

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.



ATTORNEYS FOR APPELLANT

Valerie Kent Boots
Indianapolis, Indiana

Donald R. Hostetler
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Robert J. Henke
Deputy Attorneys General
Indianapolis, Indiana

Katherine G. Meger Kelsey
Kid's Voice of Indiana
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of
D.W. (Minor Child)
And
R.W. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

June 17, 2022

Court of Appeals Cause No.
21A-JC-2367

Appeal from the Marion Superior
Court

The Honorable Ryan Gardner,
Judge

The Honorable Beth Jansen,
Magistrate

Trial Court No. 49D10-2103-JC-
2145

Appellee-Petitioner.

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, R.W. (Mother), appeals the trial court's adjudication of her minor child, D.W. (Child), to be a Child in Need of Services (CHINS).
- [2] We affirm.

ISSUES

- [3] Mother presents this court with three issues on appeal, which we consolidate and restate as follows:
- (1) Whether the trial court abused its discretion when it admitted certain evidence; and
 - (2) Whether there was sufficient evidence to support the CHINS determination.

FACTS AND PROCEDURAL HISTORY

- [4] Mother and D.W. (Father) are the biological parents of Child, born on March 16, 2021.¹ Mother gave birth to Child at IU North Hospital (IU North) in

¹ Father's paternity was established at Child's birth. He does not participate in this appeal.

Indianapolis. During Mother's pregnancy with Child, she neglected to take her prescribed medication to treat her various mental health illnesses, which include bipolar disorder, schizophrenia, intellectual delay, and personality disorder. She also developed gestational diabetes that went unmanaged and that resulted in several medical concerns for Child during labor and delivery. Doctors diagnosed Child with a number of medical conditions including, tachypnea, hypoglycemia, high muscle tone, and severe acid reflux.

[5] The Department of Child Services (DCS) employees working at IU North identified several concerns pertaining to Mother. Mother had previously made several statements to hospital staff on prior occasions that she wanted to have sexual intercourse with her son and kill him. In addition, there was an open CHINS case for Child's older sibling, who was two years old at the time, due to an allegation of domestic violence in Mother's home that necessitated removal, and because Mother had ongoing hospitalizations due to her mental illness. Mother also had several referrals from the DCS for a "sexual abuse assessment, parenting assessment and parent education training for the children's medical needs, and domestic violence services" due to Child's older sibling's CHINS case. (Appellant's App. Vol. II, p. 42). Mother was not compliant with any of those services.

[6] On March 17, 2021, DCS' Family Case Manager Jennifer Richardson (FCM Richardson) interviewed Jamie Elliott (Elliott), a social worker at IU North. Elliott stated that Mother had recently been hospitalized for untreated mental health issues and suicidal ideations. Given that Child had a series of medical

problems and given Mother's history of unaddressed mental health problems and aggression toward service providers, Elliott expressed the hospital's concern that Mother might be unable to cope with Child's medical care and treatment. Elliott further indicated that the Bureau of Developmental Disabilities Services (BDDS)² provided services to Mother, but she clarified that those services were limited to only eight hours per day and BDDS did not directly assist with parental support for its clients. FCM Richardson subsequently interviewed the service coordinator for BDDS, and the coordinator disclosed that Mother and Father resided in a group home managed by BDDS. The coordinator reiterated that BDDS services were limited to Mother, BDDS could not provide direct care to Child, and BDDS could not assist Mother with parenting skills.

- [7] Still, on the same day, FCM Richardson interviewed Mother at the hospital. Mother stated that Child was born with an enlarged heart and liver. It appeared from Mother's response that Mother lacked an understanding of Child's various diagnoses and medical needs. FCM Richardson determined from the assessment that Mother had failed to address her mental health problems and that she only became compliant with her medication after she delivered Child. FCM Richardson also discovered that an unidentified roommate, who had developmental needs, was residing in Mother's home. Following Mother's

² It appears that BDDS is a service provider for individuals with developmental disability. It includes services such as "[c]ase management, residential support[], behavioral support[], [] occupational therapy, speech [therapy], music therapy, [] community support[], transportation support[,] and [] medical [support]." (Tr. Vol. II, p. 19). At the fact-finding hearing, Mother's counsel stated that Mother qualified for BDDS' services based on her developmental disabilities and not because of her mental health disabilities.

interview, DCS attempted to develop a safety plan with Mother, but it was unsuccessful.

- [8] On March 18, 2021, due to increased health complications, Child was transferred from the neonatal intensive care unit (NICU) at IU North to the NICU at Riley Children's Hospital (Riley). On March 19, 2021, DCS removed Child from Mother's care and on March 22, 2021, DCS requested and received permission to file a petition alleging that Child was a CHINS based on the allegations that Mother was unable to meet Child's medical needs, had failed to provide Child with a home environment that was free from neglect and domestic violence, and had untreated mental health issues. The next day, the trial court held an initial hearing on the CHINS petition. Mother did not appear since she was hospitalized for mental health reasons. Following that hearing, the trial court issued an order, finding that removal of Child from Mother's care was necessary to protect Child's health and welfare. The trial court granted DCS temporary wardship, and it maintained Child's placement at Riley. The trial court additionally ordered an appointment of a guardian ad litem (GAL). The trial court then continued the initial hearing to April 8, 2021. Mother was released from the hospital and was able to telephonically appear for the continued initial hearing during which she denied the allegations. At the close of that hearing, the trial court ordered DCS to continue its temporary wardship over Child, and it authorized foster care placement after Child was discharged from the NICU at Riley.
- [9] On April 9, 2021, at approximately 5:00 a.m., a day after the continued initial hearing, Father called 911 and reported that Mother was "tripping, yelling,

slamming doors” and was trying to cut herself with a knife. (Appellant’s App. Vol. II, p. 106). Father informed the operator that he forcibly held Mother down in order to make the call. Mother was thereafter transported to Eskenazi Hospital for an evaluation. It is unclear whether it was the same day, or the day after she was released from the hospital, Mother was offered a visit with Child at Riley. Abony Wilkins (Wilkins), a parenting time facilitator, supervised the visit and noted that Mother “displayed no emotions or affection toward” Child, and she chose to end the visit early. (Appellant’s App. Vol. II, p. 107).

[10] On April 13, 2021, during a visitation session, Wilkins educated Mother on how to properly hold Child since Child was born with “high muscle tone” and “there was a lot of focus [] on the fragility of [Child’s] bones” and ligaments. (Tr. Vol. II, p. 74). Wilkins also trained Mother on how to properly burp Child. Mother seemed to not understand the training. On April 14, 2021, the supervising visiting facilitator who was present at the hospital retrained Mother on how to feed Child. Mother required multiple prompts as to when to feed Child. Mother then abruptly left the hospital crying, she left Child crying, and she did not notify the attending nurse that she was leaving.

[11] Between April 15 and 28, 2021, Mother was hospitalized at St. Vincent Women’s Hospital due to mental health problems. The day after Mother was released from the hospital, Child was discharged from the NICU and placed in a regular hospital room at Riley. Child was thereafter circumcised and received a G-Tube for his feeding and medication. On May 4, 2021, Wilkins supervised Mother’s visitation with Child. Mother was present for the first part of Child’s G-Tube feeding but did

not complete the training. Because Mother did not complete training, her visit was shortened so that Child could be returned to his foster parents for feeding.

[12] At some point during this CHINS case, DCS asked Mother and Father to separate due to domestic violence concerns, but they declined. Mother also had ongoing conflicts with her roommate, and in July 2021, Mother disclosed to Wilkins that her roommate was poisoning her food. Mother also reported that the roommate had intentionally locked her out of the house several times. Mother admitted to Wilkins that she did not feel safe around the roommate.

[13] On August 14, 2021, the trial court conducted a factfinding hearing on DCS' CHINS petition. During the hearing, Sarah Clark (Clark) testified that she was "part of the behavior management team" that responded to behavioral incidents pertaining to Mother while in the BDDS group home. (Transcript Vol. II, p. 13). Clark stated that she rendered services to Mother between April and May 2021, and her services were limited to Mother. She specified that she did not engage in daily monitoring of Mother's medication, and during her involvement, she became aware that Mother was not consistently taking her mental health medication.

[14] Wilkins testified that Mother had three days of supervised visits with Child. Wilkins stated that Mother did not recognize Child's non-verbal clues for hunger or sleep. Wilkins stated that Mother needed assistance on how to use the G-Tube for Child's feeding and medication, and on how to soothe Child. Wilkins claimed that Mother was distracted by her cellphone during the visits, would at times be "venting about [her] home situation" regarding her roommate, and she would have

to be prompted or redirected to cater to Child's needs. (Tr. Vol. II, p. 32). Wilkins opined that Mother could not properly care for and feed Child without the court's intervention.

[15]Memorie Bush (Bush), a therapist with Family and Community Partners, who conducted Mother's clinical assessment during the pendency of this CHINS case, stated that during Mother's assessment, Mother voiced three to four times that she heard noises and sounds which Bush did not hear and that Bush had to call in security in order to feel safe during the assessment. Following Mother's evaluation, Bush recommended a psychological evaluation to assess Mother's mental health needs. Bush recommended that Mother complete an individual parenting assessment and therapy. Bush also recommended that Mother continue taking her prescribed medication for her mental illnesses, and that visitation should be conducted via "video call or be postponed" if she was not compliant. (Tr. Vol. II, p. 67). Bush explained that Mother would be "erratic" when she missed her medication but when on medication, "she was able to remain focused. Her mood was cooperative, so she was more engaged." (Tr. Vol. II, pp. 67-68).

[16]FCM Nieshia Beverly (FCM Beverly) testified that Mother needed to continue home-based case management to ensure that her home stays clean and appropriate for the needs of Child during feeding. She also stated that Mother needed to continue with supervised visitations since Mother was unable to read Child's non-verbal clues for sleep or hunger and that she needed parenting education. She further testified that it was necessary for Mother to have an updated mental health

assessment, and a domestic violence assessment due to ongoing conflict with her roommate.

[17] While Mother was initially hesitant, she cooperated with her home-based case manager, Sussette Horn (Horn). Mother struggled with budgeting issues and keeping her home clean. Horn testified that she had concerns as to Mother's ability to address budgeting issues and Child's dietary needs.

[18] The assigned GAL, Thomas Heath (GAL Heath), testified that Child was on medication to help control "muscle spasms and potential seizures," and on acid reflux medication which was administered through the G-Tube. (Tr. Vol. II, p. 73). He stated that knowing how to operate the G-Tube and keeping it surgically clean was crucial. He stated that foster parents did that well. He added that because Child was also born with high muscle tone, there was also a lot of "focus on the fragility of []Child's bones as well as ligaments." (Tr. Vol. II, p. 74). GAL Heath stated that, given that Child's bones were fragile, a caregiver attending to Child must be cognizant of that and that foster parents handled that well. Due to Child's numerous health problems, GAL Heath added that Child had a team of medical doctors at Riley which included "a developmental pediatrician, endocrinologist, nephrologists to ensure the kidneys are properly functioning, as well as a gastroenterologist to continually you know monitor the G-tube." (Tr. Vol. II, p. 74). GAL Heath stated that Child's medical treatment involved scheduling appointments, and that Child's caregivers were required to proactively communicate with the medical team if there were any concerns. GAL Heath claimed that foster parents properly attended to Child's medical needs. GAL

Heath further testified that Child's feedings are problematic and complex since he had severe acid reflux. He stated that Child's formula had to be mixed by a certain ratio and that there was a need for close supervision several hours after feeding. GAL Heath stated that foster parents properly handled Child's feeding.

[19]Mother testified that she had safety concerns in her home. She claimed that her roommate would bring several adults into the home without her consent and that those people would go through her stuff and sneak in dangerous items such as a knife to her room. When asked if she frequently gets overwhelmed, Mother admitted that she did and that during this CHINS case, she was hospitalized because of stress since random people were entering her home, eating her food, and stealing her stuff. When asked how she would protect Child from being harmed by those random people, Mother's sole solution was that she would call the police. When asked if she knew how to feed Child using the G-Tube, Mother could not specifically describe the procedure and it sounded like someone in the background was directing her on how to answer the question. After failing to describe the procedure, Mother claimed she knew how to do it "hands on." (Tr. Vol. II, p. 128). Despite failing to recognize Child's sleep or hunger cues, her limited understanding of Child's diagnoses and treatment needs, and her incomplete training on how to operate the G-Tube, Mother stated that she did not appreciate DCS service providers telling her how to parent, feed, or hold Child, and she claimed that she knew what was best for Child.

[20]On October 7, 2021, the trial court entered the following pertinent findings of facts and conclusions thereon, adjudicating Child to be a CHINS:

FINDINGS OF FACT

3. [] Clark is a part of the behavioral management team at DAMAR and she . . . was on the team that responds to behavioral incidents and is a consultation service for the benefit of the adult only. She does not engage in daily monitoring of medication non-compliance. Mother has in the past been medically non-compliant with her mental health medications. Mother receives BDDS services for her developmental diagnosis.

4. There are a number of services that are available to Mother but [] Clark is unsure of the budget and what Mother would be eligible for. The team that [] Clark works on would not provide any services for the [C]hild.

5. Recently Mother admitted herself into the hospital for stress and [] Clark believed that was a result of change in medication[].

6. [] Wilkins is employed as a home-based case worker and she facilitates parenting time. Ms. Wilkins is familiar with this child and Mother and has provided services. Ms. Wilkins has seen that Mother is very loving and prepared for her parenting time. Mother does not recognize [C]hild's non-verbal cues, [*i.e.*,] she does not recognize when [] [C]hild is hungry/sleepy. There remain[] concerns about how Mother needs assistance to meet the [C]hild's basic needs. Mother has recently needed assistance with the [C]hild's G-Tube feedings. Mother has been distracted by her phone and her living situation which has diverted her attention for [] [C]hild.

7. Mother has a roommate who she believes was poisoning her and Mother has acknowledged personal safety concerns because of that roommate. Additionally, Mother describes how the roommate has locked her out of the house on a number of occasions and how she has locked out that roommate herself.

8. Mother struggles with recognizing dates and times and the passage of time. This is problematic when dealing with a special needs child. Mother had to be redirected as to feeding, G-Tube use, calming the child down and coddling. Mother's home-based case manager does not believe that without intervention Mother could feed and properly care for [] [C]hild.

* * * *

11 []Bush is a therapist who completed a clinical interview assessment on Mother. This assessment resulted in Ms. Bush recommending that Mother receive a full psychological evaluation. During the assessment Ms. Bush conducted, Mother stated that she heard noises/voices but no one else heard those voices or sounds. Ms. Bush also recommended that Mother take all medications as prescribed and that she continue in therapy, that visits continue to be supervised. Ms. Bush believed that if Mother is shown to not be medically compliant, parenting time should be fully supervised at an agency because her behavior is more erratic.

12. [GAL] Heath . . . has seen [] [C]hild in his current placement. Feedings for [] [C]hild are problematic and complex. [] [C]hild has severe acid reflux and the child must be closely monitored. [] [C]hild has a G-Tube and a number of medications which must be administrated properly. [] [C]hild is fragile and how he is handled is crucial. There is a treatment team for this medically fragile child and parents have not shown that they can meet the needs of this child.

13. Parents['] history and limitations show that unsupervised time with this child would not be in the best interests of this child.

14. [] Mother live[s] in a BDDS waiver support group home and there is not [24-hour] assistance available.

15. Regina Parrish is a home-based case manager for Midwest Psychological. Ms. Parrish has worked with Mother on budgeting issues and home upkeep issues. Mother has been cooperative but she struggles with household issues. Mother was recently admitted to the stress center for four days recently. Ms. Parrish has continuing concerns for Mother and her ability to address budgeting and her ability to properly meet the dietary needs of [] [C]hild. Initially, Mother was not cooperative and hesitant and untrusting initially[sic].

16. [FCM] Beverly [] sees a need for parents to continue with home based case management, [h]ome-based therapy, supervised parenting time, parenting education, a psychological evaluation for Mother and follow recommendations and a [domestic violence] assessment for Mother and follow all recommendations. Mother needs assistance with home issues such as cleanliness, appropriate people in the home and budgeting. Mother has mental health issues[,] and those issues need to continue to be addressed. [] Mother [] need[s] parenting education and [domestic violence] education. [Mother] struggle[s] with the special needs of [] [C]hild and there are [domestic violence] issues between parents and the adult roommate in the home. Mother has not followed through on many of the referrals that are in place for her, thereby necessitating the coercive intervention of this Court.

17. Mother is intellectually limited, has mental health issues and does not understand basic parenting issues and the status of the home is chaotic and unclear. [C]hild needs stability and care givers who understand and can meet his needs. . . .

18. [C]hild is in foster care with an older sibling. [] [C]hild's needs are being met in foster care and the Court finds that [] [C]hild's special medical needs would NOT be met in the care of [Mother]. [Mother] ha[s] another child not currently in [her] care and [she] [has] not demonstrated the ability to properly parent that older sibling.

19. [] Horn[] is employed at DAMAR and she has worked with Mother for four years and sees her at least once a month. Mother has made progress in her coping skills and daily living skills. Mother has missed taking her medications in the past and it appears that she continues to need assistance with budgeting. Mother is participating in services through BDDS waiver services but that is voluntarily and Mother can stop BDDS services at any time.

20. Mother testifies and it is clear that she is intellectually challenged. Mother has safety concerns for where she is living. Various adults are being snuck into the home and they have snuck dangerous items such as a knife into her room. Mother lives in an assisted living home that is provided by DAMAR. Although she claims to be able to meet the needs of [] [C]hild, the Court finds that her testimony is misguided, meandering and confusing. Mother's living situation is stressful and she had recently checked herself into a stress center.

* * * *

22. The amount of services and service providers assisting parents is NOT sufficient enough to ensure that the child is not seriously endangered.

CONCLUSIONS OF LAW

3. [Child] is a child in need of services. [] [C]hild needs care, treatment or rehabilitation that he is not receiving and would unlikely [] be provided or accepted without the coercive intervention of the court. This child needs a Mother [] who can meet the special needs of the child, who do[es] not engage in domestic violence in the home and who can meet [her] own special living needs and [her] mental health needs.

(Appellant's App. Vol. II, pp. 204-10).

[21]Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Admission of Evidence*

[22]Mother contends that the trial court improperly admitted certain evidence at the CHINS fact-finding hearing. We review a trial court's admission of evidence for an abuse of discretion. *In re Des.B.*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014). An abuse of the trial court's discretion occurs if its decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* It is well-established that errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. *Id.*

[23]At the fact-finding hearing, the State presented ninety-two exhibits. Mother objected on relevance grounds as to the admission of Exhibits 13 through 29, which were orders and reports from her own CHINS determination as a teenager. DCS in turn argued that the trial court should apply "the appropriate weight to anything it feels it is necessary in those records." (Tr. Vol. II, p. 9). Following the parties' arguments, the trial court stated that "having considered the nature of []

exhibits one through ninety-two, at this time I will admit one through ninety-two over objections as stated.” (Tr. Vol. II, p. 11).

[24] On appeal, Mother reasserts her relevancy argument to Exhibits 13 through 19.

The State argues that orders relating to Mother’s own CHINS adjudication were relevant to this CHINS case. Indiana courts have found that when children are alleged to be CHINS under Indiana Code section 31-34-1-1, which is the statute relied upon in the present case, a parent’s character is a material issue in the proceeding. *Matter of J.L.V., Jr.*, 667 N.E.2d 186, 190 (Ind. Ct. App. 1996). To that end, the court in *Matter of J.L.V., Jr.* reasoned that Indiana Rule of Evidence 405(b)³ allows admission of specific instances of a parent’s character because “a parent’s past, present, and future ability to provide sufficient care for his or her child forms the basis for a CHINS adjudication” and “a parent’s character is an integral part of assessing that ability.” *Id.* at 190-91. In *Matter of Eq.W.*, 124 N.E.3d 1201, 1210 (Ind. 2019), our supreme court agreed with the general proposition that *past acts by parents* in CHINS proceedings can be relevant but qualified this practice to “new CHINS filings involving the same parents and children.”

[25] We recognize that Mother was a *victim*, and not an *actor*, to her own CHINS case when she was a teenager. Had it been a CHINS adjudication relating to her other

³ Indiana Rule of Evidence 405(b) provides: “When a person’s character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person’s conduct.”

children, or a record of her criminal past, that would be relevant evidence to judge her ability to parent. *See In re L.T.*, 145 N.E.3d 864, 872 (Ind. Ct. App. 2020) (finding that a parent’s previous criminal conviction for domestic violence was admissible as a specific instance of that parent’s character at CHINS fact-finding hearing). We agree with Mother that orders relating to her CHINS case should not have been admitted. The State’s argument that the evidence was relevant as it bore to her character and her ability to provide necessary care and stability for Child fails.

[26] However, we note that the mere fact that evidence was erroneously admitted does not automatically require reversal; rather, we will only reverse if we conclude the admission affected a party’s substantial rights. *D.B.M. v. Ind. Dep’t of Child Servs.*, 20 N.E.3d 174, 179 (Ind. Ct. App. 2014), *trans. denied*. “To determine whether the admission of evidence affected a party’s substantial rights, we assess the probable impact of the evidence upon the finder of fact.” *E.B. v. Ind. Dep’t of Child Servs.*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014) (citation omitted). In the instant case, Child was removed from Mother’s care on March 19, 2021, following DCS’ safety and risk assessments on the premise that there was domestic violence in Mother’s home, Mother lacked an understanding of Child’s diagnoses and medical needs, and that she had unaddressed mental health issues. DCS’ petition was centered around those issues, and as we will discuss below, DCS presented sufficient evidence in support of the CHINS determination. More importantly, there is no reference or reliance of those exhibits by the trial court in the Order, and while it was unnecessary for the State to present evidence of Mother’s own CHINS case,

Mother cannot demonstrate sufficient prejudice from the admission of those challenged exhibits to merit reversal. *See D.B.M.*, 20 N.E.3d at 179 (noting that admission of improper evidence is harmless if such does not affect a party's substantial rights). We therefore conclude that the admission of those challenged exhibits was harmless.

II. *CHINS Adjudication*

A. *Standard of Review*

[27] Mother asserts that DCS did not present sufficient evidence that Child was a CHINS. A CHINS proceeding is civil in nature, so 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). DCS sought to have Child adjudicated a CHINS under Indiana Code section 31-34-1-1, which provides as follows:

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.

Our supreme court has interpreted this provision to require “three basic elements: that the parent’s actions or inactions have seriously endangered the child, that the child’s needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014).

[28] A CHINS adjudication “focuses on the condition of the child,” and not the culpability of the parent. *In re N.E.*, 919 N.E.2d at 105. The purpose of finding a child to be a CHINS is to provide proper services for the benefit of the child, not to punish the parent. *Id.* at 106. The “need for coercive intervention” element of the CHINS statute “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 at 1287 (quotation omitted). When considering this element, “courts should consider the family’s condition not just when the case was filed, but also when it is heard.” *In re D.J.*, 68 N.E.3d 574, 580 (Ind. 2017) (quotations omitted). “Doing so avoids punishing parents for past mistakes when they have already corrected them.” *Id.* at 581.

[29] The trial court entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A). We may not set aside the findings or judgment unless they are clearly erroneous. Ind. Trial Rule 52(A); *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210 (Ind. 2000). In our review, we first consider whether the

evidence supports the factual findings. *Menard*, 726 N.E.2d at 1210. Second, we consider whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. *Menard*, 726 N.E.2d at 1210. We give due regard to the trial court’s ability to assess the credibility of witnesses. T.R. 52(A). While we defer substantially to findings of fact, we do not do so to conclusions of law. *Menard*, 726 N.E.2d at 1210. We do not reweigh the evidence; rather, we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Yoon v. Yoon*, 711 N.E.2d 1265, 1268 (Ind. 1999).

[30] Mother argues that the evidence does not support two of the trial court’s factual findings and that the other unchallenged findings of fact do not support the trial court’s judgment.

[31] Mother first challenges Finding 14, wherein the trial court found that “Father and Mother live in a BDDS group home and there is not [24-hour] assistance available.” (Appellant’s App. Vol. II, p. 207). Mother claims that this finding is erroneous since “Father testified in detail that there is 24[-]hour assistance available at Father and Mother’s home from BDDS personnel who are continually located at their home in 3 consecutive shifts for 24 hours per day.” (Appellant’s Br. p. 10). While Father testified that BDDS provided 24 hours of assistance, DCS presented contrary evidence. When FCM Richardson interviewed the BDDS coordinator, she was informed that BDDS services are limited to eight hours per

day in Mother's home and that BDDS did not directly assist with parental support for its clients. This finding is supported by the evidence, and Mother's argument is a request for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *In re Des.B.*, 2 N.E.3d at 836 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

[32] Mother next challenges Finding 22, which stated that “[t]he amount of services and service providers assisting parents is NOT sufficient enough to ensure that [] [C]hild is not seriously endangered.” (Appellant’s App. Vol. II, p. 209). Mother again argues that Father testified that BDDS provides 24 hours of assistance at her home, and she claims that a “BDDS service provider testified at length that BDDS can teach Mother parenting skills” and work with her on a routine for Child and assist her with budgeting issues. (Appellant’s Br. p. 11). At the fact-finding hearing, FCM Beverly testified that BDDS would only provide services for the benefit of Child if he qualified for services, and at the time of the hearing, Child had not qualified for BDDS services. Further, DCS presented evidence that Mother’s participation in BDDS services was completely voluntary, and Mother could stop BDDS services at any given time and not lose her housing. Based on the evidence, this finding is supported by the record and is clearly not erroneous.

[33] While Mother contends that there are not sufficient findings to support the CHINS adjudication, she does not specifically challenge any of the other trial court’s findings of fact. Thus, they 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*;

McMaster v. McMaster, 681 N.E.2d 744, 747 (Ind. Ct. App. 1997) (when father failed to challenge specific findings, this court accepted them as true).

[34] Mother contends there is no evidence that her actions or inactions seriously endangered Child or that Child's needs would not be met under her care. She contends that DCS conceded that visits were going well, BDDS was prepared to assist with budgeting and parenting skills, and there was no domestic violence in her home. Contrary to Mother's arguments, the trial court's unchallenged findings established that Child was diagnosed with several medical conditions at birth, and that Mother did not comprehend the particulars of Child's diagnoses and how to appropriately manage Child's medical needs. Training was required following the insertion of the G-Tube which would enable Child to receive nutrition and medication. Mother failed to complete training, and she could not explain the procedure of feeding Child through the G-Tube. Child's medical treatment was complex, it involved scheduling appointments, and caregivers were required to proactively communicate with the medical team if there were any concerns. The trial court found that Mother could not handle Child's medical treatment schedule since she struggled to recognize dates and the passage of time, which was problematic for a caregiver who was dealing with a special needs child. Child's nutrition was key, and Mother failed to recognize Child's non-verbal clues for hunger. Mother, who has extensive mental health issues, failed to take her medication several times and would be erratic if not on medication. Further, Mother had prior domestic violence incidents with Father, she failed to live apart from him, and she also had ongoing conflicts with her roommate. Mother

additionally admitted that she did not feel safe around her roommate, and she claimed the roommate would allow random people to enter her home. Mother also struggled to keep her home clean which was a significant risk to Child, who had multiple medical issues.

[35] We note that 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 evidence of domestic violence occurring in Mother’s home, Mother’s untreated mental health issues, and her inability to understand Child’s special needs and medical care based on her own intellectual limitations⁴ is more than sufficient to support the trial court’s finding that Child is endangered in Mother’s care and that his needs cannot be met under Mother’s care.

[36] Finally, Mother contends there is no evidence that coercive intervention of the court is necessary. As we noted, when considering a “need for coercive intervention” by the court, we consider the family’s condition not just when the case was filed, but also when it is heard.” *In re D.J.*, 68 N.E.3d at 580. “Doing so avoids punishing parents for past mistakes when they have already corrected

⁴ This court has noted that a parent’s mental illness, in and of itself, does not necessarily present a serious danger to the child. *In re E.Y.*, 93 N.E.3d 1141, 1146 (Ind. Ct. App. 2018). Here, however, it is not the mere fact of Mother’s mental illness that supports the CHINS finding; instead, it is the manifestation of her mental illness if left untreated. DCS presented evidence that Mother did not understand Child’s medical diagnoses. In addition, DCS presented evidence that Mother would be erratic if she was not on medication, and that goes to show that Child may be seriously endangered if placed in Mother’s care and custody. *See In re K.P.G.*, 99 N.E.3d 677, 684 (Ind. Ct. App. 2018) (noting that an inability or unwillingness to address mental illness when it creates an unsafe environment is proof of serious endangerment).

them.” *Id.* at 581. At the time the CHINS petition was filed, Mother had failed to follow any of the recommended services of an ongoing CHINS case relating to Child’s older sibling. Specifically, Mother had been required to complete a sexual abuse assessment, a parenting assessment, a parent education training to address her other children’s medical needs, and a domestic violence assessment. Mother’s noncompliance with the recommended services in an ongoing CHINS case supports a reasonable inference that she might not voluntarily participate in services designed to help her provide Child with the necessary care and treatment absent court intervention.

[37] In sum, we conclude that the unchallenged findings support the trial court’s ultimate determination that Child “needs care, treatment or rehabilitation that he is not receiving and would unlikely [] be provided or accepted without the coercive intervention of the court.” (Appellant’s App. Vol. II, p. 210). *See In re Des.B.*, 2 N.E.3d at 839 (affirming trial court’s CHINS determination where facts most favorable to judgment supported court’s conclusion).

CONCLUSION

[38] Based on the foregoing, we conclude that the admission of Mother’s own CHINS orders and filings was harmless and does not necessitate a reversal and that the trial court’s findings support the trial court’s conclusion that Child is a CHINS.

[39] Affirmed.

[40] May, J. and Tavitias, J. concur