed services at the dispositional hearing. We agree with DCS that Mother has waived these arguments with respect to the Dispositional

Order. At the dispositional hearing, Mother, who was represented by counsel, challenged where she could do her assessments but did not object to the court-ordered services she challenges on appeal or specifically to any of the services recommended by DCS in either its Pre-Dispositional Report or the juvenile court's Dispositional Order. *Tr. Vol. 2* at 102-03, 105-06. It is axiomatic that an argument cannot be presented for the first time on appeal. *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015). *See also Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013) (“[A]ppellate review presupposes that a litigant’s arguments have been raised and considered in the trial court.”); *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003) (“It is well established, however, that a party on appeal may waive a constitutional claim.”). Therefore, Mother has waived her arguments concerning whether the requirements in the Dispositional Order were not supported by sufficient evidence because they were unrelated to the behavior or circumstances revealed by the evidence.

[21] Waiver notwithstanding, we cannot say that the requirements Mother challenges are an abuse of discretion. Based on Mother’s admission that Child was a CHINS, the court adjudicated Child a CHINS under Indiana Code section 31-34-1-1. *Appellant’s App. Vol. II* at 68-69. Therefore, Mother admitted, and the juvenile court agreed, that Child was a CHINS due to Mother’s “substance abuse” and “behavioral concerns” causing Child’s physical or mental condition to be seriously impaired or seriously endangered; and because of that, Child needed care, treatment, or rehabilitation that Child was not

receiving and was unlikely to receive in Mother's care without court intervention. *Id.*

[22] After a CHINS adjudication, a dispositional hearing is held, at which the juvenile court must consider the alternatives for the child's care and rehabilitation, as well as the extent to which the parent should engage in a "program of care, treatment, or rehabilitation for the child." Ind. Code § 31-34-19-1. As was done here, the juvenile court can admit DCS's pre-dispositional report to help determine what services are necessary. Ind. Code § 31-34-19-2. The parent has the right to controvert any part of the report. *Id.* Here, the only part of the report Mother controverted was *where* her assessments would occur. *Tr. Vol. 2* at 102-03, 105-06. The juvenile court can accept DCS's recommendations from DCS's pre-dispositional report and make them part of the court's dispositional decree. Ind. Code § 31-34-19-6.1(b); Ind. Code § 31-34-19-10(b).

[23] In looking at the challenged requirements, we conclude that the juvenile court did not abuse its discretion. First, the Dispositional Order's requirement in paragraph f that Mother participate in services recommended by DCS or its service providers in a reasonable time reiterates the juvenile court's preface to its order that Mother "shall participate in a treatment program ... consistent with the recommendations of DCS" per the juvenile court's adoption of DCS's Pre-Dispositional Report; it does not provide DCS the authority to create orders as Mother contends. *Appellant's App. Vol. II* at 86. With respect to the requirement in paragraph q that Mother obey the law and paragraph y that

Mother not commit acts of domestic violence, Mother (like all citizens) is already subject to those obligations. During the pendency of the case, Mother was using illegal drugs and continued to have positive drug screens, including for fentanyl and heroin, which is illegal behavior, and the case began when she was found passed out in a car at a stoplight, which was related to her illegal substance abuse. *Id.* at 2-3, 42; *Tr. Vol. 2* at 6-7, 13-14, 26, 28, 37, 55, 57-58. The evidence supported these requirements.

[24] As to paragraphs j and k, which respectively require Mother to maintain suitable, safe, and stable housing and to secure and maintain a legal and stable income, we find that they were related to the circumstances of the case and supported by the evidence. Mother's housing, and possible homelessness, was a concern to FCM Orman and Keppel, upon whose testimony the juvenile court found established the factual basis for the CHINS adjudication. *Tr. Vol. 2* at 55, 67; *Appellant's App. Vol. II* at 68-69. Additionally, on the day of the dispositional hearing, October 29, 2020, Mother testified that she was living at Catalyst, which is a rescue mission. *Tr. Vol. 2* at 105. There was also testimony that Mother's employment had been inconsistent with her moving from job to job and being at a temporary position at the time of the fact-finding hearing. *Id.* at 69. The record supports these dispositional requirements.

[25] We do not consider the dispositional order's requirements in paragraph l, to assist in the formulation and implementation of a protection plan for Child so Child can be free of abuse and neglect, paragraph m, to ensure that Child continues to attend school and is properly clothed, fed, and supervised, and

paragraph ab, to provide Child with a safe, secure, and nurturing environment free from abuse and neglect, to be an abuse of discretion. Mother, like all other similarly situated parents, already has the parental obligation to tend to Child's needs and keep him free from abuse and neglect. The evidence presented showed that Mother continued to abuse illegal substances while the CHINS case was pending and had numerous positive drug screens for "alarming amounts of fentanyl" suggesting "chronic abuse," and the case was precipitated because Parents were observed unconscious in a car with Child present, because Child was observed wandering around outside unattended, and because Mother was involved in a car accident with Child. *Appellant's App. Vol. II* at 3, 41 42. Based on this evidence of dangerous behavior, illegal drug use, and lack of supervision of Child, we do not believe that the requirement in paragraphs l, m, and ab were an abuse of discretion.

[26] Regarding the requirements in paragraphs u and v that Mother complete a psychological evaluation and complete any recommendations and that she meet with medical/psychiatric personnel as directed and take all prescribed medications, we do not find them to be an abuse of discretion. These requirements were linked to her substance abuse and concerns about her behavior. The juvenile court found Child to be a CHINS due to Mother's substance abuse and behavioral concerns, and the evidence showed that, prior to the dispositional hearing, Mother had taken steps to engage in psychological and drug assessment at Life Springs and had spoken to a counselor there. *Id.* at 69; *Tr. Vol. 2* at 102-03. Therefore, at the time of the dispositional hearing,

Mother was already voluntarily engaging in these requirements. Further, the evidence that Mother had a substance abuse issue was supported by the evidence and engaging in substance abuse treatment would likely have psychological elements. Additionally, Mother told FCM Orman that she was taking methadone through a clinic, which was presumably prescribed by medical personnel. Therefore, the requirements in paragraphs u and v were linked to the circumstances of the case.

[27] In the present case, Mother agreed that her substance abuse and behavioral issues caused Child's physical or mental condition to be seriously impaired or seriously endangered; and because of that, Child needed care, treatment, or rehabilitation that Child was not receiving and was unlikely to receive in Mother's care without court intervention. Although specifically made aware of the juvenile court's dispositional requirements at the dispositional hearing, she did not object to them. We conclude that the requirements challenged by Mother were not contrary to the record, and the trial court did not abuse its discretion in including them in the Dispositional Order.

[28] Mother also contends that the juvenile court abused its discretion when it ordered her to complete her assessments and services at Family Ark instead of Life Springs. She maintains that, because she already had an appointment scheduled at Life Springs and that Life Springs was going to offer her additional assistance such as getting her back in school and assisting with obtaining daycare, it was an abuse of discretion to not allow her to complete her services there.

[29] Mother has not shown that those same options and services that she claimed were offered at Life Springs were unavailable at Family Ark. Keppel, who worked at Family Ark, testified that she had been attempting to provide Mother services, including visitation and case management, which encompassed parenting services -- but Keppel had not been successful because Mother was not cooperating at the time of the fact-finding hearing. *Tr. Vol. 2* at 66-67. Further, this court has previously found that a trial court's requirement that parents complete a psychological evaluation at a certain facility was not erroneous because such a requirement did not mean that the family could not continue their therapy at a different facility. *In re A.H.*, 751 N.E.2d 690, 700 (Ind. Ct. App. 2001), *trans. denied*. Therefore, the juvenile court's requirement in the present case that Mother complete the required services at Family Ark did not foreclose her from receiving the assistance she wanted to receive from Life Springs. Mother has failed to show that the court abused its discretion. We, therefore, conclude that the juvenile court did not abuse its discretion in issuing its Dispositional Order and the requirements included therein.

[30] Affirmed.

Altice, J., and Weissmann, J., concur.