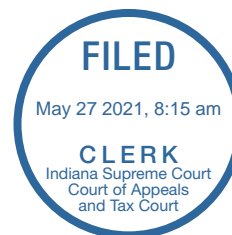


MEMORANDUM DECISION

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

In the Matter of:

Ad.B., Av.B., Al.B., and Ai.P.
(Minor Children), and R.B.
(Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

May 27, 2021

Court of Appeals Case No.
21A-JC-11

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly Benjamin,
Judge

The Honorable Lindsay Holden-
Kay, Magistrate

Trial Court Cause Nos.
03C01-2006-JC-2962
03C01-2006-JC-2963
03C01-2006-JC-2964
03C01-2006-JC-2965

May, Judge.

[1] R.B. (“Mother”) appeals the adjudication of her children, Ad.B., Av.B., Al.B., and Ai.P. (collectively, “Children”) as Children in Need of Services (“CHINS”). Mother challenges several the trial court’s findings and contends the trial court’s findings do not support its conclusion that Children are CHINS. We affirm.

Facts and Procedural History

[2] Mother is the mother of Ad.B., born December 13, 2005; Av.B., born February 10, 2008; Al.B., born December 4, 2011; and Ai.P., born March 30, 2016. An.P.¹ (“Boyfriend”) is Mother’s boyfriend and the father of Ai.P. J.B.² is the legal father of Ad.B., Av.B., and Al.B.³ Mother and Children lived with Children’s maternal great-grandmother and maternal great-uncle. Boyfriend did not live with Mother, but he regularly visited the residence.

[3] In April 2020, Boyfriend overdosed on heroin in a camper behind Mother’s residence.⁴ The Department of Child Services (“DCS”) assessed the family to determine if they needed services, but DCS closed the case when the family

¹ Ai.P. was found to be a CHINS as to An.P., who does not participate in this appeal.

² Ad.B., Av.B., and Al.B. were found to be CHINS as to J.B., but he does not participate in this appeal.

³ Mother alleged S.S. was Av.B.’s father; however, he has not established paternity. Mother and J.B. were married when Ad.B., Av.B., and Al.B. were born, and thus he is the presumed father of those children.

⁴ This was the fourth time Boyfriend had overdosed. In addition to the May 2020 overdose, he overdosed at Mother’s residence one other time in 2020.

case manager discovered Boyfriend did not live with Children. DCS helped Mother make a safety plan prior to closing the case.

[4] On June 15, 2020, Boyfriend was driving to his mother's house with Mother and Ai.P. in the car. Police initiated a traffic stop because Boyfriend crossed the center line. Officers discovered Boyfriend's license was suspended. Officers performed a K-9 search of the vehicle, and the K-9 alerted for narcotics. Officers removed everyone from the vehicle and searched the vehicle. They did not find drugs in the car, however, one officer observed a bulge in Mother's bra. Mother removed half of a hydrocodone pill from her bra and gave it to an officer.

[5] Officers indicated they intended to place Mother and Boyfriend under arrest, and asked Mother to remove Ai.P. from his car seat so that DCS could take Ai.P. from the scene. When Mother did so, she pushed a pill bottle under the driver's seat. The officers retrieved the bottle, which contained 121 Gabapentin⁵ pills. The label on the pill bottle had been removed. Mother told officers the pills belonged to maternal great-grandmother. Boyfriend told officers that the pills belonged to Mother and that he and Mother were going to Walmart to dispose of the pills in a pharmacy drop box.

⁵ At the CHINS fact-finding hearing, an officer testified that Gabapentin is an "anti-seizure" medication that "can be used for pain, it has some pain nullifying effects" that "has also commonly been found on traffic stops along with other pain pills." (Tr. Vol. II at 62.) He testified that Gabapentin, "when combined with pain pills, etc, can produce or extend it's [sic] own sort of high feeling." (*Id.*)

- [6] Officers also took an empty cigarette packet from Mother during a search. Inside the packet was a straw with a white residue in it. Mother said the straw belonged to Boyfriend. Officers observed a white residue on Mother's nostril. When asked about the residue, Mother indicated it was from her inhaler, though she later admitted that she sometimes snorted her prescription medication. Officers arrested Mother and Boyfriend. The State charged Boyfriend with driving while suspended and charged Mother with possession of paraphernalia and two counts of possession of a controlled substance.
- [7] DCS arrived at the scene to take Ai.P. to maternal great-grandmother's house. Boyfriend admitted to the DCS family case manager that he would test positive for amphetamine and methamphetamine. He also told the family case manager that Mother "had a history of snorting pills." (Tr. Vol. II at 69.) The DCS family case manager administered a drug test for Mother, who tested positive for Hydrocodone.
- [8] The DCS family case manager next spoke with Mother and Boyfriend upon their release from jail on June 17, 2020. The family case manager told Mother and Boyfriend that she would like them to sign up for services. Mother and Boyfriend agreed, and the family case manager scheduled intake appointments for them. During this visit, Mother again tested positive for Hydrocodone. Mother gave the family case manager a pill bottle containing Hydrocodone with Mother's name on it, and the family case manager observed the "pill bottle was actually out of date." (*Id.* at 71.) Mother told the family case manager that Mother "had about four different doctors that were prescribing her medications

. . . [and] it wasn't her problem, or her fault if the doctor's [sic] didn't communicate with each other." (*Id.*) The family case manager also observed that Ai.P. appeared to have a speech delay.

[9] On June 23, 2020, DCS filed a petition alleging Ad.B., Av.B., and Al.B. to be CHINS and a petition alleging Ai.P. to be a CHINS. The petitions were based on Mother and Boyfriend's substance abuse and lack of medical care for Children. Children remained in Mother's care.

[10] On July 7, 2020, the trial court held its initial hearing on the petitions, during which Mother and Boyfriend requested and were appointed counsel. On August 21, 2020, the trial court held a fact-finding hearing on DCS's CHINS petitions. During the hearing, the family case manager testified Mother and Boyfriend had not attended their intake appointments with service providers. The family case manager also testified that she visited Mother's home on June 24, 2020, and administered a drug screen to Mother, who tested positive for Hydrocodone.

[11] To explain the positive screen, Mother had provided the family case manager with a prescription bottle for Hydrocodone. The prescription bottle had Mother's name on it. However, the family case manager observed that "the prescription was filled on the 27th of May" and "the directions had to do with using these every six hours as needed for up to four days." (*Id.* at 100.) The family case manager pointed out that the date of her observation was approximately one month after the prescription was filled. The family case

manager testified that, during a visit in July, she also found a prescription bottle for Hydrocodone that had been filled in May. The family case manager indicated she was never “presented with a current, in date prescription for hydrocodone[.]” (*Id.* at 101.) Mother tested positive for Tramadol on August 4, 2020, and she had a valid prescription.

[12] At the fact-finding hearing, DCS presented evidence that Boyfriend tested positive for amphetamine and methamphetamine. Boyfriend indicated he intended to seek medical help for his substance abuse issues but did not have health insurance. Mother testified at the fact-finding hearing that she did not “need drug treatment” but would participate if Boyfriend needed “support[.]” (*Id.* at 37.) Regarding any other services, Mother testified she was “just not gonna do this because it’s not Court Ordered, and [she doesn’t] have to.” (*Id.* at 38) (errors in original). Mother testified she would not leave Children alone with Boyfriend because of “[h]is drug issue.” (*Id.*)

[13] On August 26, 2020, the trial court issued an order adjudicating Children as CHINS. On October 20, 2020, the trial court held a dispositional hearing. On December 1, 2020, the trial court entered its dispositional order, requiring Mother to, among other things, allow the family case manager to make announced and unannounced visits to her home; enroll in all services recommended by the family case manager; maintain a safe living environment for Children; assist in the creation and implementation of a protection plan to ensure Children are not left in a situation that would lead to abuse or neglect; engage Children in a home-based counseling program; complete a parenting

assessment and follow all recommendations therefrom; complete a substance abuse assessment and follow all recommendations therefrom; participate in a pain management referral and follow all recommendations therefrom; meet all of Children's medical and mental health needs; meet her medical and mental health needs; and submit to random drug screens. The trial court left Children in Mother's care.

Discussion and Decision

[14] Mother challenges Children's adjudication as CHINS. Because a CHINS proceeding is a civil action, DCS 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). The CHINS petition was filed pursuant to Ind. Code § 31-34-1-1, which states:

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; 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.

Under Indiana Code section 31-34-1-2, DCS must prove “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.”

[15] A CHINS adjudication focuses on the needs and condition of the child, rather than the culpability of the parent. *In re N.E.*, 919 N.E.2d at 105. The purpose of a CHINS adjudication is not to punish the parent, but to provide proper services for the benefit of the child. *Id.* at 106. “[T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* at 105. “A CHINS adjudication can also come about through no wrongdoing on the part of either parent[.]” *Id.*

While we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that - a determination that a child is in need of services. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. Only when the State moves to terminate a particular parent’s rights does an allegation of fault attach. We have previously made it clear that CHINS proceedings are “distinct from” involuntary termination proceedings. The termination of the parent-child relationship is not merely a continuing stage of the CHINS proceeding. In fact, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child.

Id. (citations omitted).

[16] When a trial court enters findings of fact and conclusions of law in a CHINS decision, we apply a two-tiered standard of review. *In re Des. B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). We first consider whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We may not set aside the findings or judgment unless they are clearly erroneous. *Id.* Findings are clearly erroneous when the record contains no facts to support them either directly or by inference, and a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.* We give due regard to the trial court’s ability to assess witness credibility and do not reweigh the evidence; we instead consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.* We defer substantially to findings of fact, but not to conclusions of law. *Id.* Unchallenged findings “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1991).

I. Challenged Findings

a. Findings 12 and 13

[17] Mother challenges the portion of Finding 12 that states, “[t]he evidence is unclear as to when Mother may have had a valid prescription for Hydrocodone and Tramadol due to the fact that Mother was getting the medication from multiple doctors and at various times” and the portion of Finding 13 that states:

That Mother did present prescription bottles to [Family Case Manager] Thompson at a [Child Family Team Visit] on June 24, 2020, but [Family Case Manager] Thompson did not observe any

of the prescriptions to be current. . . . At the time of the [Child Family Team Meeting], Mother had been screening positive for Hydrocodone and did not have a current valid prescription for Hydrocodone. [Family Case Manager] Noland-Smith also examined two Hydrocodone prescription bottles presented by Mother. [Family Case Manager] Noland-Smith was never provided information about a current prescription for Hydrocodone.

(App. Vol. II at 48.) Mother contends that the evidence does not support these findings because DCS's exhibits prove she had valid prescriptions at the times relevant to these findings.

[18] The record contains pictures of three pill bottles documented on two dates. DCS Exhibits 5.1 and 5.2 show a bottle of “Tramadol HCL 50 MG Tablet” with Mother’s name on it, that was filled on June 5, 2020. (Ex. Vol. I at 13) (formatting in original omitted). It was photographed on June 24, 2020. The prescribing doctor is listed as “D. Porter[.]” (*Id.* at 15.) The directions on the bottle indicated Mother was to “[t]ake 1 to 2 tablets by mouth every 4 to 6 hours as needed for pain[.]” (*Id.* at 13.) DCS Exhibits 5.3 and 5.4 show a bottle of “Hydrocodone-Acetamin 7.5-325” with Mother’s name on it, filled on May 27, 2020. (*Id.* at 17) (formatting in original omitted). It was photographed on June 24, 2020. The prescribing doctor is listed as “D. Porter[.]” (*Id.* at 19.) The directions on the bottle indicate Mother was to “[t]ake 1 tablet by mouth every 6 hours as needed for moderate pain for up to 4 days[.]” (*Id.* at 17.) DCS Exhibits 5.5 and 5.6 show a bottle of “Hydrocodone-Acetamin 5-325 Mg” with Mother’s name on it, that had been filled on May 29, 2020. (*Id.* at 23)

(formatting in original omitted). It was photographed July 22, 2020. The prescribing doctor is listed as “B. Goodwine[.]” (*Id.* at 23.) The directions on the bottle indicate Mother was to “[t]ake 1 tablet by mouth every 6 hours as needed to relieve pain[.]” (*Id.* at 21.)

[19] Thus, while it would seem that Mother had at least one valid prescription for Tramadol and Hydrocodone on June 24, 2020, the evidence shows that the two Hydrocodone prescriptions were filled within days of each other and prescribed by different doctors. One of the Hydrocodone prescriptions specifically stated it should be taken within four days of the prescription, a time frame which had long since passed by the time the picture of the bottle was taken on June 24, 2020. The evidence does not support the trial court’s finding that Mother did not have valid prescriptions for Hydrocodone or Tramadol. However, the inclusion of these statements is harmless error, as they do not change the fact that the trial court was concerned with the manner in which Mother was obtaining her prescriptions and the way she was ingesting the pills. As we will discuss *infra*, the unchallenged findings were sufficient to support the trial court’s adjudication of Children as CHINS, and thus the erroneous statements of which Mother complains are merely surplusage and not grounds for reversal. *See In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (“Because there is evidence sufficient to support the trial court’s ultimate findings on the elements necessary to sustain the judgment” the erroneous finding was “merely harmless surplusage that did not prejudice [m]other and, consequently, is not grounds for reversal.”), *trans. denied.*

b. Findings 18 and 19

[20] Mother also challenges portions of Findings 18 and 19, arguing the portions of those findings regarding Boyfriend operating a vehicle under the influence are not supported by the evidence. While Mother is correct that DCS presented no evidence of Boyfriend’s intoxication at the time of the traffic stop, the inclusion of that information was harmless surplusage, as it does not change the fact that Boyfriend was driving while suspended and indicated he would test positive for amphetamine and methamphetamine. As we will discuss *infra*, the unchallenged findings were sufficient to support the trial court’s adjudication of Children as CHINS, and thus the erroneous statements of which Mother complains are merely surplusage and not grounds for reversal. *See In re B.J.*, 879 N.E.2d at 20 (“Because there is evidence sufficient to support the trial court’s ultimate findings on the elements necessary to sustain the judgment” the erroneous finding was “merely harmless surplusage that did not prejudice [m]other and, consequently, is not grounds for reversal.”).

II. Trial Court’s Conclusions

[21] The unchallenged findings of the trial court in adjudicating Children as CHINS, state in relevant part:

5. That on April 30, 2020, DCS received a report alleging that [Children] were the victims of neglect and physical abuse and that Mother and [Boyfriend] were the perpetrators. The report involved allegations that [Boyfriend] had overdosed at the home of [maternal great-grandmother] on that date.

6. That [Boyfriend] has overdosed at the home of [maternal great-grandmother], where Mother and [Children] reside, on at least two occasions. On one occasion, he overdosed in the bathroom of the home. On that occasion [Children] were home, but were asleep at the time of the overdose. On another occasion, [Boyfriend] overdosed in the camper located on [maternal great-grandmother's] property. The camper is mainly used for storage and clothing, but [Children] do have access to the camper. [Boyfriend] had to be revived with Narcan and was hospitalized on both occasions.

7. That Mother found [Boyfriend] unresponsive on both occasions that he overdosed at the home of [maternal great-grandmother]. Mother observed a needle near [Boyfriend] on one occasion.

8. That [Boyfriend] is an intravenous drug user who has ongoing substance abuse issues involving methamphetamine, heroin, and pills.

9. That [Family Case Manager] Thompson met with [Boyfriend] at his mother's home in May 2020 and observed that he appeared to be under the influence. [Boyfriend] was slurring his words, mumbling, and speaking very quickly.

10. That on June 15, 2020, a traffic stop was conducted on a vehicle driven by [Boyfriend]. Mother and [Ai.P.] were passengers in the vehicle. [Boyfriend] was arrested for Driving While Suspended. Police searched the vehicle. A prescription bottle containing the controlled substance Gabapentin was located in the vehicle. During the traffic stop, Mother was observed by Deputy Bush attempting to conceal the prescription bottle under the driver's seat of the vehicle. Mother was also found to be in possession of a narcotic drug, Hydrocodone, for which she was not able to produce a prescription. Mother was

placed under arrest for possession of a controlled substance and possession of a narcotic drug. At the time of her arrest, Mother was holding two packs of cigarettes. Inside one of the cigarette packs, Deputy Bush located a cut straw with white residue on the end of it. Deputy Bush also observed Mother to have a white powdery residue around her left nostril. Both parents were arrested and [Ai.P.] was returned to the home of [maternal great-grandmother] by law enforcement.

11. That Mother admitted to Deputy Bush that she sometimes snorts her medication. Mother told Deputy Bush that the Gabapentin belonged to her Grandmother, [maternal great-grandmother]. Detective Holderness testified based on his training and experience that Gabapentin is commonly taken with pain medication by drug abusers to extend or enhance the high.

12. That Mother abuses her prescription medication. Evidence indicates that at various times Mother has been prescribed Tramadol and Hydrocodone. On June 15, 2020 during the traffic stop Mother was found to have a single Hydrocodone pill concealed in her bra and was in possession of a cut straw with white residue that was concealed in a cigarette pack also found in Mother's possession. Mother was observed to have white residue around her left nostril by Deputy Bush, Detective Holderness, and [Family Case Manager] Thompson. [Boyfriend] reported to [Family Case Manager] Thompson on that day that Mother has a history of snorting pills. While Mother denies snorting pills on the day of the traffic stops, [sic] she admits to having snorted pills in the past. . . . [E]ven with a valid prescription, the evidence indicates that Mother was not ingesting the pills orally as prescribed, but instead snorting them presumably to enhance the effects of the medication.

13. . . . When questioned by [Family Case Manager] Thompson as to whether the various doctors were in communication

regarding the prescriptions, Mother responded to [Thompson] by stating that was not her problem. . . .

14. That Mother has voluntarily submitted to some drug screens by DCS. That Mother has tested positive [for] Hydrocodone and Tramadol. That Mother needs services to address her substance abuse concerns and has expressed that she will not engage in services unless services are Court-ordered.

15. That [Boyfriend] has voluntarily submitted to some drug screens by DCS. That [Boyfriend] has tested positive for methamphetamine and amphetamine. That [Boyfriend] admits he needs services to address his substance abuse.

16. That two (2) referrals have been made to [service provider] for Mother and [Boyfriend] to begin services to address their substance abuse, but neither [has] engaged in services with [service provider].

* * * * *

18. Due to Mother's substance abuse and continued use, her unwillingness to acknowledge that her substance abuse is a problem, [and] the risky behavior of allowing her child to be in a vehicle being driven by an unlicensed driver . . . the coercive intervention of the court is necessary to ensure that [Children] are in a safe environment with a safe and sober caregiver at all times.

19. Due to [Boyfriend's] substance abuse and continued use and the risky behavior . . . the coercive intervention of the Court is necessary to ensure that [Children] are in a safe environment with a safe and sober caregiver at all times.

(App. Vol. II at 47-9.) Mother argues these findings do not support the trial court's conclusions that Children's mental or physical conditions were seriously impaired or seriously endangered as a result of her inability, refusal, or neglect and that the trial court's coercive intervention was necessary.

[22] As noted *supra*, the trial court found that Mother snorted her prescribed medication, which was not the manner in which it should be ingested; she allowed Boyfriend to be at her house twice when he overdosed; she allowed Boyfriend to spend time with Children when he had drugs in his system; and Mother did not feel it was important that the four doctors who were each prescribing her narcotic pain medication communicate in order to coordinate her care. Further, Mother and Boyfriend did not follow through with the services ordered during the CHINS investigation, and Mother indicated she did not think she needed substance abuse treatment. Mother's argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Therefore, the trial court's unchallenged findings support its adjudication of Children as CHINS. *See, e.g., White v. State*, 547 N.E.2d 831, 833 (Ind. 1989) ("the knowing exposure of a dependent to an environment of illegal drug use poses an actual and appreciable danger to that dependent and thereby constitutes neglect"); *and contra Matter of E.K.*, 83 N.E.3d 1256, 1262-3 (Ind. Ct. App. 2017) (coercive intervention of the court not necessary when parents have been cooperative

with DCS's proffered services prior to the child's adjudication as a CHINS),
trans. denied.

Conclusion

[23] The trial court's unchallenged findings support its conclusion that Children are CHINS. Accordingly, the erroneous findings are harmless surplusage, and we affirm.

[24] Affirmed.

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