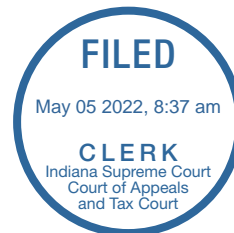


MEMORANDUM DECISION

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:
D.C., K.C., T.C., Tr.C. (Minor
Children), Children in Need of
Services

R.C. (Mother),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner,

and

Kids' Voice of Indiana,

Appellee-Guardian ad Litem.

May 5, 2022

Court of Appeals Case No.
21A-JC-2582

Appeal from the Marion Superior
Court

The Honorable Marshelle Dawkins
Broadwell, Judge

The Honorable Danielle P.
Gaughan, Magistrate

Trial Court Cause Nos.
49D16-2011-JC-2601
49D16-2011-JC-2602
49D16-2011-JC-2603
49D16-2011-JC-2604

Weissmann, Judge.

- [1] R.C. (Mother) appeals the adjudication of her four children as children in need of services (CHINS). Because Mother’s arguments amount to an improper request for this Court to reweigh the evidence, we affirm.

Facts

- [2] In November 2020, the Marion County Department of Child Services (DCS) investigated reports that Mother was physically abusing her children, T.C., K.C., Tr.C. and D.C. (Children).¹ Mother denied the reports, but DCS removed Children on an emergency basis and filed a petition alleging Children were CHINS.
- [3] T.C., K.C. and Tr.C. had been previously adjudged CHINS in 2015 based, in part, on evidence that Mother used excessive physical punishment. After five years of services, however, the family was reunited, and that CHINS case was closed.
- [4] To evaluate DCS’s most recent allegation, the juvenile court conducted a hearing over four sessions in 2021. Mother denied any use of physical discipline, insisting that she instead used techniques endorsed by DCS. She provided evidence that she had taken two more parenting classes to refresh her understanding of these techniques since Children were removed. Mother further

¹ At the time of the reports, T.C. was eleven years old, K.C. was eight, Tr.C. was two, and D.C. was one.

highlighted that there was no physical evidence of abuse. She suggested that DCS's repeated inquiries about physical abuse prompted Children ultimately to "just give in" and lie. Tr. Vol. II, pp. 150-51. Mother also provided evidence that both she and Children had continued therapy even after the previous CHINS case closed.

[5] Eleven-year-old T.C. directly contradicted Mother's story. She testified that Mother covered her and her siblings' noses and mouths so they couldn't breathe, "choke slam[med]" them, and grabbed them by their necks and dug in her nails, leaving marks. Tr. Vol. II, pp. 102-03. T.C. testified, "I don't want to go home. I don't feel safe there. . . . I don't think that I should be able to home (sic) and I don't think my siblings should either." *Id.* at 104. According to T.C.'s testimony, any attempts at therapy were sporadic and did not serve her individual needs.

[6] The juvenile court adjudged Children as CHINS in October 2021. In support of its finding, the court concluded that Mother had engaged in excessive discipline even after the previous CHINS case had closed and failed to keep Children in therapy as recommended. Later, the juvenile court ordered Children's continued removal from Mother and Mother's participation in services. The court also dismissed the CHINS case as to D.C., who is living with his father. Mother now appeals, arguing the evidence was insufficient to show that Children were "seriously endangered" in her care and that the coercive intervention of the court was necessary.

Discussion and Decision

- [7] DCS was required to prove by a preponderance of the evidence three elements: (1) Children are under the age of eighteen; (2) one of eleven different statutory circumstances exist that would make Children CHINS;² and (3) Children need care, treatment, or rehabilitation that they are not receiving and are unlikely to receive without the coercive intervention of the court. *See In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). The juvenile court found that two of the requisite statutory circumstances existed: first, that Children’s “physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal or neglect of the children’s parents to supply the children with necessary food, care, and supervision,” App. Vol. II, p. 184; *See Ind. Code § 31-34-1-1*; and second, that Children’s “physical or mental health is seriously endangered due to injury by the act of the children’s parent.” App. Vol. II, p. 185; *See Ind. Code § 31-34-1-2*.
- [8] We will not reweigh the evidence or judge witness credibility. *In re K.D.*, 962 N.E.2d at 1253. Where, as here, a trial court enters findings of fact and conclusions of law, we apply a two-tiered standard of review: first considering whether the evidence supports the findings, and second whether the findings support the judgment. *In re D.J. v. Ind. Dep’t Child Servs.*, 68 N.E.3d 574, 578 (Ind. 2017). We will reverse only if the CHINS determination was clearly

² These eleven circumstances are codified in Indiana Code §§ 31-34-1-1 to -11.

erroneous, meaning the facts in the record do not support the findings or the trial court applied the wrong legal standard. *Id.*

I. Excessive Discipline

- [9] Mother argues the evidence does not support a finding that she “seriously endangered” Children, despite T.C.’s testimony to the contrary. Mother characterizes the evidence supporting the CHINS finding as “speculative,” raising only “vague concerns” insufficient to meet the State’s burden. Appellant’s Br., pp. 14, 16 (citing *In re S.M.*, 45 N.E.3d 1252, 1256 (Ind. Ct. App. 2015) (finding insufficient evidence for CHINS adjudication where one finding “was merely a future concern rather than a present fact”) and *In re K.D.*, 962 N.E.2d at 1256 (“Speculation is not enough for a CHINS finding”)).
- [10] Mother’s arguments amount to an improper request to reweigh evidence, which we will not do. *See In re K.D.*, 962 N.E.2d at 1253. The trial court explicitly stated, “the Court finds the testimony of T.C. more credible” than that of Mother. App. Vol. II, p. 184. Our standard of review prohibits us from overturning this credibility finding. *See In re K.D.*, 962 N.E.2d at 1253. Moreover, T.C.’s account was not “speculative” or “vague.” She clearly articulated specific instances of abuse, such as Mother covering her and her siblings’ noses and mouths so they couldn’t breathe; “choke slam(s)”; Mother grabbing them by the neck; and Mother digging in her nails, leaving marks. Tr. Vol. II, pp. 102-03. T.C. also denied that she remained in regular therapy after the previous CHINS case ended. And her testimony was bolstered by other

witnesses, who testified to seeing Mother improperly handle Children and to receiving reports of improper discipline from Children during the pendency of this case.

- [11] The trial court did not err in finding that Children’s physical condition was seriously impaired or seriously endangered by Mother.

II. Coercive Intervention of the Court

- [12] Children cannot be adjudged CHINS unless they need care, treatment, or rehabilitation that they are not receiving and are “unlikely to be provided or accepted without the coercive intervention of the court.” Ind. Code § 31-34-1-1(2)(B); *In re S.D.*, 2 N.E.3d 1283, 1288 (Ind. 2014) (describing coercive intervention as a “critical determination” and “element” of CHINS finding). Mother argues that she voluntarily participated in parenting classes, therapy, and supervised visitation after Children were removed, rendering coercive court intervention unnecessary by the time of the CHINS finding.
- [13] Again, Mother impermissibly requests that we reweigh evidence. *See In re K.D.*, 962 N.E.2d at 1253. The trial court found that Mother’s improper discipline continued after removal, even during supervised parenting time. It also found that Mother failed to ensure T.C. received therapy as recommended. These findings were supported by testimony from caseworkers and T.C., who testified, “There was this lady . . . for family therapy but . . . she didn’t always do her job.” Tr. Vol. II, p. 106. Although Mother presented evidence that she had not used physical discipline and the family had continued therapy since the

previous CHINS case, it was within the juvenile court's discretion not to credit that evidence. *See In re Des.B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014) (citing Ind. Trial Rule 52(A) (“[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”)). We cannot say the conclusion that Children would not receive necessary treatment was clearly erroneous.

[14] Finding that the juvenile court did not abuse its discretion, we affirm its judgment that Children are CHINS.

Robb, J., and Pyle, J., concur.