

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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E.T. and T.T.,  
*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner.*

June 23, 2021

Court of Appeals Case No.  
21A-JC-203

Appeal from the Monroe Circuit  
Court

The Honorable Holly M. Harvey,  
Judge

Trial Court Cause No.  
53C06-2010-JC-571

**Riley, Judge.**

## **STATEMENT OF THE CASE**

[1] Appellants-Respondents, E.T. (Father), and T.T. (Mother), (collectively, Parents), appeal the trial court's adjudication that their minor child, E.T. (Child) is a Child in Need of Services (CHINS).

[2] We affirm.

## **ISSUE**

[3] Father and Mother present two issues for our review which we consolidate and restate as a single issue: Whether the evidence was sufficient to support the trial court's CHINS adjudication.

## **FACTS AND PROCEDURAL HISTORY**

[4] Child was born on June 23, 2018. Father and Mother are also the biological parents to P.T. born in March 2020. At the time of P.T.'s birth, her meconium was positive for THC and Department of Child Services (DCS) became involved. On October 14, 2020, Mother took seven-month-old P.T to Bloomington Hospital because she had decreased appetite, was vomiting, had increased fussiness, and had a swollen right leg. The medical staff at the hospital discovered a fracture in P.T.'s femur and transferred P.T. to Riley Hospital. Doctors at Riley Hospital found at least ten separate fractures at different stages of healing which they determined were the result of intentional or purposeful abuse. The doctors put both of P.T.'s legs in hard casts.

- [5] When interviewed by the hospital social worker Michelle Rightley (Rightley), Mother did not have an explanation for P.T.'s injuries and she claimed that Child could have "been too rough" with P.T. (Transcript Vol. II, p. 10). Mother's alternative explanation was that P.T.'s injuries were the result of falling off a bed, couch, or a toy. Mother claimed that she and Father were the only caregivers to P.T. and Child. Mother then stated that she and Father daily smoked marijuana, and when Child was born in 2018, his meconium tested positive for THC and that DCS was involved. When asked about any mental health issues that she and Father had, Mother claimed that she had symptoms of depression and was not in any treatment, and that Father had recently been diagnosed with schizophrenia and was "actively involved with treatment for the last three months." (Tr. Vol. II, p. 10). Following that interview, Rightley contacted DCS and reported suspected neglect or abuse of P.T.
- [6] DCS then visited Parents' home to interview Father. DCS subsequently informed Father that Child needed to be evaluated by a doctor due to the discovery of P.T.'s "extensive injuries" with "some injuries being old and some [] new, and then also because [Child] was not able to communicate." (Tr. Vol. II, p. 31). Once at the hospital, when DCS informed Father that Child needed to be detained due to P.T.'s injuries, Father removed Child from the doctors' office. Law enforcement had to use force to stop Father in the parking lot. Child was eventually evaluated but did not have any injuries.
- [7] On October 15, 2020, DCS filed a petition alleging that P.T. and Child were CHINS. The following day, the trial court conducted a preliminary hearing.

With regards to the neglect or abuse allegations pertaining to Child, DCS presented evidence of P.T.'s injuries and the fact that Parents' explanations for P.T.'s injuries were not consistent with the doctors' opinion as to their causation. DCS also presented evidence that Father has unaddressed mental health issues, that Parents admitted to using marijuana, and that Parents did not have stable housing. DCS also claimed that while Child had not sustained any known injuries indicative of abuse or neglect, he was still at risk of harm being in the same home environment and having the same caregivers as P.T. The trial court found probable cause existed, and it authorized DCS to file CHINS petition.

[8] On November 17, 2020, DCS filed a motion for leave to amend the CHINS petitions. DCS claimed that since the filing of the CHINS petitions, Mother had tested positive for methamphetamine. That motion was granted, and on December 7, 2020, the trial court heard evidence on DCS's CHINS petitions as to P.T. and Child and adjudicated them as CHINS.<sup>1</sup> The trial court entered the following pertinent findings:

- a. The children are under the age of eighteen (18) and resided with their parents, . . . in Monroe County, Indiana, at the time DCS received a report alleging the children to be victims of abuse or neglect.

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<sup>1</sup> Parents do not appeal the trial court's adjudication of P.T. as a CHINS.

b. October 14, 2020, Mother brought P.T. (an infant) to IU Health Bloomington Hospital to be evaluated for a swollen leg and fussiness. It was determined that P.T. had a fractured femur.

c. P.T.'s medical records were referred to be reviewed by Dr. Roberta Hibbard, an expert in pediatrics, child abuse and head of the Riley Hospital Child Protection Team (PEDS). Dr. Hibbard found that P.T. had sustained at least ten fractures to her body. The injuries were observed to be at different stages of healing, indicating that the child sustained the injuries on multiple occasions. Dr. Hibbard concluded that the child's injuries appeared to be the result of non-accidental (inflicted) trauma, would not result from the normal handling of an infant and were indicative of physical abuse.

d. Mother and Father offered the explanation that P.T.'s injuries were the result of falling off a bed, falling off a couch, or falling out of a toy. Mother and Father did not seek medical care. That the parents' explanations for P.T.'s injuries are not consistent with the medical evidence. The offered explanations are inconsistent with the medical expert's opinion as to causation of P.T.'s injuries.

e. That P.T. and [] [Child] have been in the parents' legal and physical care and custody leading up to P.T.'s diagnoses. Mother is the children's primary caregiver.

f. That Father has significant mental health issues that are not being appropriately addressed. Father requires ongoing and permanent medication management for his diagnosis. He has not maintained treatment at Centerstone to which he was referred in February[] 2020. It is not clear that he has consistently maintained treatment at HealthNet, a provider for patients without insurance. Father has been assessed as having a high level of need far more intensive community[-]based services.

g. Mother has previous involvement with DCS (as both a victim and perpetrator of abuse) and was identified to have significant, untreated mental health issues such a bipolar disorder and significant trauma history which would benefit from treatment. Mother has not seen a therapist since she was seventeen years old, despite interim DCS involvement at the time P.T. was born in February[], 2020 with THC-positive meconium.

h. Mother and Father both admitted to using marijuana over an extended period of time. Safety concerns for the children are present any time a parent is using substances. The parents continue to test positive for marijuana.

i. Mother and Father have not had stable housing. The parents provided inconsistent statements about their housing situation, but both admitted to being ejected from a homeless shelter and staying with relatives in the weeks prior to removal. At the time of the hearing, they had been residing in a new apartment for two weeks with the assistance of home[-]based case management services. Due to very new employment of Father, the family has not been able to create a budget for expenses to ensure the stability of this housing.

j. Due to P.T.'s injuries, [Child] was evaluated for injuries. At the time of the exam and upon learning of intended removal from the home, Father left the physician's office with [Child] and law enforcement was called. Father did not flee with [Child] from the office property.

k. [Child] has demonstrated some self-injurious behavior and possible communication deficits. When approached by DCS about further assessment, Mother and Father expressed resistance to additional assessment. If [Child] was determined to have developmental deficits, Mother and Father would require additional parenting assessment and services. [Child] has since

been evaluated by First Steps and has been referred for speech therapy to focus on communication issues.

l. On or about November 6, 2020, Mother [] submitted to a drug screen, which results were positive for methamphetamine. Mother denies use and contests the results of the screen, and the parents have continued to test positive for marijuana use, though levels have decreased.

m. Father and Mother have not been able to provide adequate explanation for the children's removal, and Father still communicates lack of awareness as to why DCS is involved with his family. DCS is therefore unable to create a safety plan with the parents at this time and thus is unable to ensure the children's safety if they were returned to the parents' home.

n. The parents continued use of marijuana following P.T.'s positive meconium at birth, inability to provide an adequate explanation for P.T.'s injuries, attempts to avoid or reluctance to accept services for [Child], and untreated mental health issues despite prior referrals for services demonstrates that the parents are unlikely to provide or accept care for the children without the coercive intervention of the court.

o. The children need care, treatment, or rehabilitation that the children are not receiving or are unlikely to be provided or accepted without the coercive intervention of the court.

(Appellants' App. Vol. II, pp. 35-36). On January 5, 2021, the trial court held a dispositional hearing and entered a dispositional decree ordering Parents to participate in reunification services.

[9] Parents now appeal. Additional information will be provided as necessary.

## DISCUSSION AND DECISION

### I. *Standard of Review.*

[10] Parents contend that the evidence is insufficient to support the trial court's CHINS adjudication. DCS bears the burden of proving that a child is a CHINS by a preponderance of the evidence. *In re Des.B.*, 2 N.E.3d 828, 835-36 (Ind. Ct. App. 2014). In reviewing a CHINS determination, our court does not reweigh evidence or assess witness credibility. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). We consider only the evidence in favor of the trial court's judgment, along with any reasonable inferences derived therefrom. *Id.*

[11] In addition, the trial court entered limited findings of fact and conclusions thereon *sua sponte*; thus, our review is governed by Indiana Trial Rule 52(A). The CHINS statute does not stipulate that formal findings must accompany a CHINS determination. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). Accordingly, for the issues covered by the court's findings, we apply our two-tiered standard of review, first considering whether the evidence supports the factual findings and then whether those findings support the trial court's judgment. *Id.* We will not set aside the findings or judgment unless they are clearly erroneous. *In re Des.B.*, 2 N.E.3d at 836. Factual findings are clearly erroneous where there are no facts in the record to support them either directly or by inference. *Id.* "A judgment is clearly erroneous if it relies on an incorrect legal standard." *Id.* We accord substantial deference to the trial court's findings of fact but not to its conclusions of law. *Id.* Any issues not covered by the trial court's findings are reviewed under the general judgment standard,



“under which a judgment will be affirmed if it can be sustained on any legal theory supported by the evidence.” *In re S.D.*, 2 N.E.3d at 1287 (internal quotation marks omitted).

## II. *CHINS Adjudication.*

[12] Here, the trial court concluded that Child is CHINS “as defined by I.C. [§§] 31-34-1-1, 31-34-1-2, and 31-34-12-4.” (Appellant’s App. Vol. II, p. 97). To meet its burden of establishing CHINS status pursuant to Indiana Code section 31-34-1-1, DCS must prove that the child is under eighteen and that

(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.

[13] To meet its burden of proving CHINS status pursuant to Indiana Code section 31-34-1-2, DCS must prove that the child is under eighteen and that

(1) 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; 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.

[14] DCS also invoked Indiana Code section 31-34-12-4 (the Presumption Statute) pursuant to which a rebuttable presumption is raised that the child is in need of services because of an act or omission of the child's parent, guardian, or custodian if competent evidence of probative value is introduced by DCS that

(1) the child has been injured;

(2) at the time the child was injured, the parent, guardian, or custodian:

(A) had the care, custody, or control of the child; ...

(3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian; and

(4) there is a reasonable probability that the injury was not accidental.

“The purpose of the Presumption Statute is clear. In cases where a child has injuries that suggest neglect or abuse, it shifts the burden to the party most likely to have knowledge of the cause of the injuries—the parent, guardian, or custodian—to produce evidence rebutting the presumption that the child is a

CHINS.” *Ind. Dep’t of Child Servs. v. J.D.*, 77 N.E.3d 801, 807 (Ind. Ct. App. 2017), *trans. denied*. Once DCS has produced evidence establishing the elements of Indiana Code section 31-34-12-4, the burden of production shifts to the respondent. *Id.* at 809.

[15] Notwithstanding DCS reliance of the Presumption Statute, and the trial court’s finding that Child was CHINS also under the Presumption Statute, we note that the rebuttable presumption when raised applies only to “the child” who was injured. Thus, although the Presumption Statute was applicable to P.T. who was injured while in Parents’ care, the Presumption Statute was inapplicable to the adjudication of Child as CHINS, who himself was not injured. With that said, we only find Indiana Code sections 31-34-1-1, and 31-34-1-2 were applicable to the CHINS determination relating to Child.

[16] In its adjudication, the trial court found Child to be a CHINS based on several issues: Father’s unaddressed mental health issues, Parents’ drug use, and Child being unsafe in Parents’ home. Parents assert that those findings are not supported by the evidence, and therefore do not support the conclusion that Child was seriously endangered under their care. DCS asserts that most of the challenges are simply requests to reweigh the evidence.

#### *Father’s Mental Health*

[17] Parents contest finding (f) which provided that Father’s mental health issues were not being properly addressed and that he requires ongoing medical management for his schizophrenic diagnosis. The finding further stated that

“Father requires ongoing and permanent medication management for his diagnosis. He has not maintained treatment at Centerstone to which he was referred in February 2020. It is not clear that he has consistently maintained treatment at HealthNet a provider for patients without insurance.” (Appellants’ App. Vol. II, p. 35).

[18] Indiana has, historically, considered a parent’s mental illness as an important factor in deciding whether that parent can meet the needs of his or her child, even while it consistently has held that mental illness, standing alone, is not a proper ground for termination. *See Egly v. Blackford Cnty. DPW*, 592 N.E.2d 1232, 1234 (Ind. 1992). This includes examining the parent’s habits and patterns of conduct in addressing mental health problems and providing a safe, consistent, and nurturing residence and environment. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004). In *in the Matter of K.P.G.*, 99 N.E.3d 677, 683 (Ind. Ct. App 2018), this court discussed the endangerment of a child by a parent’s lack of treatment or insight about her mental illness. In *K.P.G.*, the child had a serious heart condition, Mother admitted she had an untreated mental illness, and the child displayed labored breathing. *Id.* at 684. The court noted that mother’s untreated mental illness “left her unable to make critical decisions regarding [the child’s] care and treatment.” *Id.*

[19] The evidence shows that in 2019 Father was diagnosed with schizophrenia by doctors at Eskenazi Health. In early 2020, DCS referred Father to Centerstone because P.T. tested positive for THC at birth. In February 2020, Father met with Centerstone staff and began receiving treatment for his substance abuse

and schizophrenia. Father received treatment through Centerstone several times until June 2020. Sometime thereafter, Father began his mental health treatment with HealthNet, and he was receiving medication through HealthNet.

[20] While not disputing Father's reported claim that he was receiving treatment through HealthNet, Philip Phelps (Phelps), a therapist at Centerstone, testified that HealthNet was not a long-term solution to address Father's psychiatric problems. HealthNet, Phelps explained, was formerly known as Volunteers in Medicine, a program wherein doctors volunteered their time to help people with physical and mental health needs. Phelps stated that in his experience, there was a high turnover at HealthNet because the providers leave unexpectedly. Notwithstanding the fact that Father's treatment at Centerstone was based on DCS' referral, DCS did not present evidence that Father's switch to HealthNet was not allowed. In fact, DCS's family case manager Sharon Taylor (FCM Taylor) testified that "one thing" DCS wanted "to do is to loop HealthNet [into] . . . his Centerstone services for sure." (Tr. Vol. II, p. 78). In addition, the record shows that Father had given DCS access to his medical records. FCM Taylor testified that she only had Father's Centerstone records but had not accessed his HealthNet records. Equally, Phelps testified that he had not tried to access Father's HealthNet record to verify Father's treatment.

[21] The trial court found that there was insufficient evidence that Father had not maintained appropriate treatment at HealthNet. We conclude that finding unsupported by the record because DCS did not dispute that Father was

receiving treatment through HealthNet, they did not take advantage of Father's release of medical information, and neither did they presented evidence that Father was not receiving proper treatment at HealthNet. Thus, we hold that the trial court's finding that there was complete lack of evidence that Father was unwilling to address his mental illness is unsupported by the record. In spite of this conclusion, we find that Father's unaddressed mental health was not the exclusive basis for the CHINS determination since DCS presented other evidence, as we will discuss below, denoting that Child is a CHINS.

#### *Drug Use*

[22] The trial court entered the following pertinent findings regarding Parents' drug use:

h. Mother and Father both admitted to using marijuana over an extended period of time. Safety concerns for the children are present any time a parent is using substances. The parents continue to test positive for marijuana.

\* \* \* \*

n. . . . [P]arents' continued use of marijuana following P.T.'s positive meconium at birth, inability to provide an adequate explanation for P. T.'s injuries, attempts to avoid or reluctance to accept services for [Child], and untreated mental health issues despite prior referrals for services demonstrate that [] [P]arents are unlikely to provide or accept care for the children without the coercive intervention of the Court.

(Appellants' App. Vol. II, pp. 35-36). While Parents admit to their history of drug abuse, they argue that DCS failed to establish that that Child was seriously endangered or impaired as a result of their alleged inability to provide necessary care and supervision without the court's coercive intervention. They claim that the trial court improperly based its decision on their drug use, and they rely on *Perrine v. Marion County Office of Child Services*, 866 N.E.2d 269 (Ind. Ct. App. 2007) and *Ad.M. v. Indiana Department of Child Services*, 103 N.E.3d 709, 710 (Ind. Ct. App. 2018), in which other panels of this court found similar evidence insufficient to support a CHINS determination.

[23] In *Perrine*, the court held that a single admitted use of methamphetamine, outside the presence of a child and without more, was insufficient to support a CHINS determination. *Perrine*, 866 N.E.2d at 277.

[24] In *Ad.M.*, we reversed a CHINS determination because “evidence of one parent’s use of marijuana and evidence that marijuana ha[d] been found in the family home, without more, does not demonstrate that a child has been seriously endangered for purposes of Indiana Code [s]ection 31-34-1-1.” *Id.* at 714. Rather, the permanency case manager admitted that she “really [couldn’t] see the way” mother’s marijuana use impacted the children. *Id.* Further, DCS did not present any evidence that mother used drugs while the children were present in the home or while she had care of the children. *Id.* Relying on our jurisprudence, we concluded that the children cannot be adjudicated as CHINS despite mother’s history of marijuana use because there was no evidence that, at any point in time, any of the children were endangered, that the parents had

ever used drugs in the presence of the children, or that there was ever an occasion in which the parents were impaired by substance abuse while the children were in their care. *Id.*

[25] We find those cases to be distinguishable. The record reveals that Parents were the only caregivers to Child, who was two years old. During Mother's clinical assessment at Centerstone, Mother informed the therapist that she smoked marijuana three to four times a day. Mother claimed that the last time she smoked marijuana was October 14, 2020. Aside from Mother's claim, the therapist recommended that Mother receive therapy and be assigned a recovery coach due to her drug use. Unlike *Ad.M.*, it appears that Mother smoked marijuana during the day while she cared for Child. Neither Parent was able to account or remember any of the ten incidents when P.T.'s bones were fractured. To that end, FCM Taylor testified that there were "safety concerns" when parents are testing positive for any illegal substance. (Tr. Vol. II, p. 80).

[26] Parents additionally argue that they had acted to remedy their drug use by the time of fact-finding because they had decreased their THC levels, and they argue that marijuana use alone is insufficient to support a finding of CHINS.

[27] However, *In re K.S.*, 78 N.E.3d 740 (Ind. Ct. App. 2017), this court reversed a CHINS determination, in part, based on a mother's marijuana use. *Id.* at 744. In doing so, the court reasoned that the mother had admitted to using marijuana two months before the child's birth to increase her appetite during pregnancy, but there was no evidence that this *single use* of marijuana had any



negative impact on the child. *Id.* at 745. (emphasis added). The court further explained that the trial court's finding that the mother lacked stable housing was unsupported by the evidence. *Id.*

[28] *In re S.M.*, 45 N.E.3d 1252 (Ind. Ct. App. 2015), this court reversed a CHINS determination based in part on the mother's use of marijuana while pregnant. *Id.* at 1253-54. In finding the evidence insufficient to support the CHINS determination, this court noted that the mother had a history of sporadic marijuana use and prior DCS substantiations. *Id.* at 1256. The court noted further, however, that every drug screen the mother provided during the CHINS case was negative, mother had participated in a substance abuse assessment, and no substance abuse treatment was recommended as a result. *Id.* The court also noted that there was no evidence contradicting the mother's testimony that she had not known she was pregnant when she used marijuana and that she had stopped using marijuana as soon as she realized she was pregnant. *Id.*

[29] The *S.K.* and *S.M.* courts emphasized that a finding of serious endangerment cannot be based solely *on previous drug use, whether isolated or habitual*. In contrast, here, Parents failed several drug screens during the pendency of the CHINS proceedings. Father appears to have been sober sometime in November, a month before the factfinding hearing, and Mother, despite her claim that she had not used drugs since October 2020, had additionally tested positive for methamphetamine in November 2020, less than four weeks before the factfinding hearing. Further, in both of Parents' clinical assessments, the

therapist recommended substance abuse treatment as a result of Parents' drug use. We emphasize that the aim of a CHINS inquiry is to determine if a child's circumstances require services that are unlikely to be provided absent court intervention. *See Matter of E.Y.*, 126 N.E.3d 872, 877 (Ind. Ct. App. 2019). Parents' argument that Child was not endangered by their drug use is simply an invitation for us to reweigh the evidence of the case, which we will not do. *See In re K.D.*, 962 N.E.2d at 1253. Here, the trial court did find Parents' dependency on illegal drugs, coupled with Child's very young age, supported a reasonable inference that Parents' drug use prevented them from providing for Child needs, or that Child's needs would go unmet without the court's coercive intervention.

#### *Child's Safety*

[30] Parents also challenge finding (m) which stated as follows:

Father and Mother have not been able to provide adequate explanations for the children's removal, and Father still communicates lack of awareness as to why DCS is involved with his family. DCS is therefore unable to create a safety plan with the parents at this time and thus unable to ensure the children's safety if they were returned to the parents' home.

(Appellants' App. Vol. II, p. 35). Parents claim that the finding is woefully unsupported by the record because DCS failed to show by a preponderance of the evidence that Child suffered any danger or impairment as a result of being in a home where another child, P.T., was adjudicated a CHINS. We disagree.

[31] FCM Taylor testified that DCS was opposed to Child being returned to Parents' care because without knowing how P.T.'s injuries occurred, DCS could not be assured Child was safe and neither could they curate an appropriate safety plan with Parents to ensure Child was safe under their care. The CHINS statute does not require that a court 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 purpose of a CHINS adjudication is not to punish the parents, but to protect the child. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*. Parents' actions and omissions not only caused physical injury to P.T., but it appears that P.T. was injured while Child was living in the same home, Child's safety was at risk, and it placed Child in a situation where DCS had to intervene. To the extent Parents' arguments invite us to reweigh the evidence and reassess witness credibility, we are unable to do so. *See In re K.D.*, 962 N.E.2d at 1253l. The evidence most favorable to the judgment supports the trial court's findings that Parents' inactions have seriously endangered Child and that Child's needs are unlikely to be met without State coercion. Thus, we conclude that the trial court's determination that Child was endangered and had needs which would not be met without the coercive intervention of the State was not clearly erroneous.

## CONCLUSION

[32] Based on the foregoing, we conclude that the evidence was sufficient to support the trial court's CHINS adjudication.

[33] Affirmed.

[34] Mathias, J. and Crone, J. concur