

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of Kod.F., Kor.F.,
and Kry.F. (Minor Children),
Children in Need of Services,

and

J.F. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

April 22, 2022

Court of Appeals Case No.
21A-JC-2499

Appeal from the Orange Circuit
Court

The Honorable Steven L. Owen,
Judge

Trial Court Cause Nos.
59C01-2105-JC-82
59C01-2107-JC-132, -133

Crone, Judge.

Case Summary

- [1] J.F. (Mother) appeals the adjudication of her children Kod.F., Kor.F., and Kry.F. (collectively the Children) as children in need of services (CHINS), arguing that the evidence is insufficient to support their CHINS determinations. Finding the evidence sufficient, we affirm.

Facts and Procedural History

- [2] Mother and T.F. (Father) (collectively the Parents) were married and are parents of Kod.F., born October 3, 2006; Kor.F., born June 7, 2013; and Kry.F., born December 31, 2014.¹ Kor.F. and Kry.F. are both on the autism spectrum.
- [3] On December 26, 2020, Orange County Deputy Sheriff Dustin Wang was dispatched to Mother and Father's home to investigate a report involving a domestic incident and a missing child. When he arrived, Mother was inside with Kor.F. and Kry.F., and Father was outside calling for Kod.F. The Children's maternal grandparents (the Grandparents) also arrived and reported that Kod.F. had walked to their residence. Mother "seem[ed] pretty upset" and told Deputy Wang that she and Father had had a verbal altercation and that he had slashed or deflated her car tires so that she had not been able to leave. Tr. Vol. 2 at 84. Mother wanted to go to the Grandparents' home with Kor.F. and Kry.F. As she gathered some items to leave, Deputy Wang stood in the

¹ Father does not participate in this appeal.

doorway and observed that the floor was covered in animal feces and urine, there was a gas or propane heater more appropriate for a garage or barn and firewood inside, and “in general not really good conditions.” *Id.* at 83.

[4] Later that day, the Indiana Department of Child Services (DCS) received a report that Kod.F. had told the Grandparents that “some sexual things had occurred between her and [Father].” *Id.* at 104. DCS conducted a forensic interview with Kod.F. and substantiated the sexual abuse allegations; however, criminal charges against Father were never brought. DCS family case manager (FCM) Kimberly Byrum visited the Grandparents’ residence to perform a family assessment. Mother told FCM Byrum that “domestic violence had been going on between her and her husband for several years.” *Id.* at 105. Regarding the allegations of sexual abuse, Mother could not “believe that her husband would do something like that.” *Id.* Mother admitted to using marijuana and tested positive for that substance. FCM Byrum attempted unsuccessfully to locate Father. Mother agreed to a safety plan, in which she and the Children would live at the Grandparents’ residence, the Children would have a sober caregiver at all times, and the Grandparents would inform the police and DCS if she left their residence with the Children to see Father. *Id.* at 106.

[5] On January 8, 2021, Mother obtained a protective order against Father on behalf of herself, the Children, and the Grandparents because “[she] was told to” by DCS. *Id.* at 148, 155-56. DCS also “pushed” Mother to divorce Father, and later that month, Mother filed for divorce. *Id.* at 156.

- [6] In February, FCM Byrum conferred with Mother at a meeting to transfer the case to FCM Donna Conrad and open a program of informal adjustment (IA) to provide her and the Children with family preservation services. Mother reiterated that “she had been a victim of domestic violence with [Father] for several years.” *Id.* at 107-08. Mother also stated that Father was not at home very often, and she was suspicious that Father was using methamphetamine. *Id.* at 108. Mother expressed how upset she was at how Father had treated her for several years, for the things he had allegedly done to Kod.F., and for “expos[ing] the family to domestic violence.” *Id.* at 108.
- [7] On February 24, Maglinger Home Based Services Regional Manager Susan Lents conducted an initial assessment with Mother to begin family preservation services. Lents recommended that Mother engage in therapy for trauma, grief, and depression resulting from the “domestic violence, both physical and emotional throughout [her] marriage” to Father and complete parenting education. *Id.* at 115-16. In addition, Lents created a safety plan with Mother, which included a weekly provider check-in, random drug screens, domestic violence services, and Mother’s and the Children’s participation in therapeutic services. *Id.* at 117. In March and April, Maglinger therapist Daniel Spurlock worked with Mother on resourcing, parenting, and enrolling her and Kod.F. in therapy. He met with Mother five to eight times. *Id.* at 133. He helped Mother get social security cards for herself and the Children and the Children’s birth certificates so that she could access services, and he facilitated scheduling Kod.F. for an intake appointment for therapy. Spurlock also set up a safety plan

with Mother, which entailed maintaining sobriety, no contact with Father, ensuring the Children received needed services, and weekly home safety checks.

- [8] On Easter, April 4, Kod.F. called the police because Mother had taken the Children to a hotel with Father, and they had all slept in the same bed. Father was arrested for violating the protective order. Spurlock spoke to Mother about violating the safety plan, but Mother simply said that she wanted the family together. Spurlock believed that Mother “didn’t really understand how much [Father] had done to [Kod.F.]” *Id.* at 129.
- [9] On April 8, Mother and Father’s divorce was finalized, and Mother obtained custody of the Children. On April 22, Mother dismissed the protective order against Father, and they attempted to reconcile. *Id.* at 149. At the end of April, FCM Conrad spoke with Kod.F. at school and learned that Mother had taken Kod.F. to a gas station to meet Father, and the family went out to eat. Kod.F. told FCM Conrad that she felt uncomfortable being with Father and that she had been afraid to call FCM Conrad and tell her about the incident. *Id.* at 10.
- [10] On April 28, Maglinger therapist Janet Bett took over Mother’s case from Spurlock. Bett met with Mother to sign the initial papers, but that was the only time that she met with Mother. Mother decided to stop participating in services because when she “got [her] divorce [her] Court paperwork from the Judge stated that [she] was the legal guardian and [she] was allowed to make decisions for [her] children[,]” and she “didn’t feel that [she] needed [services].” *Id.* at

150. However, Kod.F. began meeting with Bett weekly to engage in therapy for sexual abuse and domestic violence issues.

[11] On April 30, DCS removed Kod.F. from the Parents' care. On May 4, DCS filed a petition alleging that Kod.F. was a CHINS because Father sexually molested her, Mother took her to see Father even though Mother knew about the sexual abuse allegations, and the Parents engaged in domestic violence in her presence.² Appellant's App. Vol. 2 at 58-59. The trial court held an initial hearing and authorized DCS to take Kod.F. into immediate protective custody. Kod.F. was placed in the Grandparents' care.

[12] On July 24, Orleans Police Department Officer James Carl Lindsey responded to a report of a domestic disturbance involving a family and a dark SUV. Tr. Vol. 2 at 91. Officer Lindsey located a dark SUV with a broken windshield and Mother sitting in the driver's seat. Officer Lindsey parked his vehicle, and both he and Mother exited their vehicles. Officer Lindsey noticed that Mother's "shirt was ripped partially off of her" and that she had scratch marks on her arm. *Id.* at 93. Officer Lindsey asked her what happened and whether she was hurt, and she replied, "[W]hat do you think." *Id.*

² The petition alleged that Kod.F. had disclosed "witnessing domestic violence between [the Parents] on several occasions." Appellant's App. Vol. 2 at 59. Other than the verbal altercation that occurred between the Parents on December 26, 2020, the parties do not provide any citations to the record regarding any other specific incidents of domestic violence that Kod.F. witnessed between the Parents.

[13] Officer Lindsey then saw Father and Kor.F. and Kry.F. walking into a cornfield behind a residence. *Id.* Officer Lindsey also noticed that there was a large orange tent behind the residence. Officer Lindsey suspected that Father was the other party involved in the incident and walked toward the cornfield to speak with him and ascertain whether the two children were safe. He looked into the cornfield and saw Father and the children on the ground as though they were trying to hide. Officer Lindsey asked Father what was going on, and Father started swearing at him. *Id.* at 94. Officer Lindsey then ordered Father out of the cornfield, and Father jumped up and continued to scream obscenities at him. Eventually, Father came out with the children but remained “very aggressive” toward Officer Lindsey, walked right past him, and refused to stop when ordered to. After Officer Lindsey unsuccessfully attempted to physically detain Father, he “pulled a taser” and told Father to get on the ground. Father complied, and Officer Lindsey handcuffed him and placed him in his police vehicle. *Id.* at 95.

[14] Officer Lindsey spoke with Mother again. Mother was “visibly upset and shaken by the whole situation.” *Id.* at 98. Mother was hesitant to file any charges and stated that “it would only make things worse.” *Id.* at 95. She explained that she was driving the SUV with Father and the two children in the back seat, when Father reached over and placed the vehicle in park and then busted out the windshield. Officer Lindsey then arrested Father. While waiting for backup to arrive, one of the children gave Officer Lindsey a torn piece of

Mother's shirt. *Id.* at 97. Office Lindsey also learned that the family was living in the tent behind the residence. *Id.* at 98.

[15] DCS received a report of the domestic altercation between Mother and Father in Orleans, which indicated that Father had kicked out the car windshield while Mother was driving and tore Mother's shirt with Kor.F. and Kry.F. present, that Father had been arrested and was incarcerated, and that the family had been living in a tent. On July 27, DCS removed Kor.F. and Kry.F. from the Parents' care and filed a petition alleging that they were CHINS due to the Parents' engaging in domestic violence in their presence, Father engaging in dangerous behavior while Mother was driving him and Kor.F. and Kry.F., and the family living in a tent. Appellant's App. Vol. 2 at 125-26, 181-82. On August 4, DCS amended Kod.F.'s CHINS petition and alleged that Father had been arrested and was incarcerated for domestic battery and that Mother's housing situation was unstable and she had been living in a tent with her other children. *Id.* at 202, 219-20.

[16] On September 24, the trial court held a factfinding hearing. Bett testified that she was providing weekly therapy to Kod.F., that Kod.F. still needed therapy to process issues regarding sexual abuse and domestic violence, and that Kod.F. and Mother needed joint therapy to work on rebuilding Kod.F.'s trust in Mother. Bett also testified that Kod.F. stated that she felt safe with the Grandparents but not with the Parents. Spurlock testified regarding his role in providing Mother services in March and April and said that Mother had just been referred to him for therapy and that he had met with her that week to

begin therapy. He testified that Mother appeared “receptive and willing to engage in services.” Tr. Vol. 2 at 131.

[17] Mother testified that she was employed at Best Western and that although she had been living in a tent in July, she was currently living in a trailer that was appropriate for the Children. This was the same residence that Deputy Wang had responded to in December 2020. As for her participation in services, Mother testified that she was going to seek therapy through Lifesprings and had an appointment to start later that month. She testified that she believed that Kod.F. needed services to address trauma from witnessing the domestic violence but implied that Kor.F. and Kry.F. did not need therapy “[b]ecause they are Autistic and they don’t understand things like other people understand things.” *Id.* at 153. Regarding the domestic violence that occurred in the SUV, Mother said that she did not think it was dangerous for Kor.F. and Kry.F. to be in the vehicle at that time because she would not have let them get hurt, and she denied that they could have gotten hurt. *Id.* at 151. When asked whether she thought Kod.F. needed therapy to process the sexual abuse allegations, Mother replied, “I don’t know that answer.” *Id.* at 154. Mother also testified that she did not think it was harmful for Kod.F. to be around Father after Kod.F. made sexual abuse allegations against him. Mother testified that although she had wanted to reconcile with Father in April, now she was “done” with him. *Id.* at 159.

[18] FCM Kirsten Daugherty, who had received the case on August 2, testified that Mother had told her that domestic violence had occurred during her entire

seventeen-year relationship with Father. Regarding the threat of future domestic violence, FCM Daugherty testified that she was concerned that it would happen again once Father was released from incarceration because Mother had previously obtained a protective order against Father, Father had violated it, and Mother had dismissed it. *Id.* at 170. FCM Daugherty stated that Mother admitted that she was “in fear of her own life.” *Id.* at 172. FCM Daugherty expressed concerns that Mother would be able to keep the Children safe if Father were to be released from incarceration and that Mother would be able to provide adequate support for Kod.F. given that Mother did not believe the sexual abuse allegations. *Id.* at 172-73.

[19] FCM Daugherty also testified that she had visited Mother’s home that week and did not believe it was safe for the Children. She said that “there was visible pieces of the housing missing” and that there were holes in the living room floor. *Id.* at 170-71. She also stated that there was “a very strong odor” of animal feces, but she did not see any present. *Id.* at 172. FCM Daugherty explained that she had not taken pictures of the housing because Mother had not wanted her to “document the housing condition at that time.” *Id.* at 171. FCM Daugherty testified that Mother had told her that Mother’s brother had measured the flooring and was going to return and repair the flooring in the trailer.

[20] On October 5, the court issued its orders adjudicating each child a CHINS. The trial court made the following findings regarding Mother:

1. Domestic violence has been occurring within the family for years.
2. Numerous incidents of domestic violence have occurred in front of the children.
3. Mother obtained a divorce and protective order against Father for herself and the children.
4. Despite the divorce and protective order, Mother continued to see Father and take the children around Father in an attempt to reconcile.
5. Domestic violence continued and the younger children were present in the moving vehicle when Father was kicking out the windshield.
6. Repeated domestic violence and witnessing Father kicking out a windshield is not normal for kids to see.
7. Domestic violence has been occurring and is likely to continue to occur based on the patterns thus far.
8. The housing conditions have not been stable and are not livable for the children.
9. [Kod.F.] needs services to address the allegations of sexual abuse she has made, and Mother needs services to deal with [Kod.F.'s] issues surrounding the alleged sexual abuse so that Mother and [Kod.F.] can become comfortable around each other again.

10. Services would not occur voluntarily as the divorce, multiple protective orders, and services thus far offered would not have happened without DCS and Court intervention.

Appellant's App. Vol. 3 at 34, 37, 40.

[21] On October 12, the trial court held a dispositional hearing, and on November 8, it issued a dispositional order. *Id.* at 57-64. Mother now appeals.

Discussion and Decision

[22] Mother challenges the trial court's CHINS determinations. In addressing her arguments, we observe that appellate courts generally grant latitude and deference to trial courts in family law matters. *In re E.K.*, 83 N.E.3d 1256, 1260 (Ind. Ct. App. 2017), *trans. denied* (2018). This deference recognizes the trial court's "unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court's only being able to review a cold transcript of the record." *Id.* Thus, when reviewing the sufficiency of evidence supporting a CHINS determination, we give due regard to the trial court's ability to assess the credibility of witnesses. *In re K.P.G.*, 99 N.E.3d 677, 681 (Ind. Ct. App. 2018), *trans. denied*. "We neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the trial court's decision." *In re A.M.*, 121 N.E.3d 556, 561 (Ind. Ct. App. 2019), *trans. denied*.

[23] Where the trial court issues findings of fact and conclusions thereon, we apply a two-tiered standard of review. *In re R.P.*, 949 N.E.2d 395, 400 (Ind. Ct. App.

2011). We consider first whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will set aside the trial court's findings and conclusions only if they are clearly erroneous and a review of the record leaves us firmly convinced that a mistake has been made. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *K.B. v. Ind. Dep't of Child Servs.*, 24 N.E.3d 997, 1001-02 (Ind. Ct. App. 2015) (citation omitted).

[24] In a CHINS proceeding, DCS bears the burden of proving by a preponderance of the evidence that a child meets the statutory definition of a CHINS. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010); Ind. Code § 31-34-12-3. To meet its burden of establishing CHINS status, DCS must prove that the child is under age eighteen,

(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.

[25] “[T]he purpose of a CHINS adjudication is to protect children, not punish parents.” *N.E.*, 919 N.E.2d at 106. 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. *Id.* at 105. 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.” *Id.* (citations omitted). A trial 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).

[26] Mother claims that the findings do not support the conclusion that the Children are CHINS because most are focused on historical failures and not the Children’s current status and that the remaining findings are unsupported by the evidence. Specifically, Mother claims that findings 1 through 7 “relate to previous acts of domestic violence and the resulting protective order[,]” but that “at the fact-finding hearing held months later, the Mother emotionally testified that she was ‘done’ with the Father.” Appellant’s Br. at 21 (quoting Tr. Vol. 2 at 159). According to Mother, findings 1 through 7 address “historical failures rather than ongoing concerns” and suggest that the trial court “was punishing

the Mother for her past failures.” *Id.* We disagree that Mother’s testimony that she was “done” with Father excludes the threat that the Children would be exposed to future domestic violence.

[27] First, the trial court was not required to credit Mother’s testimony. *See Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004) (“As a general rule, factfinders are not required to believe a witness’s testimony even when it is uncontradicted.”). In determining whether Mother was really “done” with Father, the trial court properly considered all the evidence before it, including Mother and Father’s history. Mother had told DCS providers in January 2021 that Father had abused her, and at that time, she took steps that seemed to address the threat of future domestic violence: she obtained a protective order against Father and filed for divorce. Although the filing for divorce would suggest that Mother was “done” with Father, that turned out not to be the case. Mother decided she wanted to try to reconcile with Father and met with him with the Children despite the protective order, and then she dismissed the protective order. As such, the divorce did not end Mother and Father’s relationship. Then within months, the police and DCS learned of another incident of domestic violence. Father became aggressive while Mother was driving him and Kor.F. and Kry.F., tearing Mother’s clothing and kicking out the SUV windshield. Not only were Kor.F. and Kry.F. witnesses to the

violence, which itself was detrimental to their well-being,³ but the fact that the violence occurred while Mother was driving also subjected them to possible serious injury. Thus, there was a valid evidentiary basis for questioning Mother's claim that she was "done" with Father and to conclude that the threat of domestic violence was an ongoing concern. We therefore reject Mother's contention that the trial court was punishing Mother for past failures.

[28] Mother next asserts that findings 8, 9, and 10 are unsupported by the evidence. In finding 8, the court determined that the housing conditions had been unstable and not livable for the Children. In challenging this finding, Mother directs us to her testimony that at the time of the factfinding hearing she was living in a trailer and had no safety concerns and that her brother was going to repair the flooring. However, Mother ignores that just two months earlier she had been living in a tent with the younger children and that at the time of the hearing the trailer's flooring was in disrepair. FCM Daugherty testified that Mother's home was not currently safe for the Children. Mother's argument amounts to a request to reweigh the evidence, which we must decline.

[29] In finding 9, the trial court determined that Kod.F. needs services to address the sexual abuse allegations against Father and that Mother and Kod.F. need services to re-establish a comfortable relationship. Mother asserts that Kod.F. is

³ Although Mother testified that Kor.F. and Kry.F. did not "understand" Father's violence because of their autism, Tr. Vol. 2 at 153, we note that one of them held a piece of Mother's torn shirt and gave it to Officer Lindsey. That certainly indicates a level of understanding. They should be protected like any other child from exposure to domestic violence and provided with any services that will help them.

already getting therapy to deal with the sexual abuse allegations, and that Mother acknowledged at the factfinding hearing that Kod.F. needs therapy and that she would voluntarily ensure that Kod.F. received therapy. Mother ignores that although she agreed that Kod.F. needed therapy to address domestic abuse issues, Mother did not agree that Kod.F. needed therapy to address the sexual abuse allegations. Further, Mother ignores the need for her and Kod.F. to receive joint therapy to heal their relationship. We cannot say that this finding is clearly erroneous.

[30] In finding 10, the trial court determined that services would not occur voluntarily because the divorce, protective order, and services thus far offered would not have happened without DCS and court intervention. Mother claims that this finding is unfair in that she has cooperated with DCS, there is no way to know whether she would have gotten help for the Children without government intervention, and she has actually proved that she would get services by seeking her therapy outside of DCS services through Lifesprings. The record shows that Mother initially did not believe Kod.F.'s sexual abuse allegations, that Mother got the protective order because DCS wanted her to, and that she filed for divorce in part because DCS was pushing her to. Significantly, when the divorce was final, Mother stopped services because she thought that she did not need them. The evidence supports the trial court's finding, and Mother's argument is again merely a request to reweigh the evidence, which we will not do. We conclude that the trial court's findings support the conclusion that Mother's action or inaction has seriously impaired

or endangered the Children, their needs are not being met, and their needs are unlikely to be met without the coercive intervention of the court. Therefore, we affirm the trial court's CHINS determinations.

[31] Affirmed.

Vaidik, J., and Altice, J., concur.