

ATTORNEY FOR APPELLANT

Daniel G. Foote  
Indianapolis, Indiana

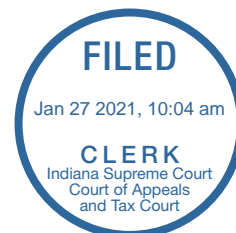
ATTORNEYS FOR APPELLEE:

Theodore E. Rokita  
Attorney General of Indiana

Katherine A. Cornelius  
Deputy Attorney General  
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:  
CHILD ADVOCATES, INC.

Kristine Dede Connor  
Indianapolis, Indiana



---

IN THE  
COURT OF APPEALS OF INDIANA

---

In the Matter of M.P. and J.P.,  
(Minor Children), Children in  
Need of Services,

and

E.P. (Father),  
*Appellant-Respondent,*

v.

The Indiana Department of  
Child Services,

*Appellee-Petitioner,*

and

Child Advocates, Inc.,  
*Guardian ad Litem.*

January 27, 2021

Court of Appeals Case No.  
20A-JC-1268

Appeal from the Marion Superior  
Juvenile Division

The Honorable Marilyn A.  
Moores, Judge

The Honorable Gael Deppert,  
Magistrate

Trial Court Cause No.  
49D09-1911-JC-2936  
49D09-1911-JC-2937

**Tavitas, Judge.**

## **Case Summary**

- [1] E.P. (“Father”) appeals: (1) the juvenile court’s finding that his children, J.P. and M.P. (“the Children”), are children in need of services (“CHINS”); and (2) the juvenile court’s corresponding dispositional order giving wardship of the Children to the Indiana Department of Child Services (“DCS”). Concluding that DCS did not prove by a preponderance of the evidence that the coercive intervention of the court was necessary to ensure the Children’s care, and therefore, that the juvenile court clearly erred in adjudicating the Children to be CHINS, we reverse and remand.

## **Issues**

- [2] Father raises three issues, which we consolidate and restate as:
- I. Whether the juvenile court erred in adjudicating the Children as CHINS.
  - II. Whether the juvenile court erred when it placed the Children in foster care, rather than with Father.

## Facts

- [3] Father and R.A. (“Mother”) are the parents of two children: J.P., born in February 2005, and M.P., born in December 2010.<sup>1</sup> Father and Mother previously resided together in Georgia, and Father was present for the birth of J.P. in Atlanta. M.P. was born in Massachusetts, and, though Father was not present for the birth, he subsequently signed an affidavit establishing paternity. Mother moved to Indiana with the Children in approximately 2009 and ceased all contact with Father, who had no information on their whereabouts for the next ten years. Father, who continued to reside in Georgia, reported that he contacted the Georgia authorities in either 2009 or 2010 in an attempt to secure either custody or parenting time, but was informed that the proper course of action would be to contact DCS in Indiana. Having no additional information, Father did not pursue the matter any further.
- [4] In approximately 2019, Father was able to re-initiate contact with the Children and, from that point on, spoke with them regularly, sometimes between thirty and ninety minutes a day.<sup>2</sup> Father began voluntarily sending Mother approximately four hundred dollars a month for the benefit of the Children.

---

<sup>1</sup> Mother and W.P. are the parents of a younger child who was a part of the proceedings below but is not a part of this appeal. As of the date of the filings, DCS has been unable to locate W.P.

<sup>2</sup> Father speaks little English, and M.P. speaks little Spanish, so a translator was required. J.P. is apparently sufficiently fluent in Spanish.

[5] On September 21, 2019, J.P. was hospitalized when, during a domestic dispute between Mother and Mother’s boyfriend, the child, J.P., was inadvertently struck on the wrist with a baseball bat. On November 21, 2019, DCS received a report of neglect after Mother left the Children at home alone and attempted to stab her now ex-boyfriend. That same day, DCS removed the Children from Mother’s home. The following day, DCS filed a CHINS petition alleging, among other things, that Father “ha[s] not demonstrated an ability and willingness to appropriately parent the children, and/or they are unable to ensure the children’s safety and well being [sic] while in the custody and care of [Mother].” Appellant’s App. Vol. II pp. 7, 39.

[6] The juvenile court held a fact-finding hearing on March 4, 2020. Mother entered a qualified admission that the Children were CHINS. DCS assessment worker, Channing Reed, testified that Father contacted DCS the day that the Children were removed from Mother’s home and inquired about securing custody of the Children. Reed was aware that the Children maintained a relationship with Father and spoke with him on the phone regularly. When questioned about why DCS did not place the Children with Father after removal, Reed replied; “Well for one he didn’t live her [sic][,]” and: “So, we, I mean, them identifying him, we didn’t know for sure, like have the actual evidence that ensured that he actually was the father, so. . . .”<sup>3</sup> Tr. Vol. II p. 25.

---

<sup>3</sup> A different DCS caseworker testified that Mother did identify Father as the father of the Children during the initial removal.

Reed confirmed that DCS considered the most significant barrier to placement with Father to be the fact that Father lived in Georgia.

[7] Father testified that Mother had denied him communication with the Children during the approximately ten years between her relocation to Indiana and the initiation of the CHINS proceedings. Father indicated that he is gainfully employed in the construction industry, though his job requires frequent travel. At the time of the hearing, Father resided in a two-bedroom apartment with his girlfriend and her three children, but Father testified that he had already been approved to move into a three-bedroom apartment. Father explained he had not filed for custody or formal visitation because he was under the impression that Mother was going to allow him informal visitation. Father confirmed that, once he was aware of the Children's whereabouts, he began voluntarily providing four hundred dollars a month in child support and would have done so sooner if he had known where to send the money. Father expressed his desire for the Children to reside with him and to obtain custody.

[8] Child therapist, Regina Yates, testified that the Children were progressing in their therapy and that changing locations or therapists would not constitute a problem for the Children. Yates also indicated that the Children appeared to have a very positive relationship with Father and that Yates had no concerns related to Father. Yates also explained that J.P. was "adamant" about wishing to live with Father. Tr. Vol. II p. 46. The Children's Guardian ad Litem testified that she was "comfortable" with Father, but that she had no

interactions with him prior to the morning of the fact-finding hearing. *Id.* at 54-55.

[9] DCS permanency case manager, Robin Mitchell, testified regarding her concerns about placement of the Children with Father, which included: “not having [a] background check with Father, or fingerprints, or . . . and also, we also do a drug screen, those are our three main ones.” *Id.* at 48. Mitchell offered no explanation as to why DCS had not secured any of that information during the more than three months that the case had been pending. Mitchell further testified that Father was compliant and willing to work with DCS. Mitchell testified that, beginning in February, DCS repeatedly attempted to contact its counterpart in Georgia in an attempt to obtain a home-study but that Georgia child welfare services had not responded. Mitchell explained that ordinarily the next step would be for DCS to request travel to Georgia itself to perform a home study; the approval period, however, lasts approximately thirty to sixty days. As of the date of the hearing, Mitchell had apparently not requested permission to travel to Georgia. Without the background checks and home-study, DCS was unwilling to provide a recommendation with respect to placing the Children with Father. During closing arguments, Father sought either custody or placement of the Children with him.

[10] On April 2, 2020, the juvenile court entered an order adjudicating the Children as CHINS containing findings of fact as follows:

\*\*\*\*

10. By his testimony, [Father] had communication with [the Children] between four and five times in the past 10 years.

11. [Father] did not have a significant relationship with [M.P] prior to DCS involvement.

12. [Father] and [M.P.] need an interpreter to communicate, as [M.P.] does not speak Spanish and [Father] does not speak English well.

13. [Father] did not financially provide for the children from the time of [Mother's] relocation to Indiana 10 (ten) years ago, until approximately a year prior to DCS involvement when [Mother] re-established contact with [Father].

14. [Father's] justification for lack of contact and lack of support was that he was unable to locate [Mother] and [the Children] other than knowing they were in Indiana. [ ]

15. Despite his testimony that in the past year he began to communicate with his children on a regular basis, [Father] did not demonstrate any ability to provide the children with a safe and stable living environment while in the care of [Mother] in the past year.

16. [Father] never made formal efforts to establish child support and/or obtain parenting time prior to DCS involvement.

17. [Father] is employed in a position that requires extensive travel for extended periods of time that allows him to be home about eight (8) days a month.

18. From [Father's] testimony it can be reasonably inferred that he is not available to consistently parent the children, nor is he

anticipating acting as a significant caregiver for the children, as he plans for his girlfriend to take care of [the Children] were he to have primary physical custody of the children.

19. When asked how close [the Children] were to his girlfriend, [Father] testified that [“]I could not tell you because (the girlfriend) just met [the Children] one day last year.[”]

20. No testimony is elicited from [Father’s] girlfriend regarding her fitness and willingness to take care of [Father’s] children or to have the children live with her and her 3 children.

21. [Father] resides in a two bed-room apartment with his girlfriend and her three (3) children, ages 3-6.

22. From [Father’s] testimony it can be reasonably inferred that his current 2 bedroom apartment lacks sufficient space for two adults and five children, including a teenager who not incidentally has a history of sexual abuse.<sup>4</sup>

23. Despite his testimony that he wants his children to live with him, [Father] has not acquired adequate housing at the time of fact-finding in which his children [J.P.] and [M.P.] could live with him, his girlfriend, and her 3 children.

Appellant’s App. Vol. II pp. 203-04.

---

<sup>4</sup> The record contains some evidence that seems to suggest that J.P. experienced some sexual trauma perpetrated by an older half-brother. It does not appear that this evidence pertains to Father in any way. Speculation that J.P. may require additional space in order to process her trauma, or that Father will be unable to provide it, is not supported by the record.



[11] On June 17, 2020, the juvenile court entered a dispositional decree and placed the Children in foster care. The juvenile court specifically found that its disposition: (1) “[l]east interfered with family autonomy”; (2) “[i]s least disruptive of family life”; and (3) “[i]mposes the least restraint on the freedom of the child(ren) and the child(ren)’s parent, guardian, custodian.” *Id.* at 29. This appeal followed.

## Analysis

[12] Father argues that the juvenile court erred in adjudicating the Children as CHINS. We have explained that “[CHINS] cases aim to help families in crisis—to protect children, not punish parents.” *Matter of A.R.*, 110 N.E.3d 387, 400 (Ind. Ct. App. 2018) (quoting *In re S.D.*, 2 N.E.3d 1283, 1285 (Ind. 2014)). “When determining whether there is sufficient evidence to support a CHINS determination, we neither reweigh the evidence nor judge the credibility of the witnesses.” *Id.* (citing *S.D.*, 2 N.E.3d at 1287). “We consider only the evidence that supports the juvenile court’s decision and reasonable inferences drawn therefrom.” *Id.* We limit our review “to whether the evidence supports the findings, and then . . . whether the findings support the judgment,” reversing the findings only if they are clearly erroneous. *Id.* Issues not reached by the findings of fact are reviewed pursuant to “the general judgment standard, under which a judgment ‘will be affirmed if it can be sustained on any legal theory supported by the evidence.’” *S.D.*, 2 N.E.3d at 1287 (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). The trial

court's conclusions of law and any constitutional challenges are reviewed de novo. See, e.g., *In re Adoption I.B.*, 32 N.E.3d 1164, 1169 (Ind. 2015).

- [13] A CHINS proceeding is civil in nature, so 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. 2017). “‘Not every endangered child is a child in need of services,’ and not every endangered child needs ‘the State’s *parens patriae* intrusion into the ordinarily private sphere of the family.’” *In re D.J. v. Indiana Dep’t of Child Servs.*, 68 N.E.3d 574, 580 (Ind. 2017) (quoting *S.D.*, 2 N.E.3d at 1287).

There are three basic elements DCS must prove for a juvenile court to adjudicate a child a CHINS: that the child is under eighteen years of age; one or more of the statutory circumstances outlined in Indiana Code sections 31-34-1-1 through 11 exists; and the care, treatment, or rehabilitation required to address those circumstances is unlikely to be provided or accepted without the coercive intervention of the court.

*Matter of K.Y.*, 145 N.E.3d 854, 860 (Ind. Ct. App. 2020) (citing *N.E.*, 919 N.E.2d at 105), *trans. denied*. In this case, DCS alleged that the Children were CHINS pursuant to Indiana Code Sections 31-34-1-1 and 31-34-1-2.

- [14] To meet its burden under Indiana Code Section 31-34-1-1, DCS was required to prove that the Children are under the age of eighteen and that:

(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; 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 coercive intervention of the court.

Ind. Code § 31-34-1-1.

[15] DCS also alleged that J.P. was a CHINS pursuant to Indiana Code Section 31-34-1-2, which requires the State to prove a child is under the age of eighteen, and:

(1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; 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.

[16] Father specifically challenges the juvenile court's conclusion that the Children were unlikely to receive necessary care absent the court's coercive intervention. The required proof of the statutory CHINS elements "guards against

unwarranted State interference in family life, reserving that intrusion for families ‘where parents lack the *ability* to provide for their children,’ [and] not merely where they ‘encounter *difficulty* in meeting a child’s needs.’” *D.J.*, 68 N.E.3d at 580-81 (quoting *S.D.*, 2 N.E.3d at 1287) (citation omitted) (emphases in original). When determining whether the “coercive intervention” of the court is necessary, courts “‘should consider the family’s condition not just when the case was filed, but also when it is heard.’” *Id.* (quoting *S.D.*, 2 N.E.3d at 1290). “Doing so avoids punishing parents for past mistakes when they have already corrected them.” *Id.* (citing *S.D.*, 2 N.E.3d at 1289-90).

[17] At the fact-finding hearing, Mother admitted that the Children were CHINS. Such an admission, however, is not dispositive. “Situations can exist where an admission by a parent would be incapable of providing a factual basis for the CHINS adjudication.” *In re K.D.*, 962 N.E.2d 1249, 1256 (Ind. 2012). Contrary to the juvenile court’s finding that “[Father] did not demonstrate any ability to provide the children with a safe and stable living environment while in the care of [Mother] in the past year[,]” the burden of proof rests with DCS, not with Father. Appellant’s App. Vol. II p. 203-04; *see also N.E.*, 919 N.E.2d at 105. “[B]ecause DCS has to prove all three basic elements, each parent has the right to challenge those elements.” *K.D.*, 962 N.E.2d at 1254.

[18] “A parent’s interest in the care, custody, and control of his or her children is “perhaps the oldest of the fundamental liberty interests.” *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (citing *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). “Indeed the parent-child

relationship is ‘one of the most valued relationships in our culture.’” *Id.* (citing *Neal v. DeKalb County Div. of Family & Children*, 796 N.E.2d 280, 285 (Ind. 2003)). Because CHINS proceedings must protect and promote the all-important best interests of the child, while treading carefully so as not to infringe upon constitutionally protected parental rights, two recent Indiana Supreme Court decisions “cautioned courts against turning a blind eye to piecemeal litigation and/or actions that undermine the confidence we must place in our State’s child welfare system.” *See R.L. v. Indiana Dep’t of Child Servs. & Child Advocates, Inc.*, 144 N.E.3d 686, 690 (Ind. 2020); *see also Matter of Eq. W.*, 124 N.E.3d 1201 (Ind. 2019).

- [19] With such weighty concerns hanging in the balance, “DCS must have its house in order when it institutes a CHINS proceeding. . . .” *R.L.*, 144 N.E.3d at 689. “DCS also bears responsibility to move ‘cautiously and meticulously . . . through each stage of a CHINS proceeding.’” *Id.* at 691 (quoting *Matter of Eq. W.*, 124 N.E.3d at 1210). “If there is to be any predictability for parents, children, and the State in these proceedings, we must hold each party properly accountable to their individual responsibilities.” *Id.* In *Matter of Eq. W.*, our Supreme Court declined to endorse DCS’s procedural tactics that “essentially string out the CHINS proceeding until enough evidence was collected, all the while keeping the children separated from their parents,” noting that, “[t]here is simply too much at stake to condone these actions.” 124 N.E.3d at 1211.

- [20] The record before us does not support the juvenile court’s finding that coercive intervention of the court was required in order for the Children to receive

necessary care. DCS failed to effectively communicate with child welfare services in Georgia and secure a home study, or perform one of its own, despite its “vastly superior resources . . . to properly and accurately move through each stage of the CHINS proceeding.” *R.L.*, 144 N.E.3d at 691.

[21] The record reveals that Father maintained a positive relationship with the Children from the moment he re-obtained contact with them and that they spoke on the phone regularly, often daily. J.P. was adamant that she wanted to be placed with Father. Father voluntarily provided four hundred dollars a month in child support to Mother and had already taken steps to secure a larger residence by the date of the fact-finding hearing. Every worker or therapist that had contact with Father agreed that he has been compliant and willing to do whatever is required in order to take care of the Children. Father is gainfully employed, and the record is devoid of evidence that establishes that his home is inadequate for the Children. The evidence strongly suggests that, at the relevant time, Father *was* willing to provide a safe and stable living environment.

[22] DCS’s reservations were based on little more than speculation and its own failure to properly investigate. A CHINS proceeding, however, is no place for conjecture. *K.D.*, 962 N.E.2d at 1256 (citing *D.H. v. Marion County Office of Family & Children*, 859 N.E.2d 737, 744 (Ind. Ct. App. 2007)) (“Speculation is not enough for a CHINS finding.”). We have previously found that even a “Father’s lack of prior parental involvement and parenting skills” is not sufficient to conclude that coercive intervention will be needed in the future. *In*

*re S.A.*, 15 N.E.3d 602, 611 (Ind. Ct. App. 2014), *aff'd on reh'g*, 27 N.E.3d 287 (Ind. Ct. App. 2015), *trans. denied*.

[23] We understand the need to initially place the Children in foster care, until Father could be notified of the events requiring removal of the Children from Mother's home. Nevertheless, juvenile courts must be careful not to simply export circumstances warranting emergency removal into considerations about whether ongoing coercive intervention of the State is truly necessary. As our Supreme Court has noted in *In re D.J. v. Indiana Dep't of Child Servs.*:

The trial court's CHINS order included factual findings that amply support its conclusion that Parents required coercive intervention *early* in the CHINS process. But those findings did not show that Parents needed *ongoing* coercive intervention throughout the process, and they certainly did not show that Parents needed such intervention by the time of the fact-finding hearing months later.

68 N.E.3d 574, 581 (Ind. 2017) (emphasis in the original). "DCS does not satisfy its burden of proof by simply highlighting Father's shortcomings as a parent; rather, DCS must establish that Father is unlikely to meet the Child's needs absent coercive court intervention." *S.A.*, 15 N.E.3d at 611-12. Neither the juvenile court's findings nor the evidence in the record supports such a conclusion.

[24] DCS failed to prove that court intervention was necessary. Because we conclude that DCS failed to prove that the Children are CHINS by a preponderance of evidence, we reverse the juvenile court's CHINS

determination, and, accordingly, we need not reach Father's challenge to the Children's placement in foster care via DCS.

### **Conclusion**

[25] DCS did not meet its burden to prove by a preponderance of evidence that the Children are CHINS. The evidence, accordingly, did not support the juvenile court's findings. We reverse and remand.

[26] Reversed and remanded.

Bailey, J., and Robb, J., concur.