MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

In the Matter of D.L., A.P., Z.W., and M.W. (Minor Children), Children in Need of Services,

and

M.G. (Mother) and T.W. (Father),

Appellants-Respondents

v.

Indiana Department of Child Services,

Appellee-Petitioner

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Court of Appeals
and Tax Court

February 20, 2024

Court of Appeals Case No.
23A-JC-1900

Appeal from the Allen Superior Court

The Honorable Beth A. Webber, Magistrate

Trial Court Cause Nos.
02D08-2305-JC-138
02D08-2305-JC-139

02D08-2305-JC-140
02D08-2305-JC-141

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] M.G. ("Mother") appeals the trial court's determination that her four minor children, D.L., A.P., Z.W., and M.W. ("the Children"), are Children in Need of Services ("CHINS"). T.W. ("Father") is the father of Z.W. and M.W., and he also appeals the trial court's determination as to them.[1] Mother and Father raise two issues for our review, which we restate as follows:

> 1. Whether the trial court abused its discretion when it concluded that D.L.'s out-of-court statements were admissible at the fact-finding hearing on the CHINS petition.
>
> 2. Whether the Indiana Department of Child Services ("DCS") presented sufficient evidence to support the trial court's adjudication that the Children are CHINS.

[2] We affirm.

[1] The fathers of D.L. and A.P. do not participate in this appeal.

Facts and Procedural History

[3] D.L. was born in 2011, and A.P. was born in 2013 to Mother and another father. In 2019, Mother and Father married, and Mother gave birth to Z.W. and M.W. in 2020 and 2022, respectively. Mother lives with Z.W. and M.W. in Fort Wayne. D.L. and A.P. resided with Mother at least part of the time. Father lives separately from Mother.

[4] On April 16, 2023, Mother, Father, and the Children were at the Fort Wayne residence. Mother and Father got into an argument, and Father struck Mother in the face with a vase. The attack caused lacerations to Mother's face. D.L. observed the attack and further saw that Mother was "bleeding everywhere." Tr. Vol. 2, p. 46. D.L. was "upset" and "scared." *Id.*

[5] D.L. called his father and asked his father to pick him up. When D.L.'s father arrived, D.L. "ran out" of the house. *Id.* at 45. His "eyes [were] big" and he was "out of breath." *Id.* He told his father what had happened. At that time, Father approached D.L.'s father and struck him in the face in D.L.'s presence, causing D.L.'s father to sustain a black eye. D.L.'s father then took custody of D.L. and A.P. and called the police.

[6] On April 27, Mother arrived at D.L.'s school to pick him up and take him to her home. However, D.L., who had no history of behavioral issues, refused to leave with Mother. Kelli Heaton, an in-school case manager at D.L.'s school, observed that D.L. was "really upset, very frustrated," and "crying." *Id.* at 100. When Heaton walked D.L. to the front door to meet Mother and opened the

door for her, the situation "got very physical." *Id.* at 101. As Heaton would later recall:

> prior to getting there [D.L. was] yelling he wasn't going with [Mother and] that we need to call his dad, . . . he was crying and yelling . . . , but when we opened the door [Mother] went to grab him . . . , he was hanging on to the staff. She was pulling and tugging on him . . . yelling that he was going with her. . . . [H]e was crying and screaming. We were trying to ask them just to let go. [Mother was] cursing and yelling at him[,] saying "yes you are going with me,["] . . . to the point where [Mother] was holding a younger child at that time. . . . I did take the younger child from her and step[ped] back from the situation. Eventually, I'm not for sure, . . . at some point one of the staff was just telling her to just let go, and she did stop at that time because we were waiting for the police to arrive. . . . [E]veryone was separated, . . . he was taken into the office with the principal, . . . and the other staff and I stayed out . . . in the vestibule with [M]other . . . [and] the two younger children.

Id. As a result of the situation, D.L.'s school went into lockdown. After police arrived, D.L., although still upset, left with Mother.

[7] DCS caseworker Emily Thomas became involved and interviewed D.L., Mother, and Father at the Fort Wayne residence. Thomas asked the family about the alleged domestic violence on April 16. D.L. appeared "quiet and nervous" and did not disclose any information. *Id.* at 65. Mother first told Thomas that Father and D.L.'s father had gotten into an argument while "the [C]hildren were outside." *Id.* However, Mother later changed her story and said that the Children were with their maternal grandmother at the time Father and

D.L.'s father had gotten into the argument. Father, in turn, told Thomas that he did not strike D.L.'s father.

[8] DCS filed its petition to have the Children adjudicated to be CHINS based on domestic violence in Mother's home. The trial court ordered the Children to be removed from Mother and Father's care and directed Mother and Father to participate in relevant services. About one week later, Thomas met with D.L. again, and D.L. now appeared "relaxed" and not nervous. *Id.* at 69. Meanwhile, Mother and Father refused to participate in services.

[9] The trial court held a fact-finding hearing on the CHINS petition in June 2023. D.L.'s father, Heaton, Thomas, and others testified at that hearing. During his testimony, D.L.'s father testified to what D.L. had said to him on April 16 following the incident of domestic violence. Mother and Father objected to that testimony as hearsay, which objection the trial court overruled. Thereafter, the court adjudicated the Children to be CHINS.

[10] This appeal ensued.

1. The trial court did not abuse its discretion in overruling the hearsay objection.

[11] On appeal, Mother and Father first assert that the trial court abused its discretion when it overruled their hearsay objection to D.L.'s father testifying to D.L.'s out-of-court statements regarding the April 16 incident of domestic violence. A trial court has broad discretion regarding the admission of evidence, and its decisions are reviewed only for abuse of that discretion. *E.g.*, *Hall v.*

State, 177 N.E.3d 1183, 1193 (Ind. 2021). We will reverse only if the trial court's ruling was clearly against the logic and effect of the facts and circumstances before it and the error affects a party's substantial rights. *Id.*

[12] Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). Hearsay is generally inadmissible. *See* Evid. R. 802. However, Indiana's evidence rules provide two relevant exceptions to that general rule for our purposes, namely, the exception for a present sense impression and the exception for an excited utterance. Evid. R. 803(1), (2).

[13] The trial court here overruled the hearsay objection under the exception for a present sense impression. This was technically incorrect. For the present sense impression exception to apply, the statement at issue must have been made "immediately" after the declarant's perception of the event being discussed. *Mack v. State*, 23 N.E.3d 742, 755 (Ind. Ct. App. 2014), *trans. denied*. Here, we have no evidence as to how long of a delay occurred between D.L.'s observation of Father striking Mother and D.L.'s statement to his father about that observation, but it is clear that there was at least some delay as D.L. did not tell his father until after his father had arrived at the residence. Accordingly, the record does not support the trial court's reliance on the present sense impression exception to admit D.L.'s hearsay statement. *See id.* (noting that a delay of "a few minutes . . . is ample time" to make the exception for a present sense impression inapplicable).

[14] However, "an appellate court may affirm a trial court's judgment" on the admission of evidence under "any theory supported by the evidence." *Clark v. State*, 808 N.E.2d 1183, 1188 (Ind. 2004). And Indiana Evidence Rule 803(2) provides that hearsay may be admissible if the statement is an excited utterance, which is "[a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused." Such statements are "deemed reliable" because of their "spontaneity and lack of thoughtful reflection and deliberation." *Fowler v. State*, 829 N.E.2d 459, 463 (Ind. 2005). Unlike the exception for a present sense impression, "the amount of time that has passed is not dispositive" for an excited utterance. *Montgomery v. State*, 694 N.E.2d 1137, 1140 (Ind. 1998) (quotation marks omitted). Rather, the "central issue" under the excited utterance exception "is whether the declarant was still under the stress of excitement caused by the startling event when the statement was made." *Id.* (quotation marks omitted).

[15] The evidence supports the admission of D.L.'s statements to his father under the excited utterance exception to hearsay. D.L. observed Father strike Mother in the face with a vase, which, as D.L. further observed, resulted in Mother "bleeding everywhere." Tr. Vol. 2, p. 46. This caused D.L. to be "upset" and "scared." *Id.* Thus, the evidence shows that a startling event occurred for D.L.

[16] Further, when his father arrived on the scene, D.L. "ran out" of the house. *Id.* at 45. His "eyes [were] big" and he was "out of breath." *Id.* This evidence shows that D.L. was still under the stress of the excitement caused by the startling event when his father arrived. And D.L.'s statements to his father

immediately upon his father's arrival were about the startling event, i.e., Father striking Mother. *See Montgomery*, 694 N.E.2d at 1140.

[17] Accordingly, the trial court's admission of D.L.'s hearsay statements to his father is supported by the evidence under the excited utterance exception for hearsay. We therefore cannot say that the trial court abused its discretion when it admitted those statements into evidence.

2. The trial court's adjudication of the Children as CHINS is not clearly erroneous.

[18] Mother and Father also argue on appeal that the trial court's adjudication of the Children as CHINS is clearly erroneous. A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). Indiana Code section 31-34-1-1 provides:

> 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 . . . to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:
>
> (A) when the parent . . . is financially able to do so; or

(B) due to the failure, refusal, or inability of the parent . . . to seek financial or other reasonable means to do so; 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.

[19] When we review a CHINS adjudication, we neither reweigh the evidence nor judge the credibility of the witnesses, and we will consider only the evidence and reasonable inferences that support the trial court's decision. *K.D.*, 962 N.E.2d at 1253. Importantly, 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*.

[20] 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. Therefore, the focus of a CHINS proceeding is on "the best interests of the child, rather than guilt or innocence as in a criminal proceeding." *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). For this reason, the acts or omissions of one parent can cause a condition that creates the need for court intervention. *Id.*

[21] Finally, courts should consider the family's condition not just when the case was filed, but also when it is heard to avoid punishing parents for past mistakes

when they have already corrected them. *See In re D.J.*, 68 N.E.3d 574, 580-81 (Ind. 2017). This "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 & Child. Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[22] It is well established that "a child's exposure to domestic violence can support a CHINS finding." *In re D.P.*, 72 N.E.3d 976, 984 (Ind. Ct. App. 2017) (quotation marks omitted). Further, "a single incident of domestic violence in a child's presence may support a CHINS finding." *Id.* The evidence shows that D.L. observed Father strike Mother with a vase. D.L. further saw Father strike D.L.'s father. The evidence further shows that the other three children were also present in Mother's home at that time; D.L.'s father later left the home with both D.L. and A.P., and there was no credible evidence presented that Z.W. and M.W. were somewhere other than in Mother's home with their parents.

[23] Mother's and Father's arguments on this issue rely on excluding D.L.'s out-of-court statements discussed above and on attacking the credibility of D.L.'s father. Similarly, Mother and Father each assert that their testimonies were corroborating of each other and also supported by other witnesses. But the trial court expressly found that Mother and Father were not credible witnesses and that D.L.'s father was credible. We will not reassess the credibility of the witnesses on appeal.

[24] DCS presented sufficient evidence to support the trial court's adjudication of the Children as CHINS. We therefore affirm the trial court's judgment.

[25] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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