

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of C.B., M.B., and  
K.B., Children in Need of  
Services,  
R.A., Mother,  
*Appellant-Respondent,*

v.

February 24, 2022

Court of Appeals Case No.  
21A-JC-1717

Appeal from the  
Marion Superior Court

The Honorable  
Geoffrey A. Gaither, Judge  
The Honorable  
Rosanne T. Ang, Magistrate

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

and

Kids' Voice of Indiana,  
*Appellee-Guardian Ad Litem.*

Trial Court Cause No.  
49D09-2009-JC-2014  
49D09-2009-JC-2015  
49D09-2009-JC-2016

**Molter, Judge.**

- [1] M.B. (“Father”) and R.A. (“Mother”) have three children, C.B., M.B., and K.B. (“Children”). Father was their custodial parent, and they were removed from his home after the Indiana Department of Child Services (“DCS”) received multiple reports alleging neglect and sexual abuse of Children. DCS filed a petition alleging Children were children in need of services (“CHINS”), and Mother appeals the juvenile court’s determination that Children are CHINS, claiming the juvenile court improperly failed to hold a fact-finding hearing. She also argues the juvenile court violated her due process rights. Finding no clear error or due process violations, we affirm.

**Facts and Procedural History**

- [2] Father and Mother are the parents of C.B., born on August 3, 2008; M.B., born on August 8, 2012; and K.B., born on February 3, 2015. Soon after K.B. was born, DCS received a report alleging neglect of Children. Children were either staying with Mother or family friends at the time, depending on whether

Mother could care for Children. When Family Case Manager (“FCM”) Dawn Owens visited Mother’s residence to investigate the report, Mother appeared to be under the influence of drugs or alcohol. Mother told FCM Owens that she was using methamphetamine and that she drove C.B. and K.B. to and from their pediatrician’s office while under the influence. Mother also submitted a drug screen and stated that it would test positive for methamphetamine and Vicodin.

- [3] DCS removed Children from Mother’s care and filed a petition alleging that Children were CHINS. Father participated in the CHINS matter, which was eventually resolved, and Children were placed in his care.
- [4] A few years later, in 2020, DCS received multiple reports alleging neglect and sexual abuse of Children. When FCM Casey Touloukian investigated one of the reports, she learned that Father abandoned Children by leaving them with a family friend for about three years. The friend cared for Children with no financial or emotional support from Father or Mother. Also, among other details, FCM Touloukian learned that: Mother infrequently visited Children; Children were afraid of Father because he often left them alone; Father had weapons—which were not safely stored—and bullets throughout his home; C.B. and M.B. were sexually abused by a relative while in Father’s care; and Father did not protect Children from further sexual abuse. FCM Touloukian also discovered that C.B., a 12-year-old child at the time, was in a relationship with a 27-year-old man since she was roughly nine years old. The two exchanged nude photographs, and C.B. arranged for the man to pick her up and

take her to live with him. Mother told FCM Touloukian that she knew of this relationship for two years.

- [5] DCS subsequently removed Children from Father's care, filed a petition alleging that Children were CHINS, and placed Children in foster care. During this time, C.B. began trauma-focused therapy, and K.B. and M.B. began age-appropriate therapy. Also, although Mother's parenting time provider was in place, she had not visited Children. Her parenting time was conditioned upon her submitting drug screens with declining levels of illicit substances.
- [6] About one month after Children were placed in foster care, DCS filed a motion for temporary in-home trial visitation between Children and Mother. The juvenile court granted the motion shortly after, and Children were placed with Mother for a temporary in-home trial visitation. Also, near this time, Mother filed a Motion to Bundle Paternity Case requesting that the court transfer a paternity case regarding custody of Children to the juvenile court overseeing the CHINS case. The juvenile court denied Mother's motion.
- [7] The juvenile court held fact-finding hearings on March 9, 2021 and June 30, 2021. Before the first hearing, Mother petitioned for custody with the juvenile court. Also, concerning the CHINS case, Mother and DCS negotiated an agreed entry that provided: (1) Children were in need of services because Mother did not have custody of them and could not protect them while they were in Father's care; (2) Children did not wish to return to Father due to their collective past trauma, which occurred under his care; and (3) the coercive

intervention of the juvenile court was necessary. Tr. at 6. After confirming the language of the agreed entry with the parties, the juvenile court took Mother's admission under advisement. The juvenile court then asked Mother if she intended to "stay for the fact finding." *Id.* at 7. Because Mother's matter was resolved through her admission, Mother responded that she intended to stay to the extent of acting as a witness. *Id.* Mother also stated that she waived her right to present evidence and cross-examine witnesses. *Id.* at 10, 19.

[8] The juvenile court then engaged in a lengthy discussion with the parties at the first hearing, clarifying whether Mother wished to maintain her admission or withdraw it and have a contested fact-finding hearing. *Id.* at 18–27. On several occasions, Mother stated that she intended to abide by the agreed entry.

[9] At the second hearing, Father waived further fact-finding and requested that the dispositional order be issued within a few weeks. Mother countered this request, asking that the juvenile court close the CHINS case. *Id.* at 63. Earlier that day, in a paternity matter separate from the CHINS matter, the juvenile court granted Mother physical and legal custody of Children. Thus, Mother argued that the circumstances underlying her admission changed and should no longer have effect because at the time she made her admission she did not have custody of Children and could not protect them when they were with Father. *Id.* The juvenile court denied Mother's request after the opposing parties objected. It also accepted Mother's admission from the first fact-finding hearing.

- [10] The juvenile court entered its orders determining that Children were CHINS and, among other facts, found that: it was in the best interests of Children to be removed from Father's home; remaining in Father's home would have been contrary to the health and welfare of Children; and reasonable efforts had been made to prevent the need for removal of Children from Father's care. Appellant's App. Vol. 3 at 44–46.
- [11] Shortly after, the juvenile court held a dispositional hearing. FCM Brent Hybben testified that DCS requested random drug screens for Mother due to her history with sobriety. Mother had been addicted to drugs and recently relapsed with alcohol. But since FCM Hybben began working with the family, she did not miss any drug screens. Aside from prescribed medication, Mother's drug screens were negative for illicit substances.
- [12] FCM Hybben also stated that Mother knew that she needed ongoing support with family organization, stress management, financial health, and her sobriety. Along with recommending services to assist Mother with her financial health, FCM Hybben recommended that Children continue their ongoing therapy sessions and begin family therapy so that Children and Father could positively communicate. He also acknowledged that Mother had failed to take Children to their court-ordered therapy sessions for a short time. Finally, FCM Hybben testified that he had no safety concerns with Mother caring for Children.
- [13] The juvenile court subsequently issued its dispositional order, stating that it was in Children's best interests to continue not being placed in Father's care. The

order also directed that Children were to remain in temporary in-home visitation with Mother. While the juvenile court also directed Father to participate in various services, it declined to order services for Mother. Mother now appeals.

## **Discussion and Decision**

### **I. Standard of Review**

[14] A CHINS proceeding is a civil action; therefore, DCS must prove by a preponderance of the evidence that a child is a CHINS. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* Instead, we consider only the evidence that supports the trial court’s decision and the reasonable inferences drawn from them. *Id.* We will reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.*

### **II. CHINS Adjudication**

[15] Mother first argues the juvenile court committed clear error in finding that Children were CHINS because it failed to hold a contested fact-finding hearing. In essence, Mother asserts that she was entitled to a fact-finding hearing because her earlier admission that Children were CHINS—which she contends was exclusively based on Father having custody of Children—was rendered inoperative when she received custody of Children in a separate paternity matter. She further asserts that she “effectively” withdrew her CHINS admission. Appellant’s Br. at 12. She does not challenge the factual findings of

the juvenile court or its conclusions thereon. *See Matter of De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020) (explaining that unchallenged findings stand as proven).

[16] There are three elements DCS must prove by a preponderance of the evidence for a child to be adjudicated a CHINS. First, DCS must prove the child is under eighteen years of age; DCS must then prove one of eleven statutory circumstances exist, making the child a CHINS; and finally, in each case, DCS must prove the child needs care, treatment, or rehabilitation that she is not receiving and is unlikely to be provided without the coercive intervention of the court. *K.D.*, 962 N.E.2d at 1253. The CHINS statutes do not require a court to wait until a tragedy occurs to intervene; rather, a child is a CHINS when he or she is endangered by parental action or inaction that is unlikely to be remedied without coercive court intervention. *See In re C.K.*, 70 N.E.3d 359, 364 (Ind. Ct. App. 2016), *trans. denied*.

[17] The purpose of a CHINS adjudication is to protect the children, 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.* (internal quotation marks omitted). Sometimes, a child may be adjudicated a CHINS through no fault of either parent. *Id.* Other times, only one parent may be responsible for the CHINS adjudication. *Id.* When determining CHINS status, 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 if 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.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (internal quotation marks omitted).

[18] A parent may admit or deny the allegations set forth in a CHINS petition. Ind. Code § 31-34-10-6. If the parent does not admit the allegations, then the juvenile court must hold a fact-finding hearing. Ind. Code. § 31-34-11-1 (“[U]nless the allegations of a petition have been admitted, the juvenile court shall complete a [fact-finding] hearing not more than sixty (60) days after a [CHINS petition] is filed . . .”). “At the fact-finding hearing, the sole issue before the court is whether the child is a CHINS based upon the criteria in the CHINS statute.” *K.D.*, 962 N.E.2d at 1255.

Mother argues the juvenile court erred in finding that Children were CHINS when it denied her request for a contested fact-finding hearing. However, Mother never requested a fact-finding hearing in this case. Instead, at the first fact-finding hearing, Mother—who was represented by counsel—chose to enter an agreed entry, admitting that Children were CHINS and resolving the CHINS matter as to her. Further, Mother declined the opportunity to withdraw her admission and to have a contested fact-finding hearing on numerous occasions. She therefore waived her request for a fact-finding hearing. *See Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013)

(explaining that “waiver connotes an intentional relinquishment or abandonment of a known right”).

[19] After the juvenile court asked Mother for clarification on her position, Mother’s counsel stated that Mother “reached an agreement with DCS and . . . wouldn’t renege on that agreement at th[at] time.” Tr. at 24. Later, Mother also confirmed that she “was bound by [her] agreement” and “[would] not withdraw it.” *Id.* at 25. And, again, Mother clarified her position and stated that she wished to abide by her agreed entry when the juvenile court explained—once more—that Mother was “free to withdraw” it. *Id.* at 27.

[20] Further, at the second fact-finding hearing, and after Father waived further fact-finding, Mother did not withdraw her admission or request a contested fact-finding hearing. Thus, Mother had many opportunities to either withdraw her admission or request a contested fact-finding hearing. Instead, she chose to abide by her admission, which resolved the CHINS matter as to her. Thus, Mother waived this issue for review. *See Lafayette Car Wash, Inc. v. Boes*, 282 N.E.2d 837, 839–40 (Ind. 1972) (“A person who is in a position to assert a right or to insist upon an advantage may by his own words or conduct, and without reference to any act or conduct of the other party affected thereby, waive such right; and, once such right is waived, it is gone forever, and he will therefore be precluded from asserting it.”).

[21] Regardless of waiver, Mother’s argument still fails. A stipulation is an agreement, admission, or concession made in a proceeding between opposing

parties or by a party on a relevant point. *Inland Steel Co. v. Pavlinac*, 865 N.E.2d 690, 697 (Ind. Ct. App. 2007); *see also Bandini v. Bandini*, 935 N.E.2d 253, 265 (Ind. Ct. App. 2010). In most cases, stipulations may be withdrawn only for cause. *Matter of Ce.B.*, 74 N.E.3d 247, 250 (Ind. Ct. App. 2017).

As a general rule, stipulations may not be withdrawn without the consent of both parties, or for cause. Typically, the grounds for setting aside a stipulation include fraud, mistake, undue influence, or grounds of similar nature. It is not a ground for relief that the stipulation was disadvantageous to the party seeking relief.

*Id.* (cleaned up). Here, Mother chose to admit that Children were CHINS, and the juvenile court—after first taking her admission under advisement and later accepting it—adjudicated Children as such. Mother did not provide any grounds for cause either below or on appeal. Therefore, we cannot conclude that the juvenile court erred in determining that Children were CHINS.

[22] Finally, we note that Mother’s argument that her admission was rendered inoperative when she received custody of Children is misplaced. Here, the juvenile court declined to consolidate the paternity matter with the CHINS matter. While the juvenile court modified child custody in the paternity matter, such a modification is effective only when the juvenile court in the CHINS matter either (1) “enters an order adopting and approving the child custody modification” or (2) “terminates the [CHINS] proceeding.” Ind. Code § 31-30-1-13. Neither situation occurred here. And as the juvenile court noted, the outcome of the paternity matter did not dispose of the CHINS matter.

## II. Constitutional Claims

[23] “The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009), *reh’g denied*. Indeed, the parent-child relationship is “one of the most valued relationships of our culture.” *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005).

CHINS proceedings carry a significant potential to interfere with the rights of parents in the upbringing of children. Accordingly, due process concerns at all stages of a CHINS proceeding are a paramount concern. Indeed, procedural irregularities in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to a potential subsequent termination of parental rights.

*Matter of Eq.W.*, 124 N.E.3d 1201, 1209 (Ind. 2019) (cleaned up). “Indiana places extra emphasis on these proceedings and urges parties to cautiously and meticulously move through each stage of a CHINS proceeding.” *Id.* at 1210.

[24] Due process is essentially “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). A due process analysis in a CHINS adjudication turns on the balance of three factors: “(1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure.” *K.D.*, 962 N.E.2d at 1257. Mother contends DCS violated her due process in three ways—first, by denying Mother’s request for a contested fact-finding hearing;

second, by allowing DCS to introduce evidence of Mother's drug use in the CHINS matter; and third, by placing Children temporarily with Mother.

- [25] Mother has waived her due process argument by failing to raise it in the trial court. Generally, a party waives on appeal an issue that was not raised before the trial court. *Matter of D.H.*, 119 N.E.3d 578, 586 (Ind. Ct. App. 2019); *see, e.g., Plank*, 981 N.E.2d at 53. But we may address these claims when the violation of constitutional rights would constitute fundamental error. *D.H.*, 119 N.E.3d at 586. Fundamental error occurs when there are egregious trial errors. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*. "In order for this court to reverse based on fundamental error, the error must have been a clearly blatant violation of basic and elementary principles, and the harm must be substantial and appear clearly and prospectively." *Id.*

### ***A. Fact-Finding Hearing***

- [26] Mother's arguments in support of her first due process claim—that the juvenile court denied her constitutional right to due process when it denied her request for a contested fact-finding hearing—mirror those considered and discussed above. As previously discussed, the record does not support this assertion because Mother declined to withdraw her admission and have a contested fact-finding hearing on numerous occasions.

- [27] Also, Mother attempts to argue the juvenile court violated her constitutional rights when it denied her motion to hold the dispositional hearing as an evidentiary hearing. *See* Appellant's App. Vol. 3 at 78, 83. But she has failed to

develop this argument. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant’s brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal). Therefore, because Mother waived her due process claim and does not raise or develop any other arguments to support her claim beyond those addressed above, we decline to consider her argument that her due process rights were violated when the juvenile court denied her request for a contested fact-finding hearing.

### ***B. Lack of Notice***

[28] Mother’s next due process argument is that the juvenile court violated her constitutional rights when it allowed DCS to admit evidence regarding her drug use. Particularly, Mother argues she was not given notice of the allegations against her because this evidence was not in the CHINS petition. This argument also fails.

[29] Although the CHINS petition cited Father’s behavior as the basis to remove Children from his care, it also mentioned that DCS previously removed Children from Mother’s care due to her illegal drug use. Appellant’s App. Vol. 2 at 42. Further, the Intake Officer’s Report of Preliminary Inquiry and Investigation (“Preliminary Inquiry”), which was filed along with the CHINS petition, listed Father’s behavior *and* Mother’s prior substance abuse issues as facts pertinent to the court’s determination of whether Children were CHINS. *Id.* at 45–63. The Preliminary Inquiry not only explained that Mother lost custody of Children due to her use of illegal drugs, but it also stated that DCS

conducted a search on Mother's criminal history, which included drug-related violations. Further, the Preliminary inquiry explains that DCS spoke to Mother about her losing custody of Children in 2015 and was uncertain of whether Mother was still using drugs. Thus, once the juvenile court authorized the filing of the CHINS petition and Preliminary Inquiry, it provided notice to Mother that her illegal drug use, which was the basis for Children being removed from Mother in 2015, would be considered by the juvenile court when it considered DCS's request to find that Children were CHINS.

### ***C. Temporary Placement***

[30] Mother's final constitutional claim is that the juvenile court denied her due process when it placed Children temporarily with her. She particularly argues that there was no factual basis for the temporary placement and no plan for permanent reunification. Thus, Mother argues the juvenile court interfered with her rights in upbringing her children.

[31] "Although we have recognized that the right to raise one's children without undue interference from the State is protected by the Fourteenth Amendment to the United States Constitution, a parent's constitutionally protected right to raise [their] child is not without limitation." *A.C. Marion Cnty. Dep't of Child Servs.*, 905 N.E.2d 456, 464 (Ind. Ct. App. 2009). Also, the juvenile court's order of services and conditions in a CHINS case is reviewed for an abuse of discretion. *In re R.G.*, 130 N.E.3d 1171, 1181 (Ind. Ct. App. 2019), *trans. denied*. The requirements must relate to some behavior or circumstances revealed by the evidence. *In re K.D.*, 962 N.E.2d at 1258 ("Although the juvenile court has

broad discretion in determining what programs and services in which a parent is required to participate, the requirements must relate to some behavior or circumstances that was revealed by the evidence.”). The juvenile court’s dispositional decree must be “consistent with the best interest[s] and special needs of the child.” Ind. Code § 31-34-19-6; *see also* Ind. Code § 31-34-19-10.

[32] Here, while the juvenile court only ordered Father to participate in various services at the end of the dispositional hearing, the record shows that Children were already engaging in court-ordered therapy services and Mother was receiving substance abuse treatment. The record also shows that Mother admitted that Children were CHINS and that coercive intervention was necessary, and Children missed their therapy sessions for a short time while in their temporary placement with her. Further, DCS required Mother to participate in random drug screens due to her history with sobriety and to protect Children.

[33] As previously discussed, the purpose of a CHINS adjudication is to protect the children, not punish the parents. *K.D.*, 962 N.E.2d at 1255. And the focus of a CHINS proceeding is on the best interests of the child. *Id.* Accordingly, a child may be adjudicated a CHINS through no fault of either parent. *Id.* Thus, based on the facts revealed by the evidence, the juvenile court did not abuse its discretion in continuing temporary placement of Children with Mother. As DCS correctly notes, the plan remains reunification, and the court’s coercive intervention is necessary. But the trial court was within its discretion to



conclude removal was unnecessary and what is known as an in-home CHINS strikes the appropriate balance.

[34] In sum, Mother's due process rights were protected. Soon after the CHINS petition was filed, an attorney appeared on behalf of Mother and represented Mother throughout the CHINS matter. Mother admitted that Children were CHINS and waived her right to present evidence and cross-examine witnesses. Nonetheless, on numerous occasions, the juvenile court explained that Mother was free to withdraw her admission, but Mother decided to abide by her agreement. Additionally, at the dispositional hearing, Mother, who was represented by counsel, thoroughly cross-examined DCS's witnesses. She also appeared at each hearing. The record, therefore, shows Mother was afforded all her constitutional rights.

[35] Affirmed.

Robb, J., and Riley, J., concur.