

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

T.A. (Minor Child)

Child in Need of Services

and

S.L. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

June 14, 2022

Court of Appeals Case No.
21A-JC-2771

Appeal from the Owen Circuit
Court

The Honorable Kelsey B. Hanlon,
Judge

Trial Court Cause No.
60C02-2107-JC-137

Altice, Judge.

Case Summary

- [1] S.L. (Mother) appeals the trial court's order adjudicating T.A. (Child) to be a Child in Need of Services (CHINS). Mother argues that the evidence is insufficient to support the court's order.
- [2] We affirm.

Facts & Procedural History

- [3] Child was born on November 5, 2009. Mother is the Child's primary caregiver.¹ Child was previously adjudicated a CHINS in Cause No. 67C01-1706-JC-65, due to domestic violence against Jos.L., Mother's ex-husband (Ex-husband), substance abuse and neglect, and removed from Mother's care. Because Mother was not cooperative, the court held multiple compliance hearings while the case remained open. Ultimately, the matter was closed through reunification in January 2019.
- [4] Mother and Ex-husband had two children (Child's Half Siblings) before their marriage was dissolved. In June 2021, Ex-husband became concerned for the safety of Child's Half Siblings, and he refused to return them to Mother's care. He reported to the Department of Child Services (DCS) that Mother told him

¹ D.A. is Child's biological father. He admitted that Child was a CHINS and thus, does not participate in this appeal.

about domestic violence between her and her intermittent boyfriend, Joe.L. (Boyfriend). He also reported that Mother had sent him text messages telling him that she was going to commit suicide and that she had tried to kill herself by jumping off the roof of her house.² Child’s Half Siblings had also disclosed that Mother left them and Child unsupervised for long periods of time while she was in another room with guests with the door closed.

[5] On June 11, 2021, DCS began investigating the report pertaining to Mother concerning “lack of supervision, domestic violence in the home, drug use in the home.” *Transcript Vol. II* at 22. The following day, Family Case Manager Tamara Whaley (FCM Whaley) started her initial assessment. Between June 12 and July 11, 2021, FCM Whaley unsuccessfully tried to meet with Mother six different times. She did, however, speak with Mother on the phone a few times, but mostly, Mother communicated by texting. Mother told FCM Whaley to stop harassing her and threatened to call the FBI and/or news stations. Mother was “very clear” with FCM Whaley that she would not meet in person or permit anyone to speak with Child or come into her home. *Id.*

[6] On the night of June 30 – July 1, 2021, Mother’s landlord called the police to report a domestic disturbance between Mother and Boyfriend. Mother told police that Boyfriend broke into her home and stole her gun. Boyfriend gave a different account, telling police that he went to Mother’s home after she sent

² A copy of the text messages between Mother and Ex-husband was introduced into evidence at the fact-finding hearing.

him text messages that she was going to shoot herself with a gun she had at home. He explained that Mother let him in and that they talked for a while before Mother asked him to leave. As he was leaving, he claims he saw a gun near the front door and as Mother lunged for the gun, he grabbed it and “secure[d]” it from her. *Id.* at 64. He admitted that as he pulled the gun from Mother, she fell to the floor. He told Mother to call the police, walked home, unloaded the gun, and waited in his driveway for police to arrive. According to Boyfriend, when the officers came to question him, he gave them the gun and showed them the text messages containing Mother’s suicide threats. A few days after the incident, Mother exchanged text messages with Ex-husband in which she told him the same story that she told the police—that Boyfriend had broken into her home.

[7] As part of her assessment, FCM Whaley spoke with the guidance counselor at Child’s school and was informed that Child was “behind a grade level or two in his math and language” and that he exhibited signs of “severe issues with attention.” *Id.* at 78. School officials suspected a learning disability and wanted to have Child tested but needed Mother to sign consents. Mother made numerous excuses and never signed the consents. Additionally, the counselor noted that Child had missed thirty days of school and that he was tardy on twelve occasions.

[8] Stephanie Surber, a family support specialist with Cornerstone, testified that she attempted to start family preservation services with Mother to address parenting skills and mental health concerns to prevent Child’s removal. Mother canceled

her first two appointments because her father was in the hospital and did not follow up to reschedule. Surber eventually met with Mother on August 12, 2021, at a truck stop, which was the location chosen by Mother. Mother informed Surber that she would only work with Surber if a judge ordered her to do so. Surber was unsuccessful in setting up any services for Mother.

[9] On July 15, 2021, FCM Whaley, with assistance from law enforcement, entered Mother's home pursuant to a court order granting DCS's motion to compel such entry. While conducting a check of the home, officers found a loaded handgun on Mother's dresser. The gun "wasn't locked or did not even have a safety." *Id.* at 27. FCM Whaley talked to Mother about supervising Child, and they put together a safety plan. FCM Whaley also had the opportunity to speak with Child. Throughout the assessment, Mother was "adamant that this was a waste of time, [DCS] didn't need to be there. And, she was going to do as little as she had to do." *Id.* at 27.

[10] In light of reports that Mother had attempted suicide or at least sent text messages threatening suicide to different individuals, FCM Whaley was concerned for Mother's mental health and well-being. Noting Mother's history of non-compliance with DCS attempts to investigate reports of child neglect and her express denial of need for services, her concern for Mother extended to Child as Mother was Child's primary caregiver. Thus, on July 29, 2021, DCS filed a petition alleging Child was a CHINS.

- [11] On October 19, 2021, the court held a fact-finding hearing on the CHINS petition. Mother did not appear for the hearing.³ During the hearing, FCM Whaley, Ex-husband, Boyfriend, Child’s school counselor, and a police officer who responded to the June30/July 1 incident testified to the above-stated facts. At the conclusion of the hearing, the court took the matter under advisement.
- [12] On November 4, 2021, the court issued its order adjudicating Child to be a CHINS. The trial court concluded that “child needs a safe and stable home environment that is free from domestic violence. Mother needs services to address her mental health concerns, domestic violence in the home, and her ability to fulfill the Child’s educational/supervision needs.” *Appellant’s Appendix Vol. II* at 16. In so concluding, the court found that Mother had refused to provisionally engage in family preservation services, had not cooperated with DCS’s assessment, had failed to follow the safety plan designed to protect Child and prevent Child’s removal, and had not adequately addressed her own mental health issues.
- [13] The court held a dispositional hearing on November 15, 2021. During the hearing, FCM Williams testified that Mother had told her she would not participate in services until she was ordered to do so by the court. Mother now appeals the CHINS determination.

³ At the start of the hearing, Mother’s counsel advised the court that Mother was ill and requested a continuance. After DCS objected, the court denied Mother’s request, stating as the basis for its denial that Mother failed to file a written motion to continue.

Discussion & Decision

- [14] A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). On review, we neither reweigh the evidence nor judge the credibility of the witnesses and will consider only the evidence and reasonable inferences that support the trial court's decision. *Id.* We will reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.* Further, in family law matters, we generally grant latitude and deference to trial courts in recognition of the trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied.*
- [15] There are three elements DCS must prove by a preponderance of the evidence for a child to be adjudicated a CHINS.

DCS must first prove the child is under the age of eighteen; DCS must prove one of eleven different statutory circumstances exist that would make the child a CHINS; and finally, in all cases, DCS must prove the child needs care, treatment, or rehabilitation that he or she is not receiving and that he or she is unlikely to be provided or accepted without the coercive intervention of the court.

Id. (footnote omitted); *see also* Ind. Code § 31-34-1-1 (CHINS statute applied in this case where “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”).

[16] It is well established that the purpose of a CHINS adjudication is to protect the child, not punish the parents. *K.D.*, 962 N.E.2d at 1255. The focus of a CHINS proceeding is on “the best interests of the child, rather than guilt or innocence as in a criminal proceeding.” *Id.* (quoting *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010)). Further, when determining CHINS status, particularly the coercive intervention element at issue in this case, courts should consider the family’s condition not just when the case was filed, but also when it is heard 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). This element “guards against unwarranted State interference in family life, reserving that intrusion for families ‘where parents lack the ability to provide for their children,’ not merely where they ‘encounter difficulty in meeting a child’s needs.’” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[17] In its order adjudicating Child a CHINS, the court noted Mother’s “current, serious unaddressed mental health concerns” as demonstrated by her threats to commit suicide and her disclosure to Ex-husband that she had attempted to take her own life by jumping off the roof of her own home. *Appellant’s Appendix Vol. II* at 14. The court also found evidence of domestic violence, specifically referring to the incident between Mother and Boyfriend while the instant DCS assessment was open as well as Mother’s own disclosure of domestic violence

against Ex-husband. When DCS managed to enter the home pursuant to a court order, a loaded handgun was found on Mother's dresser. The court further noted:

Mother has refused to engage in family preservation services provisionally. Mother has not cooperated with the assessment and has failed to follow safety plans designed to protect the Child [and] prevent removal. Mother is not adequately addressing her mental health needs.

Id. at 16. Based on the evidence before it, the court determined that

Child needs a safe and stable home environment that is free from domestic violence. Mother needs services to address her mental health concerns, domestic violence in the home, and her ability [to] fulfill the Child's educational/supervision needs. These services are unlikely to be provided or accepted unless the Court Orders the same.

Id. The court therefore adjudicated Child a CHINS. In the dispositional decree, the court reiterated that Child needed a caregiver "who does not have unaddressed mental health concerns" and a home that "is free from domestic violence." *Id.* at 10. The court also noted Child's need for an "educational evaluation and support." *Id.*

[18] On appeal, Mother argues that the court's reasons for adjudicating Child a CHINS are not supported by the evidence. Mother claims that the circumstances that led to DCS involvement no longer existed at the time of the CHINS fact-finding hearing. She maintains that it was error for the trial court

to overlook her circumstances at the time of the hearing and rely instead on what she claims was concern about her possible future behavior.

[19] Mother provided no evidence that her circumstances have changed since DCS became involved nor does she dispute the trial court's findings. *See McMaster v. McMaster*, 681 N.E.2d 744, 747 (Ind. Ct. App. 1997) (unchallenged trial court findings are accepted as true). The record supports the trial court's findings that Mother has current mental health issues that need to be addressed, there is a history of domestic violence in the home, and there is concern about Mother's ability to fulfill Child's educational and supervision needs. That Mother did not cooperate with the CHINS assessment, failed to follow a safety plan put in place to prevent Child's removal, and expressly stated that she would not participate in services unless ordered to do so, supports the court's determination that the State's *parens patriae* intrusion is necessary. The court's CHINS adjudication is affirmed.

[20] Judgment affirmed.

Vaidik J. and Crone, J., concur.