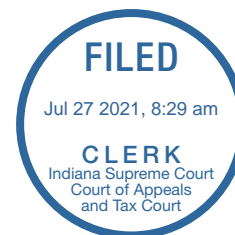


## MEMORANDUM DECISION

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.



---

### ATTORNEY FOR APPELLANT

Andrew Adams  
Jeffersonville, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Robert J. Henke  
Deputy Attorney General

Monika Prekopa Talbot  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

L.S. and T.S. (Minor Children),  
and

D.S. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

July 27, 2021

Court of Appeals Case No.  
21A-JC-251

Appeal from the Jefferson Circuit  
Court

Appeal from the Dearborn Circuit  
Court

The Honorable Donald James  
Mote, Judge

The Honorable James D.  
Humphrey, Special Judge

Trial Court Cause Nos.  
39C01-2009-JC-71, 39C01-2010-

**Altice, Judge.**

### **Case Summary**

- [1] D.S. (Father) appeals from the adjudication of his children as children in need of services (CHINS). He contends that the Indiana Department of Child Services (DCS) failed to present sufficient evidence to support the adjudication.
- [2] We affirm.

### **Facts & Procedural History**

- [3] Father and T.S. (Mother) have two children together, L.S. and T.S. (the Children) who were born in July 2004 and June 2006, respectively. Mother and Father's relationship was marred by domestic violence, much of which was witnessed by the Children. Father's anger has been directed also toward the Children, particularly L.S. Such violence led to criminal charges being filed against Father in 2005, 2008, and 2016, but no convictions followed.

[4] DCS became involved with the family as early as 2008, and several substantiated instances of child neglect were found over the years, including for physical abuse by Father, inappropriate discipline by Father, and domestic violence in front of the Children. DCS's most recent prior involvement began in August 2016. The DCS intake report revealed that on August 9, 2016, Mother and Father were involved in a physical and verbal altercation when L.S., then twelve years old, entered the room and attempted to deter Father away from Mother.<sup>1</sup> Father then grabbed L.S. by the neck and throat and pushed him to the ground, causing L.S. to hit his head on a cabinet. As a result, the police were called and Mother moved out of the family home with the Children, obtained a no-contact order against Father, and began working with Safe Passages as a victim of domestic violence. Father rejected DCS involvement, while Mother entered into a program of informal adjustment (IA), which was approved by the trial court on January 25, 2017. The Children were to remain in Mother's care during the IA with a protection plan in place.

[5] After Mother failed to comply with the IA,<sup>2</sup> DCS filed a petition alleging that the Children were in need of services (CHINS), and they were so adjudicated in August 2017. Although Father complied with the case plan, Mother moved to

---

<sup>1</sup> The report indicated that the family's prior DCS involvement included fourteen reports, nine assessments/investigations, and five substantiated cases.

<sup>2</sup> Among other things, Mother moved and left the Children in the care of their maternal great grandparents, failed to engage in referred services or communicate truthfully with DCS, and had been arrested in Indiana (February 2017) and Florida (March 2017, in the presence of T.S.) for shoplifting.

Florida and did not cooperate with DCS for several months until she returned to Indiana. T.S. remained in the care of her maternal great grandparents until October 2017, when she was placed with Father on a trial home visit. Her CHINS case was closed in June 2018. On the other hand, between June 2017 and December 2018, L.S. lived in four different foster homes and had two stints in juvenile detention and spent eight months at the Southwest Indiana Regional Youth Village, a treatment center for at-risk youth. During this time, L.S. was diagnosed with, among other things, oppositional defiance disorder, PTSD, and ADHD. He was returned to Mother's care on a trial home visit in December 2018. His CHINS case was closed in September 2019.

[6] Thereafter, Mother continued to experience difficulty with L.S., who was verbally and physically abusive to her. In late October 2019, L.S. tried to stab Mother with a knife, which resulted in a delinquency case, two months in a juvenile detention facility, and probation. At some point, L.S. was also suspended from school. On February 10, 2020, Mother gave custody of L.S. to Father because she could no longer handle his behaviors. She then relocated out of state. Up until that point, though Father made attempts, L.S. had refused any contact with Father for over three years.

[7] On February 14, 2020, deputies of the Jefferson County Sherriff's Department were dispatched to Father's residence following an altercation between L.S. and Father. L.S. reported that Father had headbutted him, pinned him to the ground, placed his hands around L.S.'s neck, and spit on him. The deputies did not make an arrest, but the Children were taken to the home of their maternal

grandfather. DCS family case manager (FCM) Nancy Roberts met with the Children the following day and observed minor injuries to L.S., which L.S. attributed to Father. T.S. indicated that she came out of her bedroom during the argument and saw L.S. pinned to the ground and Father spit in L.S.'s face. T.S. reported that Father had pinned her down in the past and that one time he hit her in the head repeatedly with a full bottle of water. T.S. informed FCM Roberts that she did not feel safe in the home with Father.

[8] As a result of the above incident, DCS initiated a new CHINS action and placed the Children in the care of their maternal grandfather.<sup>3</sup> The CHINS petition was filed on February 18, 2020, and the initial/detention hearing was held the next day. The record before us does not indicate any proceedings thereafter until DCS sought and obtained dismissal without prejudice of the CHINS petition on September 4, 2020. At this time, the Children were returned to Father's care, and Mother continued to live out of state.

[9] T.S. moved back in with Father, and L.S., with Father's permission, lived with Renee Denning, a family friend. Father became dissatisfied about L.S. living with Denning, believing – based on social media posts and text messages – that L.S. was involved with drugs. Father contacted various law enforcement agencies about L.S. in the days leading up to September 12, 2020, and L.S. was returned to Father's home on or about that date.

---

<sup>3</sup> While in the maternal grandfather's care, L.S. was found unresponsive from an overdose of Xanax.

[10] In the early morning hours of September 12, 2020, Father called the Jefferson County Sheriff's Department and indicated that L.S. was "out of control" and "destroying the house." *Transcript* at 126. Deputy Curtis Shelpman and another deputy responded and found that the situation had cooled down. Father answered the door, and Deputy Shelpman then spoke with L.S., who, while "calmly sitting" in his bedroom, indicated that he and Father had "gotten into a mild argument," which was over. *Id.* The deputies then spoke with Father, who stated that L.S. had been engaging in illegal activity and requested that they take L.S. to juvenile detention or otherwise remove him from the house. The deputies explained that they could not remove L.S. without actual evidence of a crime, and then they left.

[11] Within five minutes of leaving, the deputies received another dispatch advising that L.S. was now a runaway. Deputy Shelpman quickly found L.S. walking on the side of the road. It was around 3:30 a.m., and L.S. was "crying, scared, [and] stated that he was in bed, planning on going to sleep and his dad came in there to spank him." *Id.* at 127. Deputy Shelpman decided to contact DCS because "something just didn't seem right to [him]." *Id.* at 129. DCS worker Brittany Reynolds met with Deputy Shelpman and L.S. in a parking lot. Thereafter, Deputy Shelpman accompanied Reynolds, as she went to speak with Father after 6:00 a.m.

[12] Father eventually woke up and answered the door after several minutes and briefly spoke with Reynolds. Father acknowledged that he wanted L.S. to be arrested or taken to a mental institution. Reynolds explained that there were no

grounds for arrest and that a mental evaluation could be done but that L.S. would need to be accompanied by a parent. Father refused to assist in that regard, would not provide names of family members who could potentially take L.S., and directed Reynolds to put L.S. into a foster home because he did not want L.S. back and because L.S. needed to learn consequences. Father then refused to complete any paperwork and “closed the door in [their] faces” before going back to sleep. *Id.* at 145.

[13] After taking L.S. into DCS custody, Reynolds was unable to find any family members with whom to place him. Mother, who still lived out of state, informed Reynolds that “there were concerns for [L.S.’s] safety and well-being in the home with his father.” *Id.* at 24. Ultimately, Reynolds placed L.S. in kinship placement with Denning, with whom he had a “trusting relationship.” *Id.* at 101. DCS filed a CHINS petition regarding L.S. on September 14, 2020.

[14] Thereafter, Father refused to cooperate with DCS. He did not allow Reynolds access to his home or to interview T.S., even after DCS obtained an order to compel from the trial court. He told Reynolds that the court’s order was illegal and warned that there would be “legal repercussions” if she came to his home. *Id.* at 28. Father also directed T.S. to lie and not to cooperate with DCS.

[15] T.S.’s school contacted Reynolds on Friday, October 23, 2020, because T.S. had indicated that she was afraid to go home and wanted to speak with DCS. Upon interviewing T.S. at school that day, Reynolds took her into emergency custody and filed a CHINS petition, which alleged that Father was verbally

abusive toward T.S., had threatened to kill Mother, and has firearms and knives hidden throughout the home and razor blades and spikes on the windows. Additionally, DCS alleged that T.S. had witnessed physical altercations between L.S. and Father, resulting in Father pinning down L.S. and choking him, and that T.S. “lives in continual fear.” *Appellee’s Appendix* at 6. L.S. was placed with an aunt.

[16] FCM Roberts, who had been involved with the family previously, began assisting Reynolds in late September. Referrals were made for individual counseling and family therapy for T.S. and family therapy for L.S. The Children, however, refused to see Father. Additionally, related to a recent arrest involving marijuana, L.S. was scheduled to have a psychological evaluation and substance use disorder assessment completed and to start anger management treatment.<sup>4</sup>

[17] The trial court held, remotely via Zoom, a consolidated factfinding hearing on December 15 and 17, 2020. Mother had previously admitted that the Children were CHINS and, thus, she did not participate in the hearing. In addition to Reynolds, FCM Roberts, and Deputy Shelpman, T.S. testified for DCS. T.S. explained the domestic violence she had witnessed in Father’s home, and she described Father as “very unrational and angry.” *Transcript* at 157. She noted

---

<sup>4</sup> In November 2020, State filed a delinquency action against L.S. for selling marijuana, which ultimately resulted in a delinquency adjudication for possession of marijuana. At the time of the factfinding hearing in the instant case, L.S. was placed in the residential section of the Clark County Youth Shelter. DCS’s plan was to return him to Denning’s home upon his release.



that he has sharp blades on all the windows, hidden knives throughout the house, and a loaded gun in his closet. T.S. also testified that Father screams in her face, has unusual discipline techniques, and had hit her, L.S., and Mother in the past. Father has called T.S. a “B-I-T-C-H” and a “fat lesbian” and has threatened to kill Mother. *Id.* at 159. T.S. testified that she did not want to live with Father at this time due to “his anger and how he’s not willing to get help with it to change.” *Id.*

[18] Father, on the other hand, testified that T.S. was lying – “like her mom” – and indicated that since 2016 he had been subjected to false accusations by his family. *Id.* at 231. He blamed DCS for L.S.’s years of “deteriorate[ion] in every single way imaginable.” *Id.* at 230. Father opined that L.S. should not be under the same roof as T.S. and should be placed in the Youth Challenge Academy for the structure and discipline and the potential of being “a somewhat respectable adult.” *Id.* at 231. He continued, “I need to do what I can for [L.S.], but I can’t do that with him in my life. [T.S] needs to be in my life.” *Id.* At the conclusion of Father’s testimony, the trial court took the matter under advisement.

[19] On January 11, 2021, the trial court issued an order in which it found by a preponderance of the evidence that the Children were CHINS. The trial court made a number of specific findings, of which we note the following:

1. On direct examination, Father effectively admitted that L.S. is a [CHINS] in that the minor child has substance abuse and mental health issues that need to be addressed by services.

Over the approximate six (6) week period before 9/12/2020, law enforcement was called to the [] residence numerous times. Father described L.S. as out of control. Father also admitted that he was unable to control L.S....

2. Father essentially abandoned L.S. in the early morning hours of September 12, 2020....

3. Further, .... Father engaged in an altercation with his son in the early morning hours of September 12, 2020.... Officer Shelpman, thinking things had calmed down, left. Within five (5) minutes, he was called to the residence again. Father had gone to L.S.'s room and attempted to spank sixteen (16) year old L.S. at 3:30-4:00 a.m. L.S. ran away and was found crying and scared and walking along the roadway. ... Father refused to talk to the case worker and told her to take L.S. to foster care or jail.

4. Father admitted that L.S. cannot return home at this time and further admitted that L.S. needs services to address substance abuse, mental health concerns, and alleged criminality. Father even identified a possible service provider.

5. The evidence presented shows that Father is unwilling to provide L.S. with the care, treatment or supervision that he needs.

\*\*\*\*

8. On Father's own motion, the Court took judicial notice of two prior CHINS matters for each child in this cause .... The Court, on Father's motion, took judicial notice of ... a juvenile delinquency case for L.S., in which this Court took an admission and ordered the agreed disposition. These cases are not dispositive on their own. However, when coupled with the case

at bar and considering the totality of the circumstances, they illustrate a pattern of conduct that shows the need for court intervention to assist this family through services for substance abuse, mental health treatment, anger management, and domestic violence prevention.

9. T.S. testified that Father had knives hidden throughout his home. This was corroborated by the testimony of Officer Shelpmann.... T.S. also testified that, at some point, a hidden knife ... nearly cut her when it fell from its hiding place in a kitchen cabinet while she was putting away dishes.

10. As testified by FCM Reynolds, T.S. appeared distraught when Reynolds interviewed the child at school.

11. Father urged T.S. to lie to DCS and to not cooperate with the ongoing assessment....

12. T.S. has observed domestic violence and child abuse perpetrated by Father, as well as being a victim of Father herself. T.S.'s testimony indicated that Father had previously slapped her in the face. T.S. further alleged that her father hit her with a full bottle of water for accidentally dropping a grocery item on an antique table.

13. Father has used unusual discipline with T.S. As testified by T.S. and admitted by Father, T.S. was forced to move stacks of bricks in the yard back and forth as punishment.

14. .... T.S.'s need for help is shown by the fact that she has observed loud and aggressive fights between L.S. and Father, in which Father choked L.S. and spit on him. T.S. has also observed Father strike Mother. T.S. also expressed concerns

[about] the sharp blades lined up across the windows, and knives hidden throughout the house.

T.S. also described firearms in the home and expressed concern regarding dad's erratic, irrational and angry behavior.... T.S. was also advised by Father that if she attempted to talk to her mother, that he would kill Mother. [] T.S.'s testimony further makes clear that Father is unwilling to seek help regarding his anger issues. This Court accepts T.S.'s testimony.

15. Father fails to acknowledge L.S.'s mental health issues, having called them a "bullshit" diagnosis. In fact, in a call to the Indiana State Police to enter a complaint regarding L.S., Father referred to a diagnosis for his son as meaning that his son was an "asshole."

16. Father disregarded this Court's Order Compelling Conduct:

- a. Not allowing DCS to inspect the interior of his home.
- b. Urging T.S. to not cooperate with DCS and to lie....
- c. Intimidating DCS's employees attempting to execute the Court's order.

17. Further, Father has refused to cooperate in any manner with DCS, even declining to receive written advisements from FCM Reynolds at the removal of L.S.

18. Father's presentation of evidence confirms Father's continuing conflict with DCS. This behavior and attitude are not beneficial for Father or the Children.

19. The coercive intervention of the Court is necessary based upon these circumstances.

*Appellant's Appendix* at 36-38 (cleaned up). Ultimately, based on these findings, the trial court concluded:

Father's actions or inactions have seriously endangered the Children. Father's inconsistent, belligerent and aggressive behavior has created a situation which endangers the Children's mental and physical health. The Court finds that the Children's needs for counseling, mental health services and the need for a consistent caring parent with parenting skills to meet these needs are currently unmet.... The Court also finds that evidence presented clearly show that Father will not cooperate in providing for the needs of the Children without the coercive intervention of the court....

*Id.* at 38 (cleaned up). Following the dispositional hearing and order, Father filed the instant appeal.

## **Discussion & Decision**

[20] 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*.

[21] There are three elements DCS must prove 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”). The CHINS statutes do not require a court to wait until a tragedy occurs to intervene; rather, a child is a CHINS when he or she is endangered by parental action or inaction that is unlikely to be remedied without coercive intervention by the court. *See In re C.K.*, 70 N.E.3d 359, 364 (Ind. Ct. App. 2016), *trans. denied*.

[22] It is well established that the purpose of a CHINS adjudication is to protect the children, 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)) (observing that there are circumstances in which a CHINS adjudication may be made where neither parent is at fault or where only one parent is responsible). 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). 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)).

[23] Father contends that the trial court’s determination that the Children are CHINS was clearly erroneous. In doing so, he does not directly challenge any of the court’s specific findings set out above. He simply disagrees with the trial court’s ultimate conclusions that the Children are in need of services and that the coercive intervention of the court is required to meet their needs. Father’s arguments differ as to each child, so we will address them in turn.

[24] Father’s arguments related to L.S.’s adjudication are somewhat difficult to follow. He begins by noting that he had contacted various police departments, probation, and DCS on a number of occasions about L.S.’s delinquent behavior. Father then suggests that because L.S. was receiving services through

the probation department at the time of the factfinding hearing, no further intervention by the court or services from DCS were needed. Although Father admits that L.S. needs help, Father claims that he has made every attempt he could to properly parent L.S. We cannot agree.

[25] We observe, initially, that Father seems focused on whether he is at fault for L.S.'s behavioral and mental health issues. As we have recently explained, however:

Although the acts or omissions of one or both parents can cause a condition that creates the need for court intervention, the CHINS designation focuses on the condition of the children rather than on an act or omission of the parent(s). In other words, despite a “certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that – a determination that a child is in need of services.”

*A.M.*, 121 N.E.3d at 562 (cleaned up) (quoting *N.E.*, 919 N.E.2d at 105). DCS presented ample evidence that L.S. suffers from a variety of mental health and related behavioral and substance abuse issues, many of which stem from years of emotional and physical abuse both witnessed by and experienced by him. Moreover, Father has been unable or unwilling to provide L.S. with the care, treatment, or supervision that he needs to help L.S. with his serious struggles and, through his (Father's) own inconsistent, belligerent, and aggressive behaviors, has made the situation worse. As the trial court found, Father effectively abandoned L.S. on (and after) September 12, 2020, and left it to the system, without any help or cooperation from Father, to address L.S.'s needs.



That is exactly what DCS and the trial court are now trying to do. The trial court's adjudication of L.S. as a CHINS is not clearly erroneous.

[27] With regard to T.S., Father argues that the trial court improperly treated the Children collectively in its findings. This is simply not true. The trial court made a number of specific findings related to T.S., as set out in full above. In particular, we paraphrase the following findings of the trial court: T.S. had witnessed domestic violence and child abuse perpetrated by Father and had been a victim herself; T.S. expressed concerns about sharp blades on the windows, which could prevent egress in an emergency, and knives hidden throughout Father's house, noting that one fell and almost cut her while doing dishes; T.S. described Father's erratic, irrational, and angry behavior, which included threats to kill Mother if T.S. attempted to contact her; and, T.S. was distraught when she was finally able to speak with Reynolds at school, as Father had directed her not to cooperate with DCS. The trial court expressly found T.S.'s testimony to be credible.

[28] Father essentially invites us to reweigh the evidence and judge T.S.'s credibility, neither of which we will do. Contrary to Father's suggestion on appeal, his inconsistent, belligerent, and aggressive behaviors – directed toward his family, among others – were not all a thing of the past (though there is certainly a significant pattern of historical abuse and DCS involvement with the family). T.S., who had witnessed and been a victim of his abuse, remained fearful of Father's uncontrolled anger and indicated that she did not want to live with him due to his unwillingness to seek help. The home, as described by T.S. at

trial, was also full of weapons, with knives left in dangerous and precarious places, and all of the windows had sharp blades on them making it difficult to escape in an emergency, such as a home fire. Additionally, Father had been aggressive, threatening, and uncooperative with DCS staff during the underlying investigation.

[29] In sum, the evidence favorable to the adjudication indicates that Father's supervision of T.S. is violent and abusive and that the home he has provided for her, which he has not allowed DCS to observe despite a court order, has significant safety concerns. Further, throughout the underlying CHINS proceedings, Mother has lived out of state and not been available to parent T.S., and Mother admitted that the Children were both CHINS. *See Matter of L.S.*, 82 N.E.3d 333, 341 (Ind. Ct. App. 2017) (observing that one parent's admission that his or her children are CHINS constitutes "evidence in support of a CHINS determination"), *trans. denied*.

[30] DCS provided ample evidence that T.S. and L.S. are in need of the court's coercive intervention to protect them from physical and/or emotional danger, which has resulted from Mother and Father's inability, refusal, or neglect to supply them with necessary shelter or supervision, and to provide the therapy, treatment, supervision, and other services the Children so desperately need.

[31] Judgment affirmed.

Kirsch, J. and Weissmann, J., concur.