

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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In the Matter of A.O. and Ka.J.  
(Children in Need of Services)

and

H.J. (Mother),  
*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner.*

September 7, 2021

Court of Appeals Case No.  
21A-JC-243

Appeal from the Putnam Circuit  
Court

The Hon. Matthew L Headley,  
Judge

The Hon. Melinda Jackman-  
Hanlin, Magistrate

Trial Court Cause Nos.  
67C01-2009-JC-102  
67C01-2009-JC-103

**Bradford, Chief Judge.**

## Case Summary

[1] In September of 2020, the State petitioned the juvenile court to find that nine-year-old A.O. and one-year-old Ka.J. (collectively, “the Children”) were children in need of services (“CHINS”). A.O. is the child of H.J. (“Mother”) and C.O., while Ka.J. is the child of Mother and her husband Ke.J. (“Father”) (collectively, “Parents”). The CHINS petition was based on, *inter alia*, allegations of domestic violence by Father on Mother and Mother’s failure to protect the Children from exposure to it. Following an evidentiary hearing, the juvenile court found the Children to be CHINS and ordered that Mother participate in reunification services. Mother challenges several of the juvenile court’s findings and contends that the juvenile court’s judgment is not supported by its findings, even if many findings are valid. Because we disagree, we affirm.

## Facts and Procedural History

[2] A.O. was born on November 22, 2010, to Mother and C.O., and Ka.J. was born on August 25, 2019, to Parents.<sup>1</sup> Mother and Father have a history of domestic violence dating back to before March 8, 2018, when the State charged Father with Class A misdemeanor domestic battery against Mother. On March 12, 2018, the court issued a no-contact order to Father with Mother as the protected person. In early April of 2018, Mother requested that the no-contact

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<sup>1</sup> Neither Father nor C.O. participates in this appeal.

order be dismissed. Later in 2018, the State dismissed the criminal charge against Father, and the court vacated the no-contact order. On May 13, 2020, Mother petitioned for a protective order against Father, alleging that she had been the victim of domestic violence from “5/2018 – Present[.]” Ex. Vol. III p. 5. On May 14, 2020, the court issued a two-year protective order against Father. On June 10, 2020, the court dismissed Mother’s petition for a protective order after she failed to appear for an evidentiary hearing.

[3] Also in June of 2020, DCS became involved, and family case manager Amanda Brown (“FCM Brown”) evaluated a report of domestic violence in Mother’s home. FCM Brown met with the family multiple times and became concerned about Mother’s and the Children’s safety as well as Parents’ substance abuse. On June 22, 2020, Mother submitted to a drug screen, which was positive for methamphetamine and THC. On July 14, 2020, Mother met with Missy Patton from the Children’s Bureau, who referred Mother to community resources and worked with her regarding domestic violence. In August of 2020, FCM Brown closed out the assessment.

[4] Meanwhile, on July 24, 2020, Mother petitioned for another protective order against Father, alleging that she had been “threatened, hit, [and] choked” by Father since her last petition and that she was “scared for the safety of [herself] and [her] children.” Ex. Vol. III p. 22. The same day, the court issued a two-year protective order against Father. Father nonetheless continued to live at Mother’s residence full-time with the Children. On September 7, 2020, Greencastle Police Sergeant Ed Wilson responded to a call from Prompt Care

regarding suspected domestic violence. Mother explained to Sergeant Wilson that she was at Prompt Care seeking treatment for injuries she had received from Father. Mother explained that when a deputy sheriff had served Father with the July 24, 2020, protective order, he had initially left but had returned and had continued to live in her residence. Mother completed a “domestic violence/fatality form” for Sergeant Wilson and, based on her responses, screened “high-risk of – for (audio interference) injury or death if she wasn’t removed from the home.” Supp. Tr. p. 29–30. On September 9, 2020, the State charged Father (who already had a pending invasion of privacy charge from June of 2020) with Class A misdemeanor domestic battery and Class A misdemeanor invasion of privacy, and the court entered a no-contact order.

[5] On September 14, 2020, DCS filed petitions alleging that the Children were CHINS based on allegations of domestic violence by Father, Mother’s failure to protect herself and the Children, Mother allowing Father to live with her despite protective orders, domestic violence in September of 2020 witnessed by a child, and Mother testing positive for methamphetamine. On September 15, 2020, the juvenile court found probable cause for the Children’s detention.

[6] On November 24, 2020, the juvenile court conducted an evidentiary hearing. FCM James Hughes testified that he had assessed Mother’s allegations regarding the events of September 7, 2020. According to FCM Hughes, the allegations of domestic violence were substantiated, and Mother told him that she had been afraid to report that Father had been living with her despite the protective order. FCM Hughes expressed concern that Father had ignored a

court order and had stayed in the home and that domestic violence had continued to occur with children in the home. FCM Michael Martin, who took over the case in October of 2020, testified that Mother did not follow the safety plan and that he was concerned that Father would be allowed back into the home “and there will be issues of domestic violence, as the pattern has shown over and over again in this case.” Supp. Tr. pp. 48–49.

[7] On November 24, 2020, the juvenile court issued its orders on the evidentiary hearings, which provided, in part, as follows:

- 28) FCM Hughes testified that he was concerned about the safety of the family since Mother ignored the active Protective Order in place and did not notify anyone that Father was back in the home
- 29) FCM Hughes’s concerns were well-founded.
- 30) Although Mother claimed that the [C]hildren are not in the home during domestic violence episodes, the evidence indicated that something has to happen before Mother sends the children next door.
- 31) Mother did not indicate that it was problematic to send the [C]hildren over to a neighbor’s house when domestic violence occurred.
- 32) FCM Hughes testified that Mother had allowed Father into the home while there was an active Protective Order put in place.
- 33) FCM Michael Martin testified that Mother disclosed to him [] her current desire to coparent with Father.
- 34) FCM Martin testified that Mother asked him what would happen if Mother and Father got back together.
- 35) Mother did not believe arguing is part of domestic violence.

- 36) Mother testified that she has only reported domestic violence between her and Father on two occasions.
- 37) Father testified that he pled guilty to his invasion of privacy charge.
- 38) There is currently a no-contact order and an active Protective Order for Mother and the [C]hildren against Father.
- 39) DCS is not certain where the [C]hildren are located when the episodes of domestic violence are occurring.
- 40) [The Children are] too young to self-protect.
- 41) That, prior to DCS involvement, [the Children were] potentially exposed to domestic violence between Father and Mother.
- 42) The witness accounts provided by [FCM] Brown, Missy Patton, Sergeant Wilson, [FCM] Hughes, and [FCM] Martin were all clear and credible.
- 43) Mother does not seem to understand or appreciate the cycles of domestic violence and the harm that it causes Mother and the [C]hildren in the home.
- 44) Father has not received any services that would address domestic violence with Father and the negative effects it has on his family.
- 45) That the coercive intervention of the Court is necessary to provide [the Children] with safe and appropriate care.
- 46) The Court finds that [the Children] lacked safe and adequate attention and support from [their] Mother and Father. The [P]arents have failed to protect and care for [the Children]'s physical and mental health. The [P]arents have instead relied on others to provide safety for the children after violence arises between Mother and Father. Their neglectful acts have impacted [the Children] and make[ the Children] CHINS.

Appellant’s App. Vol. II pp. 16, 20. On December 7, 2020, the juvenile court found the Children to be CHINS, and, on January 11, issued its dispositional orders, in which it ordered Mother into reunification services with the Children.

## Discussion and Decision

[8] Indiana Code section 31-34-1-1 provides that a child is a CHINS before the child becomes eighteen years of age if

(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; 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.

[9] The purpose of a CHINS adjudication is to “protect children, not [to] punish parents.” *In re D.J. v. Ind. Dep’t of Child Servs.*, 68 N.E.3d 574, 580–81 (Ind. 2017) (citations omitted). DCS bears the burden of proving that a child is a CHINS by a preponderance of the evidence. Ind. Code § 31-34-12-3; *see also In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). The Indiana Supreme Court has stated that

[a] CHINS proceeding is a civil action; thus, “the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code.” *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). We neither reweigh the evidence nor judge the credibility of the witnesses. *Egley v. Blackford County Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We consider

only the evidence that supports the [juvenile] court’s decision and reasonable inferences drawn therefrom. *Id.* We reverse only upon a showing that the decision of the [juvenile] court was clearly erroneous. *Id.*

*In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012) (footnote omitted). A juvenile court need not wait until a tragedy occurs before adjudicating a child a CHINS.

*In re R.S.*, 987 N.E.2d 155, 158 (Ind. Ct. App. 2013).

## I. Whether Several of the Juvenile Court’s Findings Are Unsupported by the Evidence

[10] Mother challenges four of the juvenile court’s findings: that (1) she never complied with either of the orders of protection, (2) she does not seem to understand or appreciate the effect domestic violence has on her and the Children, (3) Parents have failed to protect the Children, and (4) the coercive intervention of the court is necessary to provide the Children with safe and appropriate care. As to the first challenged finding, Mother focuses on the word “never” and points out that she did comply with the protective order once DCS and the juvenile court became involved. The juvenile court was free, however, to conclude that this later compliance was due more to the juvenile court’s involvement and Father’s incarceration than anything else. Even so, FCM Hughes testified that Mother told him three weeks before the evidentiary hearing, or around the time that Father was being released from jail, that she was considering reconciling with him. Even if the juvenile court was technically incorrect that Mother had “never” complied with the orders of protection, the substance of the finding—that Mother had never complied with the orders before the juvenile court became involved and Father was



incarcerated—is supported by the record. Any error the juvenile court might have made in this regard can only be considered harmless. *See In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (holding that because there was sufficient evidence outside the erroneous finding to support the juvenile court’s conclusion, “the erroneous finding was merely harmless surplusage that did not prejudice” the mother and is not grounds for reversal), *trans. denied*.

[11] As for the juvenile court’s finding that Mother did not understand or appreciate the harm domestic violence was doing to her and Children, this is not an unreasonable interpretation of the evidence. The record indicates that Mother’s relationship with Father has been violent since at least far back as 2018 and has at various times involved hitting, choking, and threats. Mother has sought three protective orders against Father stemming from his abuse, the first of which was dismissed at her request, the second of which was terminated when she failed to appear for an evidentiary hearing, and the third of which is apparently still in effect. Despite this, Mother allowed Father back into her home more than once and denied at the evidentiary hearing that she and Father had an extensive history of domestic violence. Mother also claimed that she had to be coerced by DCS into filing her third request for a protective order, which further underscores her failure to appreciate the effects of domestic violence on herself and the Children. The juvenile court did not abuse its discretion in this regard.

[12] Mother also challenges the juvenile court’s finding that she and Father have failed to protect and care for the Children’s physical and mental health.

Mother's argument seems to be that because Father is not currently in the house, the Children are being adequately cared for and no court intervention is necessary. While it may be true that the Children are not currently being exposed to domestic violence, the record supports the juvenile court's finding that Mother and Father have exposed the Children to domestic violence in the past and establishes a repeating cycle of Father abusing Mother and Mother inviting and/or allowing him to return soon thereafter. Given the evidence regarding the history of Mother and Father's relationship, the juvenile court's finding that Parents have failed to protect the Children is not clearly erroneous.

[13] Finally, Mother challenges the juvenile court's finding that the coercive intervention of the court is necessary to provide the Children with adequate care. "[T]he government is permitted to forcibly intervene in a family's life only if the family cannot meet a child's needs without coercion[.]" *Matter of E.K.*, 83 N.E.3d 1256, 1261 (Ind. Ct. App. 2017), *trans. denied*. "[T]he question is whether the parent[] must be coerced into providing or accepting necessary treatment for their child." *Id.* at 1262. Mother points to her compliance with services from June to August of 2020 as evidence that no coercion is necessary. While it is true that FCM Brown testified that Mother participated in services during this period, Mother also allowed Father to return to the home despite the July of 2020 protective order. Moreover, although Father had apparently not returned to the home as of the evidentiary hearing, he had only been released from incarceration three weeks previously, and Mother had already told FCM Hughes that she was considering reconciliation. As a whole, the

record supports an inference that Mother, if left to her own devices, would likely allow Father to return eventually, allowing the cycle of domestic violence to begin anew. Given Mother's history with Father and her willingness to allow him back into her home, the juvenile court did not err in finding that coercive intervention of the court was necessary to protect the Children. In her challenges to some of the juvenile court's findings, Mother is essentially asking us to reweigh the evidence, which we will not do. *See In re K.D.*, 962 N.E.2d at 1253.

## II. Whether the Juvenile Court's Findings Support Its Judgment

[14] Finally, Mother argues that even if some of the juvenile court's findings are valid, they still do not support its judgment that the Children are CHINS. Mother points to evidence that the Children "appear[ed] to be doing okay" approximately one week before the evidentiary hearing, Supp. Tr. p. 45, she recently passed a drug screen, Father was not living in the home, she had filed for divorce from Father, and the Children were safe so long as she was sober and Father was not in the home. Mother suggests that the juvenile court did not adequately consider conditions as they were at the time of the evidentiary hearing when formulating its judgment. Mother has not established that the juvenile court failed to consider circumstances as they were at the time of the evidentiary hearing. Rather, the juvenile court's order indicates that it believed the history of domestic violence between Mother and Father and her repeated willingness to allow Father to return outweighed any more recent, positive

developments. Under the circumstances, we cannot say that the juvenile court's concerns about Mother allowing Father back into her and the Children's lives were unfounded, because she had already done it more than once. Mother has failed to establish that the juvenile court's judgment is unsupported by its findings. *See In re V.C.*, 867 N.E.2d 167, 182 (Ind. Ct. App. 2007) (affirming CHINS adjudication based on mother's pattern of harmful behavior).

[15] We affirm the judgment of the juvenile court.

Robb, J., and Altice, J., concur.