MEMORANDUM DECISION

ATTORNEY FOR APPELLANT FATHER

Michael D. Ghilardi
Fort Wayne, Indiana

ATTORNEY FOR APPELLANT MOTHER

Roberta L. Renbarger
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of I.S. (Minor Child), Child in Need of Services

R.S. (Father)

and

S.C. (Mother),

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

December 14, 2023

Court of Appeals Case No. 23A-JC-1097

Appeal from the Allen Superior Court

The Honorable Lori K. Morgan, Judge

The Honorable Beth A. Weber, Magistrate

Trial Court Cause No. 02D08-2301-JC-000001

Memorandum Decision by Judge Felix
Judges Bailey and May concur.

Felix, Judge.

Statement of the Case

[1] The trial court determined that I.S. (the "Child") was a child in need of services ("CHINS"). R.S. ("Father") and S.C. ("Mother") appeal presenting two issues, which we restate as follows:

1. Whether the trial court took proper judicial notice of facts in support of its findings; and
2. Whether there was sufficient evidence for the trial court to conclude the Child was a CHINS.

[2] We affirm.

Facts and Procedural History

[3] Mother and Father (collectively the "Parents") have two children. Their first child, a son ("Brother"), was born on June 28, 2020. Their second child, the Child, was born on May 10, 2022.

[4] On August 25, 2020, the Indiana Department of Child Services ("DCS") filed a petition alleging Brother was a CHINS because of violence and drug use in the Parents' home. On November 23, 2020, a trial court adjudicated Brother as a CHINS. As part of the ongoing CHINS proceedings for Brother, the trial court ordered the Parents to submit to drug screenings and undergo substance abuse treatment.

[5] In December 2022, the Parents and the Child were living together with Father's mother ("Grandmother"). Grandmother had moved in with the Parents to help care for the Child while the Parents worked on their drug rehabilitation. On December 29, 2022, DCS received notice that Mother had tested positive for fentanyl while caring for the Child. On the same day, DCS made contact with Father, and he indicated that he was not worried about Mother's drug use around the Child. On December 30, 2022, DCS removed the Child from the Parents' care.

[6] On January 3, 2023, DCS filed a petition alleging the Child was a CHINS. On March 7, 2023, the trial court held a factfinding hearing, and, as part of the evidence, the judge took judicial notice of the Chronological Case Summaries ("CCSs") for two of Father's criminal matters, one pending and one adjudicated.

[7] On March 24, 2023, the trial court determined the Child was a CHINS. The trial court's decision included 52 findings concerning Brother's CHINS case, Father's criminal history, domestic disputes between the Parents, and the Parents' drug use. This appeal followed.[1]

[1] Mother and Father filed separate appeals. The State filed a Motion to Consolidate these appeals, and the Motion was granted.

Discussion and Decision

Standard of Review

[8] The Parents argue there is insufficient evidence to support the trial court's decision that the Child is a CHINS. "We will reverse a CHINS determination only if it was clearly erroneous." *In re D.J. v. Ind. Dep't of Child Servs.,* 68 N.E.3d 574, 578 (Ind. 2017) (citing *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012)). A decision is clearly erroneous if the evidence does not support the findings or "if it applies the wrong legal standard to properly found facts." *Id.* (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). In our review, "we do not reweigh evidence or judge witness credibility. 'Instead, we consider only the evidence that supports the trial court's decision and [the] reasonable inferences drawn therefrom.'" *D.J.*, 68 N.E.3d at 577–78 (internal citation omitted) (quoting *In re S.D.*, 2 N.E.3d 1283, 1286 (Ind. 2014)).

[9] When, as is the case here, "a trial court supplements a CHINS judgment with findings of fact and conclusions [of] law, we apply a two-tiered standard of review. We consider, first, 'whether the evidence supports the findings' and, second, 'whether the findings support the judgment.'" *D.J.*, 68 N.E.3d at 578 (quoting *S.D.*, 2 N.E.3d at 1287).

1. Judicial Notice

[10] The Parents challenge seven of the trial court's findings, arguing that these findings were based on evidence produced by improper judicial notice. "[W]e review a trial court's decision to take judicial notice of a matter, like other

evidentiary decisions, for abuse of discretion." *Horton v. State*, 51 N.E.3d 1154, 1157 (Ind. 2016) (citing *Storey v. Leonas*, 904 N.E.2d 229, 236 (Ind. Ct. App. 2009)). "A trial court abuses its discretion when its decision is 'clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.'" *Abbott v. State*, 183 N.E.3d 1074, 1083 (Ind. 2022) (quoting *Inman v. State Farm Mut. Auto. Ins. Co.*, 981 N.E.2d 1202, 1204 (Ind. 2012)).

[11] Indiana Rule of Evidence 201(a) provides:

> The court may judicially notice:
>
> (1) a fact that:
>
> > (A) is not subject to reasonable dispute because it is generally known within the trial court's territorial jurisdiction, or
> >
> > (B) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
>
> (2) the existence of:
>
> > (A) published regulations of governmental agencies;
> >
> > (B) ordinances of municipalities; or
> >
> > (C) records of a court of this state.

[12] "[T]he ultimate purpose of judicial notice is efficient consideration of uncontroversial facts . . . ." *Horton*, 51 N.E.3d at 1161 (citing *Baran v. State*, 639

N.E.2d 642, 647 (Ind. 1994)). Judicial notice is meant to incorporate facts that "cannot be reasonably questioned." *Id.* (quoting *Brown v. Jones*, 804 N.E.2d 1197, 1202 (Ind. Ct. App. 2004)).

[13] The Parents argue that the following findings from the Order on the Factfinding Hearing were the result of improper judicial notice:

> A. The Court finds that the parents of [the Child], [Mother] and [Father], were involved with DCS regarding an older child at the time of the birth of [the Child].
>
> B. The Court finds that the previous DCS case involving an older child addresses issues of substance use and domestic violence.
>
> C. The Court finds that in the open CHINS case involving an older child, both parents are ordered to participate in services that include substance abuse treatment, domestic violence programs, and random drug screens.
>
> * * *
>
> Z. The Court finds that evidence was presented regarding criminal cases involving Father . . . for cause numbers 02D04-2105-F6-643 and 02D05-2208-F4-78.
>
> AA. The Court finds that [Father] was convicted of felony invasion of privacy on December 1, 2021, for a case involving [Mother] as the victim in cause number 02D04-2105-F6-643.

> BB. The Court finds that Father . . . is awaiting trial for cause number 02D05-2208-F4-78. The trial is scheduled for April of 2023.
>
> * * *
>
> WW. The Court finds that both [Mother] and [Father] have had protective orders against the other parent in the past two years.

Father's Br. at 12; Mother's Br. at 16–17.

[14] The Parents mischaracterize the scope of the trial court's judicial notice. The trial court only took judicial notice of the CCSs for two of Father's criminal cases. Parents objected to the admission of the CCSs, claiming they included facts outside the scope of judicial notice. The trial judge recognized the concern and responded:

> . . . I am taking judicial notice of the criminal cases. I have the ability to take judicial notice of Indiana State court decision [sic] so I can only consider the court orders and pleadings that are official. I can't consider the concern of your attorney was [sic] that there are sometimes other things that are contained in the chronological case summary that I wouldn't be allowed to consider.

Tr. Vol. II at 26. The CCSs of these criminal matters are the only evidence admitted by judicial notice, and their admission is permissible under Evidence Rule 201(2)(c).

[15] The Parents ask us to rely on *Matter of D.P.*, 72 N.E.3d 976 (Ind. Ct. App. 2017) to find that the trial court went far beyond what is allowed under Evidence Rule 201. In *D.P.*, the trial court took judicial notice of court records to establish the father's charges alleging violence and drug use. 72 N.E.3d at 983–84. However, the trial court went beyond the court records themselves and gleaned other facts from the filings. *Id.* at 982. The State "did not present any independent, admissible evidence" to support these facts. *Id.* at 983. We reversed the CHINS determination due to the "scant evidentiary record" that resulted in an almost exclusive reliance on judicial notice. *Id.* at 985.

[16] Here, by contrast, the trial court did not go beyond proper judicial notice to reach its findings. Findings AA and BB concern only the dates and cause numbers related to these criminal matters, and these facts would be available from the court records in the CCSs. Finding Z is supported by the record because the State offered witness testimony about Father's past invasion of privacy case, and the trial court admitted orders for both cause numbers as exhibits.

[17] The four remaining challenged findings were based on independent evidence, and the record does not show any judicial notice of facts related to these findings. Both Mother and Father testified about the prior CHINS proceeding, and the State admitted nearly 100 pages of exhibits related to Brother's CHINS case. At trial, a DCS family case manager testified that Mother had a

protective order against Father.[2] Therefore, we conclude the trial court did not abuse its discretion by admitting the CCSs through judicial notice and did not judicially notice facts concerning the remaining challenged findings.

2. Sufficiency of Evidence

[18] The Parents argue that the evidence is insufficient to support the trial court's determination that the Child is a CHINS. To show a child is a CHINS, the State must prove three elements by a preponderance of the evidence:

> 1. The child is under eighteen (18) years of age;
>
> 2. 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
>
> 3. 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.

D.J., 68 N.E.3d at 580 (citing Ind. Code §§ 31-34-1-1, 31-34-12-3).

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[2] In a mediation report included as evidence, Mother admitted to violating a no-contact order in place against Father. Ex. Vol. III at 48. "Protective order" and "no-contact order", although distinct terms, are often used interchangeably. Since the Parents only challenge WW on grounds of judicial notice, we will not address this discrepancy in terminology.

[19] "The focus of a CHINS determination is on the status of the child, not on an act or omission of the parent." *In re C.W.*, 172 N.E. 3d 1239, 1245 (Ind. Ct. App. 2021) (citing *In re N.E.*, 919 N.E.2d 102, 105–06). The status of the child should be based on the circumstances at the time of the hearing to "avoid punishing parents for past mistakes when they have already corrected them." *D.J.*, 68 N.E.3d at 581 (citing *S.D.*, 2 N.E.3d at 1289–90).

[20] The Parents argue that the trial court clearly erred when it concluded that the Child's safety was endangered due to lack of supervision and that the State's intervention was required for the Child to receive proper care.

[21] The Parents do not challenge 45 of the trial court's 52 findings, so we accept those findings as true. *See R.M. v. Ind. Dep't of Child Servs.*, 203 N.E.3d 559, 564 (Ind. Ct. App. 2023) (citing *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992)). The relevant unchallenged findings are as follows:

> J. The Court finds that both parents were unconcerned about the use of fentanyl by a parent or the safety issues regarding an infant child being exposed to fentanyl, even in small increments.
>
> K. The Court finds that Father admitted allegations H and I[3] relating to mother's fentanyl use and specifically that [sic] stated

[3] The Child's CHINS petition alleged the following: "H. On December 29, 2022, the Department received concerns for neglect to [the Child] due to Mother using illegal drugs and testing positive for fentanyl on or about December 15, 2022. I. On or about December 29, 2022, the Department was able to make contact with Father and he indicated that Mother and child were out of town and that he had no concerns for substance use by Mother or safety concerns for [the Child]." Father's App. Vol II at 13.

that Father has no concerns for substance use by Mother or safety concerns for [the Child].

* * *

M. The parents lacked any understanding that fentanyl, even a minute amount of fentanyl, that was unintended for an infant that was left behind as a speck on a person or item could still significantly harm an infant child.

N. The Court finds that [Mother] tested positive for substances without a valid prescription [on five dates between October 2022 and January 2023].

O. The Court finds that Father . . . tested positive for substances without a valid prescription [on four dates in January and February of 2023].

P. The Court finds, equally important, both parents frequently missed calling into [sic] the Cordant Health Solutions to inquire if they were required to drug screen on a particular day. Therefore, they frequently did not drug screen on dates that Cordant had picked them to drug screen.

* * *

R. The Court finds that from January 24, 2022 through February 21, 2023, [Mother] failed to submit to random drug screens (that were unforgiven) 55 times.

* * *

> T. The Court finds that from January 24, 2022 through February 21, 2023, [Father] failed to submit to random drug screens (that were unforgiven) 102 times.

Father's App. Vol. II at 37–38.

[22] These findings show the Parents are unconcerned about the potential harm that fentanyl could cause to the Child. Even after the State filed a petition alleging the Child was a CHINS, the Parents both tested positive for fentanyl and failed to submit to random drug screens. These findings support the trial court's conclusion that the Parents' lack of supervision seriously endangered the Child and that these circumstances will not change without State intervention.

[23] In challenging the trial court's CHINS determination, the Parents ask us to reconsider certain evidence. The Parents argue that we should reverse the trial court because the evidence shows: the Parents never used drugs in front of the Child; the Child's basic needs were met; and Grandmother could have served as a sober caregiver. Even if we assume these arguments had merit, "we do not reweigh evidence." *D.J.*, 68 N.E.3d at 577–78. Thus, in considering "only the evidence that supports the trial court's decision," we find the evidence was sufficient to conclude the Child was a CHINS. *Id.* at 578.

[24] Affirmed.

Bailey, J., and May, J., concur.