

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of C.S.R. (Minor
Child), Child in Need of
Services,

and

A.O. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

June 20, 2023

Court of Appeals Case No.
22A-JC-2972

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

The Honorable Beth A. Webber,
Magistrate

Trial Court Cause No.
02D08-2202-JC-101

Memorandum Decision by Judge Crone
Judge Brown and Senior Judge Robb concur.

Crone, Judge.

Case Summary

- [1] A.O. (Father) appeals the trial court's order adjudicating his minor child C.S.R. (Child) to be a child in need of services (CHINS). He claims that the evidence is insufficient to support the trial court's adjudication. We disagree and therefore affirm.

Facts and Procedural History

- [2] Child was born on June 15, 2021, to M.R. (Mother). Father was alleged to be the father. In February 2021, the Indiana Department of Child Services (DCS) removed eight-month-old Child from Mother's care because Mother was living in a women's shelter with Child and using methamphetamine and fentanyl. Child was not placed with Father because paternity had not been established. Moreover, Mother explained to the DCS assessment team that she did not believe that Father was a safe caregiver because he was a registered sex offender. Also, at the time of removal, Father suggested to DCS that, despite Mother's known severe drug addiction, Mother should move in with him and continue to care for Child. At that time, Father was residing with his mother, who had a substantiated termination of parental rights history with DCS, and another woman, who had an active open case with DCS. Father himself also had a history of DCS involvement.

[3] On February 28, 2022, DCS filed a verified petition alleging that Child was a CHINS. The petition contained numerous allegations pertaining to both Mother and Father. Regarding Father specifically, DCS alleged:

5. Father has a history of DCS involvement including allegations of neglect, substance use, and domestic violence, CHINS cases, and termination of parental rights cases.

6. Father has a history of criminal convictions for sexual misconduct with a minor and invasions of privacy.

7. Father is the respondent to multiple, active no contact orders
....

8. Without support and services, Father is unable or unwilling to provide [Child] with:

- a. Adequate shelter;
- b. A home free from domestic violence;
- c. A home free from substance abuse.

9. Father and [Child] need and would benefit from care, treatment, or other services that are unlikely to be provided or accepted without this Court's coercive intervention.

Appellant's App. at 14-15.

[4] Father's paternity was finally established in March 2022. Thereafter, in April 2022, Father pled guilty to level 6 felony battery resulting in moderate bodily injury. A protective order was also issued against Father to protect his female battery victim from further violence. A CHINS factfinding hearing was held on May 26 and 31, 2022. Mother admitted that Child was a CHINS due to her

homelessness and drug addiction, and Father presented evidence challenging DCS's allegation that coercive intervention of the court was necessary.

Following the hearing, the trial court entered extensive findings of fact and conclusions thereon adjudicating Child a CHINS. On September 22, 2022, the trial court held a dispositional hearing and ordered both Mother and Father to participate in rehabilitative reunification services. Father now appeals.

Discussion and Decision

[5] Father contends that the trial court erred in adjudicating Child a CHINS because there was insufficient evidence that the coercive intervention of the court was necessary to protect Child. The purpose of a CHINS inquiry is to determine whether a child's circumstances require services that are unlikely to be provided without the intervention of the court, and thus the focus of a CHINS adjudication is on the condition of the child alone, not on the culpability of one or both parents. *In re N.E.*, 919 N.E.2d 102, 105-06 (Ind. 2010). Nonetheless, "[n]ot every endangered child is a child in need of services, permitting the State's *parens patriae* intrusion into the ordinarily private sphere of the family." *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014).

[6] A CHINS adjudication under Indiana Code Section 31-34-1-1 requires DCS to prove by a preponderance of the evidence that the "parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State

coercion.” *Id.*¹ “It is the last element that guards against unwarranted State interference in family life.” *Matter of N.C.*, 72 N.E.3d 519, 524 (Ind. Ct. App. 2017). “State intrusion is warranted only when parents lack the ability to provide for their children.” *Id.* Further, when determining CHINS status, particularly the coercive intervention element, courts should consider the family’s condition not just when the case was filed, but also when it is heard so as to avoid punishing parents for past mistakes when they have already corrected them. *In re D.J.*, 68 N.E.3d 574, 580-81 (Ind. 2017). In reviewing a CHINS determination, we do not reweigh evidence or assess witness credibility. *Id.* at 577-78. Instead, we consider only the evidence that supports the trial court’s decision along with any reasonable inferences drawn therefrom. *Id.* at 578.

[7] Father argues that DCS failed to prove by a preponderance of the evidence that the coercive intervention of the court is warranted because “evidence at trial

¹ In full, the statute provides:

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.

Ind. Code § 31-34-1-1.

showed [he] was capable of caring for [Child] at the time of trial, had done so for many months previously, with [DCS] acquiescence at one point; and did not need any assistance to continue to provide care at the time of trial.”

Appellant’s Br. at 12.² However, Father focuses merely on the evidence most favorable to him, and he ignores the only relevant evidence in the record, which is the evidence in favor of the trial court’s adjudication.

[8] Specifically, DCS presented evidence that Father was well aware of Mother’s severe substance abuse issues, yet he failed to demonstrate any appreciation for how Mother’s drug use seriously endangered Child when he not only left Child in Mother’s care but also suggested to DCS that Mother could just move in with him and remain Child’s primary caregiver. Father himself has a troubling substantiated history with DCS, which includes a 2017 class B felony conviction for sexual misconduct with a minor. Following that conviction, Father became a registered sex offender who was ordered to have no contact with any child under the age of eighteen. Father admitted to violating the terms of his probation in 2017, which resulted in the revocation of his probation and a three-year executed sentence. Father was released to serve that sentence in community corrections in 2018, only to violate the terms of his release and be sent back to serve the remainder of his term in prison. Even more concerning, after the CHINS petition had been filed in this case but just prior to the

² Father also asserts that “the trial court erred in incorrectly applying the ruling in [*In re K.D.*, 962 N.E.2d 1249 (Ind. 2012)] in finding CHINS with respect to any allegation against Father.” Appellant’s Br. at 12. However, Father does not elaborate on or explain this argument, so we decline to address it further.

factfinding hearing, Father pled guilty to level 6 felony battery resulting in moderate bodily injury. There is an active no-contact order against Father to protect his female victim from further violence.

[9] Based upon this evidence, the trial court found:

The Court concludes that [Father] has engaged in violent acts during the last nine (9) years, has not been able to follow the rules set through his criminal cases, and has been involved in DCS cases involving his own children (and the children of others) that have resulted in the termination of his parental rights. This past history that continues into the present demonstrates [Father's] inability to refrain from acts (or omissions) that put people at risk and that when given opportunities to benefit from services and work to address issues, he is unable to follow the rules and complete the services. This inability seriously endangers [Child].

Appealed Order at 4.

[10] Assessing the evidence as a whole, we agree with the trial court that there is ample indication that Father's failure to appreciate the dangerousness of Mother's substance abuse, his past substantiated involvement with DCS, as well as his troubling and violent criminal history that continues into the present seriously impaired or endangered Child. As noted by DCS, it is well established that a parent's character is a material issue in a CHINS proceeding, *see Matter of L. T.*, 145 N.E.3d 864, 870 (Ind. Ct. App. 2020), and although we must avoid punishing parents for past mistakes when they have already corrected them, there is nothing in the record to suggest that Father has made any strides in that

regard. In other words, at the time of the CHINS factfinding hearing, Father's continued unwillingness or inability to acknowledge his or Mother's parenting deficiencies or his violent tendencies constituted a threat that still hovered over Child. A court need not wait until a tragedy occurs to intervene. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). DCS presented sufficient evidence that Child needed care and supervision that she was not receiving—that is, a safe home free of drugs and the threat of violence—and that such care and supervision likely would not be provided without the court's coercive intervention. The judgment of the trial court is affirmed.

[11] Affirmed.

Brown, J., and Robb, Sr.J., concur.