

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of M.B. (Minor  
Child), and N.B. (Mother),  
*Appellant-Respondent*,

v.

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

June 28, 2021

Court of Appeals Case No.  
21A-JC-63

Appeal from the Allen Superior  
Court

The Honorable Charles F. Pratt,  
Judge

The Honorable Sherry Hartzler,  
Magistrate

Trial Court Cause No.  
02D08-2003-JC-162

**Brown, Judge.**

[1] N.B. (“Mother”) appeals the trial court’s order determining that M.B. is a child in need of services (“CHINS”).<sup>1</sup> We affirm.

### *Facts and Procedural History*

[2] M.B. was born on July 22, 2018. On March 30, 2020, the Indiana Department of Child Services (“DCS”) filed a petition alleging M.B. was a CHINS. The petition also alleged Mother had mental health issues which were not being adequately treated, and that, on or around March 27, 2020, law enforcement responded to reports that Mother made concerning statements that she may harm herself or others, Mother was placed in a 24-hour involuntary mental health hold, and a pipe with brown residue was found in Mother’s home. The petition further alleged that M.B. had been removed with the assistance of law enforcement, DCS had received multiple reports regarding concerns for M.B.’s safety because of mental health issues, and Mother was unable or unwilling to provide M.B. with a home free from illicit substances.

[3] On October 5 and 8, 2020, the trial court held a hearing at which it admitted screenshots of Facebook posts by Mother from March 25th, which stated:

Just give me some time at home with my daughter so we can rest in quiet without booming voices and the toxic masculinity of any man.

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<sup>1</sup> Although Mother’s notice of appeal lists the trial court’s January 4, 2021 Nunc Pro Tunc Order, she does not develop an argument concerning it.

I have feelings, and they've been hurt my entire life. I don't want [M.B.] to experience this. I might kill us to be at true peace away from all men.

State's Exhibit 5. Mother testified that the officers who came to her house on March 27th mentioned the second post. When asked to explain the posts, Mother stated she only had a single neighbor on her Facebook friends list, she "got tired of the harassment from my neighbors . . . I felt like I became their target being in a predominantly two-parent neighborhood you know I was a single mom," and that she "did that more just to test my theory just to see what would happen if I had thousands of people all over the world and one neighbor who would say something." Transcript Volume II at 34. When asked if she saw threatening to kill herself and her child in a public forum as a "[j]arring . . . thing to have said," she answered that she meant to "get someone's attention and I feel like I elicited the attention of the person who that post was targeted to given the statement made in my inbox after I made these comments." *Id.* at 35.

[4] Mother testified she enlisted in the Army in 2005 when she was seventeen years old and was discharged in 2012. According to her testimony, she received a Veterans Affairs rating that "was service connection for anxiety disorder not otherwise specified also claimed as post-traumatic stress disorder and depression" and was "granted with an evaluation of 30% effective May 12th 2012," *id.* at 12, filed a lawsuit in federal district court claiming that she had anxiety due to being raped in 2007 while in the Army which she believed was dismissed, attempted counseling and medication from the Veterans Affairs hospital with the last time

being “maybe in 2015,” and at some point received service-connected disability compensation based on an evaluation of one hundred percent disabled. *Id.* at 38.

[5] Mother testified that she called the police and reported her neighbors on multiple occasions from the end of 2019 through March 2020 for “harassment verbal harassment . . . assault verbal . . . [and] trespassing,” and that she spray-painted trees in her yard to communicate with tree removal specialists regarding the priority she wished trees to be removed. *Id.* at 25. She answered in the negative when asked if she had a gun in the house on March 27th, and then clarified that she did have an “unloaded secured BB gun.” *Id.* at 30. When asked how the encounter with law enforcement on March 27th ended, she answered that she was taken to Parkview Behavioral Health for a stay lasting approximately seventy-two hours. She indicated that she had an opportunity to find a friend or family member to watch M.B. before she left for Parkview Behavioral Health but she was not successful “because most people were at work or my family is two hours away.” *Id.* at 37.

[6] Mother testified that she was on multiple medications over numerous years and that “towards the end . . . it was more manageable.” *Id.* at 40. She stated she last received therapy in a brief treatment session in April before M.B. was removed, her last diagnosis was bipolar, and she completed treatments. She testified she filed a police report that her caseworker was harassing her with communication which was “very intimidating.” *Id.* at 46. She answered affirmatively when asked if she was referred to a parenting class during the summer and stated that she was accused of being combative and did not complete the services. When

asked if she ever said anything she would consider threatening to the first caseworker assigned to supervise her visits with M.B., she answered, “No not at all,” and when asked if she “remember[ed] telling her snitches get stiches,” she stated, “Sure [chuckles] she a snitch though,” and indicated she remembered stating it. *Id.* at 55. She indicated police came to her house for a well-person check at some point after March 27, 2020, and that she went to live in a shelter for three weeks starting on September 1st because she “felt very targeted” and “very intimidated and threatened” by the police and Family Case Manager Sarah Corley (“FCM Corley”). *Id.* at 57, 62. She answered affirmatively when asked to confirm she was not receiving any mental health treatment, and she stated that she thought treatment would be beneficial only if it was in a family environment with M.B.

[7] Dr. David Lombard, who conducts diagnostic assessments for DCS, testified that he interviewed Mother after the March incident, and she did not wish to discuss any of her past mental health treatment or trauma history. He stated Mother indicated that she did not wish to respond to questions about auditory and visual hallucinations because she did not wish to incriminate herself and, when they discussed substance abuse, she stated she would rather have her attorney present. He stated he was not able to obtain enough clinical data from the interview to obtain a definitive diagnosis because of Mother’s reluctance to provide details. He testified she was invalidated on two separate administrations of psychological testing because she was overly defensive and not responding to items in a fully open and honest manner. He indicated she did complete a parenting assessment

from which he was able to obtain some clinical information, her “very brief” answers did not “reflect any significant knowledge of . . . the development emotional needs of children,” and he recommended that she engage in a parenting skills training program. *Id.* at 78.

[8] Fort Wayne Police Sergeant Bridget Glaser testified Mother’s address had come up several times for different reasons in the months prior to March 27, 2020, and she explained that, when certain officers responded, “there were problems . . . that she did not want to talk [to] specific officers.” *Id.* at 85. She stated that the temperature was approximately forty-one degrees and the windows were open in Mother’s house when she responded to the call on March 27, 2020, and that Mother denied wanting to harm her neighbors and police officers. Sergeant Glaser indicated she encountered upon entry “large pieces of paper on the floor with . . . spray paint cans sitting around and some of the papers had quarantine . . . spray painted on it,” clothes lying around, dishes piled up in the sink, a handgun lying on the couch, a pipe used to smoke narcotics, and a small child walking around the house. *Id.* at 88. She testified she spoke with Mother who said the firearm was a BB gun and that another officer obtained information that Mother was using the trees for target practice in order to shoot the neighbors. She indicated she agreed with another officer’s determination that Mother was a danger to herself and others and she had concerns about M.B.’s safety given the temperature of the house, the gun, the narcotic pipe, and Mother’s mental health as she “was very angry towards us,” “told us that she did not speak to men” and “did not want the men around,” and when they made contact with M.B., Mother

“would turn [M.B.] away from us and say don’t . . . look at those people they just want to hurt you.” *Id.* at 89-90. She stated that Mother, when told she would be going to Parkview Behavioral Health, exhibited an anger that “was pretty much out of control,” picked up the narcotic pipe, and threw it on the ground, causing it to break and pieces to fly and hit one of the officers. *Id.* at 91.

[9] DCS assessment worker Philip Seidel testified that he accompanied the Fort Wayne Police Department on the call to Mother’s home and noticed little to no food in the home; namely, a “bowl in front of the television set . . . [with] fish and rice in it” and “maybe a jug of milk or a liquid in the fridge and one other food item.” *Id.* at 128. He stated that, when he served her with her advisement of rights, she “questioned . . . every statute[] in the advisement of rights,” became abrasive, and said that he “was being rude and abrasive and f-- DCS.” *Id.* at 125. He indicated that, following her release from Parkview Behavioral Health, she contacted him to inform him that she was going to be in Indianapolis with family, was doing better “because she’s now on medication,” and did not want additional contact besides knowing the name of her new case manager. *Id.* He testified that Mother sent a text message in which she expressed that she felt neighbors had been teaming up against her and calling the police and she stressed that she was only protecting herself and had given fair warning to her neighbors to not trespass on her property or she would shoot them.

[10] Family Coach Renee Sullivan testified she facilitated supervised visitations between Mother and M.B. which began virtually. When asked if she had concerns with the virtual visits, she answered affirmatively and explained that

Mother brought up topics such as racism that were adult-oriented and of which M.B. had no concept given her age, and she stated there “were times that [Mother] presented . . . that they were victims of the DCS system and it was all racist driven.” *Id.* at 98. She indicated that, after visits transitioned to in-person, Mother’s parenting skills were inconsistent over time, and that she would have inappropriate age expectations for M.B. She described a visit that she ended early because M.B.’s arm appeared to be stuck “like it’s pinned,” M.B. was crying, and Mother did not respond after she mentioned it three times and asked Mother to address it. *Id.* at 101. She described Mother’s interactions with DCS employees as argumentative and indicated that, during the previous week, Mother expressed concern that foster placement would run off with M.B.

[11] Quality Counseling caseworker Haley Banker testified she contacted Mother on referral around July 2020, she texted her a reminder the day prior to a scheduled parenting education session, and Mother responded late at night with multiple text messages unrelated to the session. She indicated Mother refused to answer questions at the intake meeting, stated they were ridiculous and she “just didn’t believe in them,” and would answer questions in tangents or would provide an unrelated response. *Id.* at 116. She testified Quality Counseling discharged Mother following the first intake session due to combativeness and recommended psychological testing.

[12] FCM Corley testified she last spoke with Mother in September, she had conversations with Mother about her mental health, and that during one of the last discussions, Mother asked if M.B. would be reunified with her if she were to



move, FCM Corley explained that the concern was not where Mother lived but her mental health, and Mother kept asking the same question “over and over about four times and the call ended.” *Id.* at 135. She indicated she had been concerned for Mother’s immediate wellbeing since the beginning of the case and initiated a well-person check at the end of August 2020 because she had received concerns about Mother’s actions from a service provider and wanted to ensure her safety. She answered in the negative when asked if she had ever recommended that visits be expanded and explained the reason was due to a concern with Mother’s mental health and that DCS would like to “get those services started before we . . . advance in visits.” *Id.* at 144. She answered in the negative if she ever recommended M.B. be placed back with Mother and explained that the “issue [DCS] is involved with has not been rectified” and DCS would like for Mother to complete a psychological exam and follow the recommendations. *Id.*

[13] On November 17, 2020, the court issued an order finding M.B. to be a CHINS and concluding that, when Mother stated she may kill herself and M.B., and when law enforcement and DCS intervened, she was taken to the hospital and admitted for over three days; and that the condition of Mother’s home and Facebook statement, combined with her mental illness and refusal to engage in services, established Mother was unable to provide protection and appropriate supervision. It also concluded that Mother failed to cooperate with her assessment and parenting services, and that DCS established that coercive intervention was required. Following another hearing, the court issued a

dispositional order that continued M.B.'s placement in foster care and required Mother to enroll in individual counseling and obtain a psychological evaluation and a bond assessment, complete the counseling program and follow all recommendations of the assessments, and engage in therapeutic supervised visits with M.B.

### *Discussion*

[14] Mother claims that no evidence was presented that she was failing to provide the child with necessary food, shelter, medical care, education or supervision. She contends that, since she was prepared to be reunified with M.B. days upon her release from Parkview Behavioral Health, the evidence cannot reasonably support the inference that she was likely to need the court's coercive intervention. She states that "by the fact-finding hearing [she] had addressed all of the allegations which could be attributed to her behavior." Appellant's Brief at 15.

[15] The State must prove by a preponderance of the evidence that a child is a CHINS. *Matter of Eq. W.*, 124 N.E.3d 1201, 1208 (Ind. 2019). We do not reweigh the evidence or judge the credibility of witnesses and consider only the evidence which supports the trial court's decision and reasonable inferences drawn therefrom. *In re S.D.*, 2 N.E.3d 1283, 1286-1287 (Ind. 2014), *reh'g denied*. We apply the two-tiered standard of whether the evidence supports the findings and whether the findings support the judgment. *Id.* We will reverse a CHINS determination only if it is clearly erroneous. *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017). A decision is clearly erroneous if the record facts do not support the findings or if it applies the wrong legal standard to properly found facts. *Id.*

[16] Ind. Code § 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, 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.

The CHINS statute does not require a court to wait until a tragedy occurs to intervene. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is to protect children. *Id.*

[17] Mother does not challenge the trial court's findings of fact, and the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied.*

[18] The record reveals that Mother posted on Facebook that she might kill herself and M.B. “to be at true peace away from all men,” and when law enforcement responded to a call on March 27, 2020, they discovered Mother’s home in disarray, with open windows despite the approximate forty-one degree weather, little to no food, and a firearm and narcotic pipe within reach of M.B. State’s Exhibit 5. Following a seventy-two hour stay at Parkview Behavioral Health during which DCS removed M.B. because Mother was unsuccessful in locating care, Mother refused to engage in services, in mental health assessments, and with DCS. DCS still had concerns at the time of the hearing. To the extent Mother invites us to reweigh the evidence and judge the credibility of witnesses, we are unable to do so. *See In re S.D.*, 2 N.E.3d at 1286. The court was able to consider Mother’s actions and omissions over time, her mental health struggles and behavior, and her ability to protect M.B. Under the circumstances presented, we cannot say the court’s findings and adjudication of M.B. as a CHINS are clearly erroneous.

[19] For the foregoing reasons, we affirm the trial court’s determination that M.B. is a CHINS.

[20] Affirmed.

Bradford, C.J., and Crone, J., concur.