

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

I.R. (Minor Child),
Child in Need of Services,

and

H.R. (Mother) and R.R. (Father)
Appellants-Respondents,

v.

Indiana Department of Child
Services,

October 11, 2022

Court of Appeals Case No.
22A-JC-888

Appeal from the Wayne Superior
Court

The Honorable Darrin M.
Dolehanty, Judge

The Honorable Kaarin M. Lueck,
Magistrate

Trial Court Cause No.
89D03-2110-JC-107

Appellee-Petitioner.

Altice, Judge.

Case Summary

[1] R.R. (Father) and H.R. (Mother) (collectively, Parents) appeal the trial court's order adjudicating I.R. (Child) to be a Child in Need of Services (CHINS).

Father and Mother individually appeal, each challenging the sufficiency of the evidence supporting the court's determination that Child is a CHINS.

[2] We affirm.

Facts & Procedural History

[3] DCS first became involved with Parents on June 14, 2021, when Mother, who was pregnant, reached out to an inpatient substance abuse facility for help regarding her use of methamphetamine and cocaine. At the time, Mother's older child was also in Parents' care. As part of the initial assessment, Family Case Manager (FCM) Tommy Brown went to Parents' home and spoke with Mother, who was reluctant to let him inside without Father's approval. FCM Brown could hear Father, who was adamant about not permitting entry, yelling at Mother from inside the house. So as not to escalate the situation further,

FCM Brown agreed to Mother's request to return when Father was not home. A short time later, FCM Brown was notified that the situation between Mother and Father had escalated to a point where police were called. FCM Brown met Mother at the police station, where Mother explained that there were "ongoing issues between her and [Father] that did rise to the level of domestic violence." *Transcript* at 106. Mother also told FCM Brown she "feared" going back home. *Id.* FCM Brown arranged for Mother to be transported to a domestic violence shelter.

[4] FCM Brown then transported Mother to pick up her older child from school. Father also arrived at the school and placed himself between Mother and the school entrance. When Father moved toward Mother "in a very domineering way," FCM Brown moved between them, at which time Father became physical with FCM Brown and tried to push him out of the way. *Id.* at 108. FCM Brown called the police and filed battery allegations against Father. DCS did not initiate a CHINS action at this time.

[5] Child was born on September 26, 2021, in Indianapolis. When Mother was admitted to the hospital, her urine tested positive for methamphetamine, amphetamine, and Subutex.¹ After Child's birth, Child's cord blood and meconium were collected for testing, and both were positive for illicit substances. Child exhibited signs of withdrawal in the days following birth.

¹ Subutex is a form of Suboxone that is safer to take during pregnancy.

- [6] Due to her positive urine screen, Jamie Elliott, a social worker with the hospital, was assigned to Mother. Elliott talked to Parents and explained that she was required to contact DCS, to which Father became “very upset” and told Elliott to leave the room. *Id.* at 99.
- [7] FCM Katelin Doerflein arrived at the hospital to do an initial assessment. She noted that when she tried to talk directly with Mother, Father “would often interrupt or not allow [FCM Doerflein] to finish answering or ask a question.” *Id.* at 115. And, if Mother tried to answer a question, Father would “often interrupt those statements.” *Id.* During this conversation, Mother and Father admitted to using cocaine in August. Father also threw his phone aggressively to the ground and started shoving his belongings into a trash bag. After FCM Doerflein left Mother’s hospital room, Mother and Father began yelling at each other in such a way that hospital security staff was called. Father’s anger rose to a level “where officers felt they needed to be involved.” *Id.* at 101.
- [8] Elliott was eventually able to speak to Mother alone. According to Elliott, when Father was not around, Mother was “very cooperative and calm.” *Id.* at 100. She answered Elliott’s questions, indicating that she felt safe with Father and that he was her only support. Mother also admitted that she had “smoked a joint” in the days before being admitted to the hospital for Child’s birth and adamantly denied that she used methamphetamine. Mother claimed that the tests must have yielded false positives. Upon Father’s return, he was “very defensive,” and the situation escalated again. *Id.*

[9] On October 5, 2021, DCS filed a CHINS petition based on Child testing positive for illicit substances at birth and Mother and Father’s alleged history of domestic violence. That same day, the court authorized DCS to take custody of Child, who remained in the hospital. The court held an initial hearing on October 7, 2021, and Mother and Father were appointed separate counsel. During the hearing, FCM Doerflein advised the court that Parents would not tell her where they would be living once Mother was released, so she had not assessed their home. FCM Doerflein also testified that Parents “weren’t really compliant” and that Mother did not feel like she needed services because she was “already involved with Indiana Pregnancy Promise Program.” *Id.* at 16. The court informed Parents that they would have to permit DCS to assess their home before Child could be returned to their care.

[10] As to parenting time, FCM Doerflein told the court that she had tried to contact Parents “multiple times” but had just heard back from Mother hours before the October 7 hearing. *Id.* at 18. When she tried to discuss parenting time, Mother hung up the phone. At the end of the hearing, the court advised Parents to go to the DCS office to set up parenting time with Child. Due to a doctor appointment, Mother had to follow up with DCS at another time. Father told the court that he would not talk to DCS without his attorney present and affirmed to the court that he was declining parenting time until he contacted DCS to set it up.

[11] At a status hearing on October 25, 2021, the court was informed that Child was doing well in placement with paternal grandparents and that Parents had

arranged for parenting time. By the next status hearing on November 15, 2021, Parents were exercising parenting time with Child on Tuesdays and Thursdays from 5:00 p.m. to 7:00 p.m.

[12] On December 6, 2021, the court held another status hearing. At this hearing, Mother filed a motion to have Child released to Parents' care. DCS objected, asserting that Parents had had "a very rough period" and DCS did not think they could provide "a stable and conflict free environment" for Child. *Id.* at 43. In support of that position, FCM Brittany Sawyer testified that on November 18, 2021, Mother told her that she wanted to "leave the relationship" with Father, so FCM Sawyer helped facilitate Mother's move to a domestic violence shelter. *Id.* at 45. In her first day or two at the shelter, Mother told FCM Sawyer that she wanted a divorce and "no longer felt safe in the relationship." *Id.* at 122. Mother returned home to Father two days after arriving at the shelter.

[13] FCM Sawyer also testified that on November 26, 2021, Mother sent FCM Sawyer a text stating "Escape Plan, Help. I need to leave." *Id.* When she could not reach Mother, FCM Sawyer requested that police do a "welfare check." *Id.* Through a window, a responding officer could see Father standing over Mother in an "aggressive manner and they were yelling at each other." *Id.* at 94-95. When Mother and Father came out of the house, police separated them. Mother did not want to press charges, so Father was permitted to go back inside the house.

- [14] FCM Sawyer took Mother to a safe place for the night. Mother told FCM Sawyer about what happened before she sent the text message requesting help. Mother explained that she wanted to go to the gas station to get a lighter, and Father, thinking Mother was leaving him, “threw her phone, smashed a tv over his head, and destroyed the home.” *Id.* at 122. She claimed that she then told Father she wanted a divorce.
- [15] At the time of the December hearing, Mother and Father were still together. At their request, DCS referred them for marriage counseling. Based on the testimony about continued conflict between Mother and Father, the court denied Mother’s request to release Child to Parents’ care.
- [16] The court held a factfinding hearing on February 28, 2022. Mother and Father called witnesses who testified that they both have been and are continuing with treatment for substance abuse at Well Care Community Health in Richmond. Mother was seen regularly during her pregnancy and has been seen monthly since; Father has been and continues to be seen monthly. Their treatment includes monthly drug screens and administration of Suboxone/Subutex.
- [17] As part of their substance abuse treatment, Mother and Father have submitted drug screens since Child’s birth. The drug screens Mother has provided have been negative for illicit substances. Father’s drug screens have been negative except for two times when he tested positive for marijuana.
- [18] Father’s probation officer out of Fayette County affirmed that Father was being treated at a methadone clinic for his substance abuse and that Father had

completed an addiction recovery program in Richmond. He further testified that he had known Father for over ten years and that “[t]his is the best I’ve seen him do.” *Id.* at 80. Although Father had a previous conviction for domestic violence, his probation officer did not require Father to participate in domestic violence services because his prior conviction was for “a different victim.” *Id.*

[19] DCS presented the testimony of FCMs Brown, Doerflein, and Sawyer. They each testified about their interactions with and observations of Parents since DCS’s first involvement with the family, the details of which are set out above. FCM Sawyer also testified that Mother and Father had not filed for divorce, that DCS had increased their parenting time by adding Sundays from 12:00-6:00 p.m. to their current schedule of Tuesdays and Thursdays from 5:00-7:00 p.m., and that when Parents visited Child they “were great about bringing formula and diapers . . . and other items that [were] useful.” *Id.* at 124. She also testified that during one of the incidents when she went to pick Mother up, she was able to assess their home and found no safety issues.

[20] On March 7, 2022, the court entered its order adjudicating Child as a CHINS under Ind. Code §§ 31-34-1-1 and -10. The court held a dispositional hearing on April 1, 2022, and issued a written dispositional order shortly thereafter. Mother and Father now appeal. Additional facts will be provided as necessary.

Discussion & Decision

[21] 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). A CHINS adjudication under Ind. Code § 31-34-1-1 requires three basic elements: 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. In full, I.C. § 31-34-1-1 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 ... to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:

(A) when the parent ... is financially able to do so; or

(B) due to the failure, refusal, or inability of the parent ... 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.

Pursuant to I.C. § 31-34-1-10, a child is a CHINS if:

(1) the child is born with:

(A) fetal alcohol syndrome;

(B) neonatal abstinence syndrome; or

(C) any amount, including a trace amount, of a controlled substance, a legend drug, or a metabolite of a controlled substance or legend drug in the child's body, including the child's blood, urine, umbilical cord tissue, or meconium; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; or

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

[22] 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. *K.D.*, 962 N.E.2d at 1253. 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*.

[23] There is no statutory provision requiring specific findings of fact in a CHINS adjudication order. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). When a trial court supplements a CHINS adjudication with sua sponte findings of fact and conclusions, the reviewing court applies a two-tiered standard of review. *Id.*

First, we consider whether the evidence supports the findings, and second, whether the findings support the judgment. *Id.* Where the trial court’s findings of fact are not disputed, our task is simply to determine whether the unchallenged findings are sufficient to support the judgment. *A.M.*, 121 N.E.3d at 562.

[24] 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)).

[25] Because a CHINS determination regards the status of the child, the juvenile court is not required to determine whether a child is a CHINS as to each parent, only whether the statutory elements have been established. *See In re. N.E.*, 919 N.E.2d 102, 106 (Ind. 2010). A CHINS adjudication focuses on the condition of the child. *Id.* The acts or omissions of one parent can cause a condition that creates the need for court intervention. *Id.* at 105. While we acknowledge 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.* Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. *Id.* 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.’” *S.D.*, 2 N.E.3d at 1287 (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

1. Challenged Findings

[26] We first address Mother’s claim that several of the court’s findings are not supported by the evidence. Specifically, Mother challenges the court’s Findings 13, 14, 15, and 21. In Finding 13, the court found that “the child’s urine screen contained evidence of controlled substances.” *Father’s Appendix Vol. II* at 24. Mother is correct that there was no evidence that Child’s urine was tested. However, in Finding 14, the court found that Child’s meconium and cord blood tested positive for controlled substances. Finding 14 is supported by the evidence and supports the court’s conclusion that Child was born with illicit substances in his body. In short, the gist of Finding 13 is covered in Finding 14.

[27] With regard to Finding 14, Mother argues that the court’s findings that Child’s meconium and cord blood tested positive for controlled substances is not supported by the record because there was no medical evidence to support it. Mother does not cite any authority in support of her position, and we note that Mother did not object when Elliott testified as to the results of Child’s meconium and cord blood testing. Mother has therefore waived the issue for

review. See *In re A.G.*, 6 N.E.3d 952, 957 (Ind. Ct. App. 2014) (failure to cite authority results in lack of cogent argument prompting waiver); *A.S. v. Ind. Dep't of Child Servs.*, 175 N.E.3d 318, 322 (Ind. Ct. App. 2021) (noting that “an argument cannot be presented for the first time on appeal”).

- [28] In Finding 15, the trial court noted that Elliott was obligated to notify DCS “because of *child’s* drug screen test results.” *Father’s Appendix Vol. II* at 24. Mother argues that this finding is not supported by the evidence because it was *her* drug screen, not *Child’s*, that prompted Elliott’s involvement and gave rise to the obligation to notify DCS. Mother’s argument misses the mark as the gist of the court’s finding was that after Elliott informed Mother and Father that she had a duty to report to DCS, Father became “very upset” and told Elliott to leave the room. *Id.* In any event, that the court identified Child’s drug screen instead of Mother’s as the impetus for Elliott’s involvement is of no moment as the evidence was that at some point, Elliott was aware that Mother and Child both tested positive for illegal substances.
- [29] Finally, Mother challenges Finding 21 in which the court found that “Father refused to participate in parenting time with the Child.” *Id.* at 25. The evidence showed that during one of the status hearings, Father refused to talk to DCS to set up parenting time without his attorney present. After an exchange with Father, the court reiterated that Father was “declining parenting time at this point,” and Father responded, “I am.” *Transcript* at 20. Mother’s challenge to the trial court’s assessment of the circumstances is simply a request for this

court to reweigh the evidence, a task in which we will not engage on appeal. Finding 21 is not clearly erroneous.

2. Sufficiency

- [30] Mother and Father both argue that the court's CHINS adjudication is not supported by sufficient evidence. Specifically, they argue that there is no evidence to support the court's conclusion that Child is seriously impaired or endangered or that Child needs care and treatment that is unlikely to be provided by Parents without coercive intervention of the court. We disagree.
- [31] Child was born with controlled substances in his body and experienced withdrawal symptoms shortly after birth. And, while Mother sought substance abuse treatment, she admitted to relapsing and using cocaine a month before Child's birth and to smoking a joint in the days prior to Child's birth. Father also admitted to using cocaine a month before Child's birth. Since Child's birth, Mother and Father have both continued with substance abuse treatment. Mother's drug screens have been negative for illicit substances and Father's have likewise been mostly negative for illicit substances save two instances when he tested positive for marijuana. We commend Mother and Father for their efforts in dealing with their substance abuse.
- [32] Substance abuse, however, was not the only basis for the CHINS adjudication. Mother and Father have not been cooperative throughout DCS's involvement in this case. Further, we note that prior to Child's birth, DCS was aware of possible domestic violence between Mother and Father. Indeed, Mother

admitted that there were “ongoing issues between her and [Father] that did rise to the level of domestic violence” and that she “feared” going back home.

Transcript at 106.

[33] After Child’s birth, concerns of domestic violence between Mother and Father intensified. While Mother was still in the hospital, Father became “very upset,” yelled profanities, and acted in such a way that hospital security was summoned. Three months before the CHINS hearing, Mother sought help from FCM Sawyer because she wanted to “leave the relationship” with Father because she “no longer felt safe.” *Id.* at 45, 122. Despite her fear, Mother returned to Father two days later. Less than a week after returning home, Mother reached out again to FCM Sawyer indicating that she needed help. During a welfare check, a police officer saw Father standing over Mother in an “aggressive manner.” *Id.* at 94-95. Mother told FCM Sawyer that Father “threw her phone, smashed a tv over his head, and destroyed the home.” *Id.* at 122. At the time of the fact-finding hearing, Mother and Father were still in a relationship.

[34] The court was in the best position to assess Parents’ circumstances and consider the impact of their tumultuous relationship on the safety and well-being of Child. The evidence supports the court’s conclusion that Child’s physical or mental condition would be seriously impaired or seriously endangered in Mother and Father’s care and that Child requires care that the Child will not receive without the coercive intervention of the court. The court’s CHINS determination is not clearly erroneous.

[35] Affirmed.

Brown, J. and Tavitas, J., concur.