

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

A.W. (Child in Need of
Services),

and

D.W. (Mother),

Appellant-Respondent,

v.

January 20, 2022

Court of Appeals Case No.
21A-JC-1233

Appeal from the Marion Superior
Court

The Honorable Geoffrey A.
Gaither, Judge

The Honorable Rosanne Tan Ang,
Magistrate

Indiana Department of Child
Services,

Appellee-Petitioner,

and

Kids' Voice of Indiana,

Appellee-Guardian Ad Litem.

Trial Court Cause No.
49D09-2011-JC-2483

Altice, Judge.

Case Summary

[1] D.W. (Mother) appeals from the adjudication of her daughter A.W. (Child) as a child in need of services (CHINS).¹ She contends that the Indiana Department of Child Services (DCS) failed to present sufficient evidence to support the adjudication.

[2] We affirm.

Facts & Procedural History

[3] Child has a lengthy history with DCS. She was born to Mother and Father (collectively, Parents) in January 2005 and became a victim of sexual abuse at a young age. Around 2012 and 2016, DCS substantiated allegations of sexual

¹ Child's father (Father) admitted Child was a CHINS and, therefore, does not participate in this appeal.

abuse by her brother. The abuse caused her substantial trauma, and Child began running away from home by the age of twelve. Between the ages of twelve and fifteen, Child ran away four or five times. Parents had concerns that Child was engaging in risky behavior and possible sex trafficking during some of her elopements. On one occasion, before June 2020, Child returned and was diagnosed at the emergency room with multiple sexually transmitted diseases.

[4] Mother and Father, though not divorced, separated at some point. Father remained in Indianapolis, and Mother eventually moved to Terre Haute. Mother, who had custody of Child, allowed Child to decide when to move between Parents' homes. Further, although Child had been enrolled in therapy for PTSD at some point in the past, Mother permitted Child to choose to stop therapy.

[5] While living with Mother in Terre Haute and not in therapy, Child, then age fifteen, ran away during the middle of the night on or about June 19, 2020. Child left with an adult man, who drove from Indianapolis. Mother reported her as a runaway, and Parents did not see Child for several months thereafter.

[6] On the evening of November 9, 2020, Indianapolis Metropolitan Police Department (IMPD) Officer Derek Etheridge was dispatched to an Indianapolis motel for a welfare check. There, Officer Etheridge encountered Child and another juvenile female. Based on his experience, as well as his encounter with Child, he was concerned about possible sex trafficking at the motel. Officer

Etheridge also discovered that Child had been reported as a runaway out of Terre Haute. He contacted DCS to respond to the scene.

[7] Megan Fountain, a family case manager (FCM) with DCS, arrived to assist Officer Etheridge and assess the situation. Child was fidgety and angry and indicated that she wanted to go back to Mother's home but not Father's. At one point, Child became "verbally escalated" and IMPD officers had to step in to assist in deescalating her behavior. *Transcript* at 18.

[8] FCM Fountain spoke with Mother over the phone that evening. Mother was upset that IMPD had contacted DCS instead of her. Mother indicated that this was not the first time Child had run away and was concerned that Child was a victim of sex trafficking, as Child had interacted with adult men online in the past and received money from adult men.

[9] Father came to the scene that night and spoke directly with FCM Fountain. He was concerned for Child's well-being and indicated that she had displayed concerning behavior all her life. Father indicated that he supervised Child closely and enrolled her in counseling when she lived with him, but Mother neither continued such counseling nor closely supervised Child when she returned to Mother's care.

[10] FCM Quinn Kissane, a supervisor, also became involved in the DCS assessment that night and spoke with Mother over the phone. Mother informed FCM Kissane that Child had been diagnosed with several sexually transmitted diseases just prior to running away this time. Mother repeated her sex

trafficking concerns. Although Mother was hesitant, she ultimately accepted DCS's recommendation that Child be placed in a secure residential facility due to her history of elopement. Mother expressed concern regarding her own ability to keep Child safe at home.

[11] DCS took Child into emergency custody and placed her at Lutherwood, a residential facility for children in Indianapolis. Thereafter, on November 12, 2020, DCS filed the instant CHINS petition. At the initial hearing conducted that same day, Parents expressed agreement with Child's placement in emergency shelter care. The trial court ordered Child's continued placement at Lutherwood and ordered, among other things, that Child receive a trauma assessment through Ascent 121 and appropriate therapy. Mother was also granted supervised parenting time with Child. In mid-December, with the court's authorization, Child was transferred into residential care through Gibault Children's Services (Gibault) in Terre Haute.

[12] A clinical treatment plan was developed for Child at Gibault with goals of working on past trauma through trauma-focused cognitive behavior individual therapy, engaging in family therapy, and participating in group therapy to learn how to manage emotions and to be in healthy relationships. Child also continued weekly outpatient therapy with Nicole Fledderman of Ascent 121 to prepare for her eventual transition home. At home, Child would need to continue family therapy and addressing personal vulnerabilities to exploitations.

[13] The trial court held a factfinding hearing on February 22, March 16, and March 30, 2021. At the end of the first day of the hearing, the trial court, with no objection from DCS, authorized unsupervised parenting time, up to and including a temporary in-home trial visitation (TTV), with Mother upon positive recommendations of DCS and service providers. At the beginning of the second day, Father admitted that Child is a CHINS “because [Father] needs assistance to provide a safe, stable and appropriate home with necessary supervision to protect [Child] from sex abuse. Therefore, the coercive intervention of the court is necessary.” *Appellant’s Appendix Vol. II* at 84. He also agreed to actively participate in family therapy. The court took Father’s admission under advisement and continued with the hearing.

[14] In challenging the CHINS petition, Mother opined that Child no longer required residential treatment and that Mother could adequately provide for Child’s needs without DCS or court interference. Mother testified that she was no longer concerned that Child would engage in risky sexual behaviors or leave home, explaining: “[S]he is trying to come out of all of this. She is trying to – she knows now what she’s done has been wrong. She knows now that running isn’t the answer. I feel that she is trying to move forward, instead of backwards.” *Transcript* at 36. Mother acknowledged that Child still needed services, but Mother believed she could obtain those services for Child without DCS’s involvement. Mother testified that she planned to continue family therapy and “any services that I can find down here to assist in getting [Child] back to where she needs to be.” *Id.* at 38. To keep Child from running away

again, Mother indicated that she had placed alarms on her home's windows and doors and would be home 24/7 to keep a close eye on Child and never let her be alone. Additionally, Mother testified that there would be no internet access at home.

[15] Although Child's behaviors had greatly improved in residential treatment and she was doing well, providers testified that she remained a flight risk and vulnerable to exploitation and was not yet ready to be released to home. Specifically, therapist Fledderman testified that Child is "particularly vulnerable to be exploited when she comes home" and that there is a family component that still needs to be completed before she could recommend Child's return home. *Id.* at 66. Even considering Mother's proposed safety measures, Fledderman was still of the opinion that Child was a flight risk at home.

[16] Similarly, Megan Higashimura, Gibault's supervisor of clinical services, testified that although Child had done "really well" and was ready to start home passes, Child should complete Gibault's six-to-nine-month program and finish her school semester before transitioning home permanently in the summer with therapy. *Id.* at 80. Higashimura noted difficulties scheduling family therapy sessions with Mother and testified that this raised concerns for her about Mother's follow-up on services once Child comes home.

[17] Child's current DCS FCM Haley Forth recommended that Child "remain in residential care to ensure that she receives the services that she needs to address her trauma." *Id.* at 125. Given Child's history of elopement and the sex

trafficking concerns, FCM Forth testified that “being in a secure facility where she is able to complete [] services is going to be most beneficial for her.” *Id.* at 126. FCM Forth also opined that Mother’s plan to supervise Child 24/7 was not “a realistic plan.” *Id.* Finally, she noted “concerns with [M]other’s engagement with providers” and concerns that if Child were to go home, services would not be completed. *Id.* at 127.

[18] On May 24, 2021, the trial court entered its order adjudicating Child a CHINS. The order included a number of factual findings in line with the facts set forth above. Ultimately, based on its findings, the trial court concluded as follows:

26. 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 Child with necessary food, clothing, shelter, medical care, education, or supervision. Child has run away several times, has engaged in online interactions with adult men, has been provided money by adult men and has contracted several sexually transmitted diseases. Despite the testimony provided regarding Child’s past engagement in therapy, there is no indication that Mother attempted to obtain treatment for Child for her history of elopement and interactions with adult men. Despite testimony regarding Mother’s plan for supervision should Child not be found a CHINS, there is no indication that Mother took any of these preventative steps prior to this matter being filed. The evidence presented indicates that Mother did not take an active role in either supervising Child or ensuring that her mental health needs are met. Child’s physical and mental condition are endangered by Mother’s previous inaction.

27. Child needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without

the coercive intervention of the Court. The treatment Child is currently receiving is necessary and was not provided by either parent prior to this action being filed. Mother has not engaged in Child's treatment as requested and testified that she is not concerned that Child will continue her behaviors. The coercive intervention of the Court is required to ensure that Child continues to receive the necessary treatment and to compel Mother to engage in Child's treatment to gain the necessary tools to protect Child in the future.

Appellant's Appendix Vol. II at 97-98 (cleaned up).

- [19] On June 15, 2021, the trial court held a dispositional hearing and ordered Mother (and Father) to participate in family therapy with Child and to follow all recommendations from that therapy. Although Child remained a ward of DCS, she was successfully discharged from Gibault on June 2, 2021, and was doing well on a TTV with Mother.
- [20] Mother now appeals from the CHINS adjudication. Additional information will be provided below as needed.

Discussion & Decision

- [21] A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence² that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). On review, we

² Mother incorrectly suggests, with no citation to authority, that "clear and convincing evidence" standard applies to CHINS proceedings. *Appellant's Brief* at 11.

neither reweigh the evidence nor judge the credibility of the witnesses and will consider only the evidence and reasonable inferences that support the trial court's decision. *Id.* We will reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.* Further, in family law matters, we generally grant latitude and deference to trial courts in recognition of the trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied*.

- [22] There are three elements DCS must prove by a preponderance of the evidence for a child to be adjudicated a CHINS.

DCS must first prove the child is under the age of eighteen; DCS must prove one of eleven different statutory circumstances exist that would make the child a CHINS; and finally, in all cases, DCS must prove the child needs care, treatment, or rehabilitation that he or she is not receiving and that he or she is unlikely to be provided or accepted without the coercive intervention of the court.

Id. (footnote omitted); *see also* Ind. Code § 31-34-1-1 (CHINS statute applied in this case where “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 ... to supply the child with necessary food, clothing, shelter, medical care, education, or supervision”). 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 intervention by the court. *See In re C.K.*, 70 N.E.3d 359, 364 (Ind. Ct. App. 2016), *trans. denied*.

[23] It is well established that 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.* (quoting *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010)). Further, when determining CHINS status, particularly the coercive intervention element, courts should consider the family’s condition not just when the case was filed, but also when it is heard so as to avoid punishing parents for past mistakes when 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) (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[24] We initially address two of the trial court’s findings of fact, which Mother challenges on appeal as being clearly erroneous. “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *In re K.E.*, 162 N.E.3d 565, 569 (Ind. Ct. App. 2021) (quoting *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996)), *trans. denied*.

[25] Mother first challenges a portion of finding number 13, which provides:

FCM Kissane was also involved in the assessment received by the DCS on November 9, 2020. Mother informed FCM Kissane that Child had been diagnosed with several sexually transmitted diseases just prior to running away. Mother expressed her concerns that Child was a victim of sex trafficking due to information she had seen on social media. Mother expressed hesitation for Child to be placed in a residential facility but acknowledged understanding the basis for this recommendation due to Child's history of elopement. **Mother further expressed her concern that Child would run away again if she were to be returned to her care and was concerned about her own ability to keep Child safe.**

Appellant's Appendix Vol. II at 94-95 (cleaned up). Mother argues that the bolded portion above, though accurate, "doesn't describe the current situation and creates a false impression that [Mother] was unable or unwilling to supervise and protect [Child]." *Appellant's Brief* at 10. We cannot agree. This finding is amply supported by the record and is not misleading. When read in context, it is clear that the finding addresses Mother's conversation with FCM Kissane on the night of Child's removal.

[26] Mother also challenges finding number 19, which provides:

Child's clinical treatment plan also includes her and Mother's participation in family therapy. Mother has failed to attend one scheduled session and has not been responsive to attempts to schedule additional sessions. In total, Mother has engaged in only one family therapy session with Child.

Appellant's Appendix Vol. II at 95 (cleaned up). Mother argues that this finding is "misleading and unfair" because she only missed one out of two sessions and

had responded to scheduling another session. *Appellant's Brief* at 10. Again, we reject Mother's challenge. The facts and reasonable inferences in the record establish that Mother had engaged in only one family therapy session at Gibault and after Mother missed the second scheduled session, Higashimura had difficulty reaching Mother to reschedule. Indeed, Higashimura testified that Mother had been unresponsive to emails until March 15, 2021, the day before the hearing. In light of Mother's limited engagement in family therapy, Higashimura testified that she had concerns about Mother's follow-up on services once Child comes home.

[27] We now turn to Mother's main argument on appeal. She acknowledges that Child "no doubt" needs continued therapy and services but argues that court intervention is not necessary to ensure that Child receives these. *Id.* In this regard, Mother points to her own testimony regarding the steps she had taken to secure the home and her commitment to maintain therapy and services for Child upon her return home. Mother also notes that at the time of the factfinding hearing, Child had made substantial progress at Gibault and, according to Higashimura, was ready for home passes. Ultimately, Mother contends that in adjudicating Child a CHINS, the trial court focused solely on the conditions at the time of removal and ignored the conditions at the time of the factfinding hearing.

[28] As set forth above, when considering the coercive intervention element, courts should consider the family's condition both at the time the CHINS case was filed and when it is heard to account for changed circumstances. *See D.J.*, 68

N.E.3d at 580-81. In other words, a child cannot be adjudicated a CHINS based solely on conditions that no longer exist. *See In re C.W.*, 172 N.E.3d 1239, 1245 (Ind. Ct. App. 2021). Further, in determining the condition of the family and the need for court intervention, we do not focus on fault. As we have explained:

Although the acts or omissions of one or both parents can cause a condition that creates the need for court intervention, the CHINS designation focuses on the condition of the children rather than on an act or omission of the parent(s). In other words, despite 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.”

A.M., 121 N.E.3d at 562 (cleaned up) (quoting *N.E.*, 919 N.E.2d at 105).

[29] Here, DCS established by a preponderance of the evidence that Child is in need of services and that there is a likelihood that Child will not receive the needed services without court intervention. Indeed, Father admitted that Child is a CHINS. *See Matter of L.S.*, 82 N.E.3d 333, 341 (Ind. Ct. App. 2017) (observing that one parent’s admission that his or her children are CHINS constitutes “evidence in support of a CHINS determination”), *trans. denied*. Further, while Mother has taken significant steps to secure her home, Child’s providers testified that they still believed Child remained a flight risk, that she was particularly vulnerable at home, and that she was not yet ready to permanently go home, needing to complete the residential treatment program at Gibault, which was scheduled to last several more months. Child was doing well with

the treatment and security provided by Gibault, but Mother had not fully engaged in family therapy at the time of the factfinding hearing, which gave providers pause. Additionally, Mother's own testimony showed a lack of insight regarding Child's continued vulnerability to exploitation.

[30] In making its CHINS determination, the trial court properly considered Child's serious history of running away and being vulnerable to sexual exploitation. Between the ages of twelve and fifteen, Child had run away at least four times and, most recently, had been gone for nearly five months. Though Parents had engaged therapeutic services in the past, Mother had allowed Child to decide to stop therapy. Against this history, the trial court also considered evidence from the factfinding hearing indicating that Mother had not fully engaged in family therapy at Gibault and that Mother may not understand the complexity of the risks faced by Child upon her eventual return home, even with Mother's added security measures. On the record before us, we cannot say that the trial court erred in determining that the coercive intervention of the Court was required to ensure that Child continues to receive the necessary treatment and to compel Mother to engage in Child's treatment to gain the necessary tools to protect Child in the future.

[31] Judgment affirmed.

Bailey, J. and Mathias, J., concur.