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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of Ar.B., At.B.,
and As.B., Minor Children
Alleged to be Children in Need
of Services;

K.S. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

November 29, 2022

Court of Appeals Case No.
22A-JC-672

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

The Honorable Danielle L. Flora,
Judge Pro Tempore

Trial Court Cause Nos.
02D08-2103-JC-122
02D08-2103-JC-123
02D08-2103-JC-124

Tavitas, Judge.

Case Summary

[1] K.S. (“Mother”) appeals the trial court’s adjudication of her children, Ar.S., At.S., and As.S. (collectively “Children”), as children in need of services (“CHINS”). Mother argues that: (1) DCS presented insufficient evidence to support a CHINS finding; and (2) the CHINS case should be dismissed because the dispositional hearing was untimely. We conclude that the evidence is sufficient to support the CHINS finding and that Mother waived her challenge to the timeliness of the dispositional hearing. Accordingly, we affirm.

Issues

[2] Mother raises two issues on appeal, which we restate as:

- I. Whether DCS presented sufficient evidence to support a CHINS adjudication.
- II. Whether Mother waived her challenge to the timeliness of the dispositional hearing.

Facts

[3] The Children are the children of Mother and J.B. (“Father”).¹ Ar.S. was born on April 6, 2015; At.S. was born on January 23, 2017; and As.S. was born on November 6, 2018.²

¹ Father does not participate in this appeal.

² Ar.S. and At.S. were adjudicated CHINS in a prior proceeding on March 21, 2017.

- [4] Mother and Father began dating in February 2012, and the two married four years later. Father has a history of abusing Mother that dates back to a year after they began dating. In December 2019, Mother filed for a divorce, but the matter was dismissed when Mother and Father failed to appear for the scheduling conference. Thereafter, Mother “reconciled with [Father] off and on.” Tr. Vol. II p. 28.
- [5] On July 30, 2020, Mother contacted the police to report that Father “was drunk and was yelling at her” in the presence of the Children. *Id.* at 54. Allen County Sheriff’s Department Deputy Tom Gannon responded to the incident. On his way to Mother’s home, Deputy Gannon learned that approximately nineteen calls were made to the Sherriff’s Department regarding Mother’s address in the past year.³ Most of the calls involved domestic violence or fighting with neighbors.
- [6] On August 17, 2020, Father committed domestic battery against Mother. On September 17, 2020, the trial court entered a no-contact order that prohibited Father from contacting Mother.
- [7] On February 1, 2021, Father violated the no-contact order by entering Mother’s home and battering Mother. Ar.S. reported that “he saw [Father] throw [Mother] on the ground[,] causing a bruise on her arm.” Ex. 1, p. 14. On February 5, 2021, the State charged Father with domestic battery with a prior

³ Family Case Manager (“FCM”) Debra McClintock testified that police were called to Mother’s home to respond to domestic incidents “between five and ten” times in 2020 and “[p]robably about the same number” of times in 2019. Tr. Vol. II p. 35-36.

conviction, domestic battery with bodily injury to a pregnant woman, and invasion of privacy. FCM Debra McClintock investigated the incident and reported that, in addition to Ar.S., As.S. also “witnessed the incident,” but that “[At.S.] was asleep at the time[.]”⁴ Tr. Vol. II p. 38. On April 6, 2021, DCS filed its petition alleging that the Children were CHINS.

[8] On April 8, 2021, Mother was arrested for a domestic battery against her father’s girlfriend, C.M. Mother was also involved in a previous domestic incident involving C.M. in March 2021, in response to which police were contacted. The Children were present during both incidents. In addition, Mother was convicted of domestic battery against another woman in January 2019.

[9] After Mother’s arrest in April 2021, DCS took custody of the Children. As.S. and At.S. were placed in foster care.⁵ While in foster care, At.S., age four at the time, “cornered” the foster parent’s three-year old daughter and “punched her in the face[.]” which “caused a nose bleed.” *Id.* at 16-17. At.S. “continued to show . . . aggression towards” the foster parents’ three-year old daughter, and the foster parents “were not comfortable having [At.S. and As.S.] remain in the home after that incident.” *Id.* at 18. The Children were then placed in relative care with their maternal great aunt. DCS recommended therapy for At.S. based on her striking the foster parent’s daughter.

⁴ Mother testified that only Ar.S. witnessed the incident.

⁵ The record does not reflect where Ar.S. was placed during this time.

[10] On May 3, 2021, DCS filed an amended CHINS petition. DCS was concerned about “ongoing domestic violence issues . . . and the harm to the children of witnessing the domestic violence issues.” Tr. Vol. p. 91. DCS alleged that “[Mother] has a history and ongoing pattern of domestic violence as both the victim and the aggressor” and that “[Mother] is unable to protect the children from domestic violence.” Ex. 1, p. 14.

[11] The trial court held fact-finding hearings on May 13, June 17, June 22, and July 1, 2021. During the fact-finding hearings, the foster father testified regarding the incident involving At.S. while she was in foster care. Deputy Gannon, FCM McClintock, and FCM Shannon Beecher all testified regarding the multiple police calls to Mother’s address in response to fighting. FCM McClintock also testified regarding the potential consequences of witnessing domestic violence to the Children’s development. Mother testified that, while the September 2020 no-contact order was in effect, Father returned to the home without her permission on two occasions, one of which was the February 1, 2021, domestic violence incident. Mother admitted that Father battered her on August 17, 2020, and February 1, 2021, and that Ar.S. witnessed the latter. Mother also admitted that she was arrested for domestic violence against C.M. in the presence of the Children and that police previously intervened in an incident between Mother and C.M.

[12] The trial court found the Children were CHINS and entered its written findings of fact and conclusions thereon on September 22, 2021. The trial court found: ⁶

[The Children] are in need of a home environment that is free of domestic violence. [Mother] is not able to provide such an environment for the children as there has been a historical pattern of domestic violence occurring in the family home while the children have been present . . . The mother continues to engage in an on-again, off-again, [sic] relationship with [Father]. The mother is not providing the children with a home free of domestic violence and/or a home with appropriate supervision The Court finds that the children's mental and physical condition are seriously endangered as the result of [Mother's] inability, refusal or neglect to supply them with necessary supervision.

The mother has been both the victim and the perpetrator of domestic violence since the initiation of these proceedings. She has a lengthy history of domestic violence with the children's father. . . . She also has a history of engaging in domestic violence with others. She has not received counseling or other services to identify what, if any, psychological issues she needs to address as a result of her being both a victim of domestic violence as well as a perpetrator and has not participated in therapy to address the trauma that she has experienced as [a] result of her victimization nor has she sought therapy or other services for . . . [At.S.,] who, by her actions, has demonstrated that she is in need of therapy, yet is not participating in therapy. Given the fact that the children have repeatedly been exposed to acts of domestic violence and the mother has demonstrated the inability and/or unwillingness to ensure that they are provided with an

⁶ Mother and DCS presented evidence that conflicts with several of the trial court's factual findings. Mother, however, does not contest the trial court's factual findings and, thus, we deem them admitted. See *In re To.R.*, 177 N.E.3d 478, 485 (Ind. Ct. App. 2021) (citing *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992), *trans. denied*).

environment that is free of domestic violence, the court concludes that the children need care, treatment or rehabilitation that they are not receiving and which is unlikely to be provided or accepted without the coercive intervention of the court.

Appellant’s App. Vol. II pp. 53-54. The trial court also found that Ar.S. “has demonstrated a need for and is participating in therapy.” *Id.* at 54.

[13] The trial court held a dispositional hearing on February 28, 2022. During the dispositional hearing, Mother did not object to the timing of the hearing and stated, through counsel, that she would “honor the dispositional agreements.” Tr. Vol. II p. 189. The trial court also asked Mother if she was willing to participate in the recommended services, and Mother answered, “Yes[,] and I have been for . . . a while.” *Id.* at 194. The trial court issued its dispositional order in open court. Later that day, Mother filed a motion to dismiss the CHINS case in which she argued that the dispositional hearing was untimely. The trial court entered its written dispositional order on March 3, 2022, which was 159 days after the trial court adjudicated the Children as CHINS. The trial court did not hold a hearing on Mother’s motion to dismiss. Mother now appeals.

Discussion and Decision

I. CHINS Adjudication—Sufficiency of the Evidence

[14] Mother argues that DCS presented insufficient evidence to support the CHINS adjudication. We disagree.

[15] CHINS proceedings are civil actions; 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); *see* Ind. Code § 31-34-12-3. On review, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.J.*, 68 N.E.3d 574, 577-78 (Ind. 2017). Here, the trial court entered, *sua sponte*, findings of fact and conclusions thereon in granting the CHINS petition. “As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). We review the remaining issues under the general judgment standard, which provides that a judgment “will be affirmed if it can be sustained on any legal theory supported by the evidence.” *Id.* (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). We will reverse a CHINS determination only if it is clearly erroneous. *D.J.*, 68 N.E.3d at 578.

[16] DCS must prove three elements for a juvenile court to adjudicate a child a CHINS: (1) the child is under the age of eighteen; (2) that one of eleven different statutory circumstances exist that would make the child a CHINS; and (3) the child needs care, treatment, or rehabilitation that he or she is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court. *Id.* at 580.

[17] Here, the trial court found that the Children were CHINS under the general category of neglect as defined in Indiana Code Section 31-34-1-1, which 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, 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.

[18] “[T]he purpose of a CHINS adjudication is to protect children, not [to] punish parents.” *N.E.*, 919 N.E.2d at 106. A CHINS adjudication is not a determination of parental fault but rather is a determination that a child is in need of services and is unlikely to receive those services without intervention of the court. *Id.* at 105. “A CHINS adjudication focuses on the condition of the child [T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* (citations omitted). “A CHINS

finding should consider the family’s condition not just when the case was filed, but also when it is heard.” *S.D.*, 2 N.E.3d at 1290.

[19] Mother argues that DCS presented no evidence that Mother failed to provide the Children “with the necessary food, clothing, shelter or medical care, education or supervision.” Appellant’s Br. p. 10. The trial court, however, found that Mother failed to provide proper supervision, which, as we find below, is supported by sufficient evidence.

[20] Mother appears to argue that DCS presented insufficient evidence to support the CHINS adjudication because DCS was only concerned about Father’s domestic violence against Mother in February 2020 and that Mother had taken steps to protect the Children from Father. In other words, Mother appears to argue that Father alone presented a threat to the Children and that Mother took steps to address that threat. We disagree.

[21] We first note that “a single incident of domestic violence in a child’s presence may support a CHINS finding, and it need not necessarily be repetitive.” *K.A.H. v. Ind. Dep’t of Child Servs.*, 119 N.E.3d 1115, 1121 (Ind. Ct. App. 2019) (citing *K.B. v. Ind. Dep’t of Child Servs.*, 24 N.E.3d 997, 1003 (Ind. Ct. App. 2015)). Here, the trial court found, and Mother does not contest, that the Children have “been present and/or witnessed” multiple incidents of domestic violence in the home. Appellant’s App. Vol. II p. 50.

[22] In addition, the trial court found that Mother “continues”—present tense—“to engage in an on-again, off-again” relationship with Father, which Mother does

not challenge. *Id.* at 53. Father also returned to the home on at least two occasions while the September 2020 no-contact order was in place, which demonstrates Mother’s failure to protect herself and the Children.

[23] Domestic violence by Father, moreover, was not the only threat the trial court found. The trial court also found that Mother herself has a history of engaging in domestic violence with others. The trial court further found that: (1) the Children’s repeated exposure to domestic incidents adversely affected Ar.S.’s and At.S.’s development, *see In re E.M.*, 4 N.E.3d 636, 644-45 (Ind. 2014) (recognizing the adverse effects of domestic violence on young children); (2) Mother failed to enroll At.S. in therapy to address these effects;⁷ and (3) Mother needed therapy to address her own history of being the victim and perpetrator of domestic violence. Sufficient evidence supports the CHINS adjudication, and Mother’s argument, thus, is unavailing.

II. Motion to Dismiss

[24] Mother next argues the CHINS case should have been dismissed because the dispositional hearing was untimely. We find that Mother waived this argument.

[25] Indiana Code Section 31-34-19-1 provides:

- (a) The juvenile court shall complete a dispositional hearing not more than thirty (30) days after the date the court finds

⁷ Mother argues that she “likely would have begun counseling for [At.S.] once she realized it was necessary” and, thus, the coercive intervention of the court was not required. Appellant’s Br. p. 12. We decline to entertain this speculative argument.

that a child is a child in need of services to consider the following:

- (1) Alternatives for the care, treatment, rehabilitation, or placement of the child.
 - (2) The necessity, nature, and extent of the participation by a parent, a guardian, or a custodian in the program of care, treatment, or rehabilitation for the child.
 - (3) The financial responsibility of the parent or guardian of the estate for services provided for the parent or guardian or the child.
 - (4) The recommendations and report of a dual status assessment team if the child is a dual status child.
- (b) If the dispositional hearing is not completed in the time set forth in subsection (a), upon a filing of a motion with the court, the court shall dismiss the case without prejudice.

[26] “Matters of statutory interpretation present pure questions of law and are thus reviewed *de novo*.” *In re E.T.*, 152 N.E.3d 634, 639 (Ind. Ct. App. 2020) (citing *In re M.S.*, 140 N.E.3d 279, 282 (Ind. 2020)), *trans. denied*. “In interpreting a statute, our goal is to determine and give effect to the intent of our legislature.” *In re J.S.*, 130 N.E.3d 109, 111-12 (Ind. Ct. App. 2019) (citing *State v. Int’l Bus. Mach. Corp.*, 964 N.E.2d 206, 209 (Ind. 2012)). “We ‘consider the objects and purposes of the statute as well as the effects and repercussions of’ our interpretation.” *Id.* at 112 (quoting *Bushong v. Williamson*, 790 N.E.2d 467, 471

(Ind. 2003)). “When legislative intent has been ascertained, ‘it will prevail over the literal import and the strict letter of the statute.’” *Id.* at 113 (quoting *Int’l Bus. Mach. Corp.*, 964 N.E.2d at 209).

[27] We have not previously addressed whether a party waives his or her challenge to the timeliness of a dispositional hearing under Indiana Code Section 31-34-19-1 by failing to file a motion to dismiss prior to said hearing. We have, however, considered this issue under a similar statute. Indiana Code Section 31-34-11-1 requires that a CHINS fact-finding hearing be held not more than 120 days after DCS files its CHINS petition.⁸ *J.S.*, 130 N.E.3d at 112. Subsection (d) further provides, in relevant part, that if the CHINS hearing is not timely held, “upon a motion with the court, the court shall dismiss the case without prejudice.” I.C. § 31-34-11-1(d).

[28] In *J.S.*, we found that a party waives his or her challenge to the timeliness of a CHINS hearing under Indiana Code Section 31-34-11-1 by failing to file a motion to dismiss prior to that hearing. *See J.S.*, 130 N.E.3d at 112. We indicated that legislative purposes would not “be served by allowing a post-adjudication motion to dismiss.” *Id.*; *see also In re J.S.*, 133 N.E.3d 707, 713 (Ind. Ct. App. 2019) (observing in the context of termination of parental rights proceedings that the statutory allowance for a motion to dismiss the case as untimely is not “self-executing” and that “a party [cannot] stand idly by until an

⁸ After *J.S.* was decided, our Supreme Court held in *In re M.S.* that Trial Rule 53.5 “allows extension of the 120-day deadline in Indiana Code section 31-34-11-1(b) provided a party can show “good cause.” 140 N.E.3d at 284. Trial Rule 53.5 does not affect our analysis, as a motion for a continuance was not filed and the trial court here made no findings on good cause.

adverse determination has been made. A party must preserve the right of expediency by filing a written motion to dismiss *before the merits of a petition are litigated.*”) (emphasis added).

[29] We find the aforementioned cases persuasive in the context of Indiana Code Section 31-34-19-1. We conclude that a party waives his or her challenge to the timeliness of a dispositional hearing by failing to file a motion to dismiss prior to said hearing. As in *J.S.*, permitting such a “wait and see” approach would contravene the legislative purpose of expeditiously determining the necessary services for the parents and children. Here, Mother failed to file a motion to dismiss or otherwise object to the timeliness of the dispositional hearing prior to the hearing. Mother’s motion to dismiss, accordingly, was untimely, and Mother waived her challenge to the timeliness of the dispositional hearing.⁹

Conclusion

[30] DCS presented sufficient evidence to support a CHINS adjudication, and Mother waived her challenge to the timeliness of the dispositional hearing. Accordingly, we affirm.

[31] Affirmed.

Brown, J., and Altice, J., concur.

⁹ During the dispositional hearing, moreover, the trial court issued its dispositional order in open court, and Mother clearly agreed to abide by the dispositional order. See *In re N.C.*, 83 N.E.3d 1265, 1267 (Ind. Ct. App. 2017) (“In general, ‘waiver’ connotes an ‘intentional relinquishment or abandonment of a known right.’” (quoting *Plank v. Cmty. Hospitals of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013))).