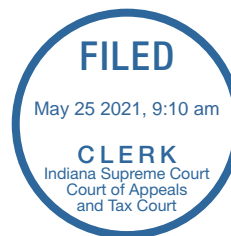


## MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In re the Matter of C.W. (Minor  
Child),  
E.W. (Mother),  
*Appellant-Respondent*,

v.

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

May 25, 2021

Court of Appeals Case No.  
20A-JC-2359

Appeal from the Marion Superior  
Court

The Honorable Marilyn A.  
Moores, Judge

The Honorable Geoffrey Gaither,  
Magistrate

Trial Court Cause No.  
49D09-2002-JC-484

**Mathias, Judge.**

[1] E.W. (“Mother”) appeals the Marion Superior Court’s order finding her child, C.W., in need of services (“CHINS”). Mother raises three issues which we consolidate and restate as the following: whether the trial court erred when it adjudicated C.W. to be a CHINS.

[2] We reverse and remand.

### **Facts and Procedural History**

[3] C.W. was born to Mother and J.W. (“Father”)<sup>1</sup> on November 26, 2019. Mother was twenty years old at the time and had been dating and living with thirty-eight-year-old Father for about four and one-half years. Though Father has three children from previous relationships, C.W. is Mother’s first child.

[4] When C.W. was about ten weeks old, Mother became concerned with how small he was. On expressing this concern to her primary care physician, Mother was referred to a gastrointestinal clinic. On February 6, 2020, Mother took C.W. to the clinic where “the GI doctor noted suspected inadequate caloric intake” and told Mother that C.W. needed to be admitted to Riley Hospital for Children immediately. Appellant’s App. pp. 26, 28. So, Mother took C.W. to Riley where he was “diagnosed with severe malnutrition and failure to thrive.” *Id.* at 26. Mother was unable to provide hospital personnel with “a clear feeding

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<sup>1</sup> Father does not participate in this appeal.

history” for C.W. and reported that she does “not wake him up to feed” during the night. *Id.*

[5] Soon after C.W. was admitted at Riley, DCS “received a report alleging an incident of neglect,” and an assessment worker investigated the claim. *Id.* at 25. Over the next three days, while C.W. remained in the hospital, the assessment worker learned that the child was severely malnourished. Mother did not realize she was supposed to wake C.W. for feedings—based on information she had received previously from a different hospital—and “thought everything was fine because he was sleeping” through the night. *Id.* at 27. She had since learned, however, that “the reasoning behind [C.W.]’s poor weight gain [was] due to him not eating at night.” *Id.* A hospital social worker reported that there were no other “medical concerns for [C.W.]” *Id.* at 28.

[6] During the investigation, the assessment worker also learned the following information: Mother had untreated mental health diagnoses; she was suffering from postpartum depression and having “daily thoughts of physically harming” C.W.; she had previously used methamphetamine, including during pregnancy; Father previously used methamphetamine; and Mother and Father have a history of domestic violence. *Id.* at 26–29. As a result of these troubling circumstances, DCS removed C.W. from parents’ care on an emergency basis and placed the child in foster care after he was released from the hospital.

[7] The next day, February 11, DCS filed a petition alleging C.W. to be a CHINS based on: (1) C.W.’s malnutrition due to not being fed properly; (2) Mother’s

untreated mental health issues; (3) parents' prior methamphetamine use; and (4) parents' history of domestic violence. *Id.* at 22–24. The court held an initial hearing that day, during which it granted temporary wardship of C.W. to DCS and set a hearing for February 28.

[8] In the intervening weeks, Mother—on her own—began receiving mental health treatment and taking prescribed medication. In fact, the day Mother took C.W. to the hospital she had an appointment scheduled with a mental health professional because she “didn’t know why” she was having negative thoughts about her son. Tr. p. 21. Though Mother missed that appointment to be with C.W., she learned—from talking “to one of the doctors at Riley”—about postpartum depression for the first time. *Id.* Within the next week, Mother met with a psychiatrist who prescribed medication and referred her to a therapist. Mother began taking the medication, followed up with the therapist, and started seeing both her psychiatrist and therapist on a regular basis.

[9] At the February 28 hearing, the court learned that C.W. was doing well in foster placement and had gained an additional pound. Mother’s counsel requested that C.W. be placed with parents, noting the “feeding schedule has been changed and the child is doing better.” Appellant’s App. p. 75. DCS objected, in part, because it first wanted “parents to participate in services.” *Id.* The court ultimately continued C.W.’s placement in foster care, authorized increased parenting time, and set a fact-finding hearing for March 27. But, due largely to issues related to the Covid-19 pandemic, the fact-finding hearing did not take place until the fall.

[10] During the intervening months, Mother maintained regular meetings with her psychiatrist and therapist and continued taking medication. She also worked with two facilitators who supervised visitations and provided parenting education. With the first facilitator, Susan Long, Mother attended “productive” bi-weekly parenting-education sessions. Tr. p. 26. They focused on “what the current problem was,” and Mother “learned about appropriate feeding for” C.W. *Id.* at 17, 26. But she only worked with Susan for “maybe a month or two” because Susan was set for a multi-week vacation and Mother “still wanted to be able to see [C.W.] within those two to three weeks.” *Id.* at 26–27. So, in May, Mother was assigned a second facilitator, Aleksandra Mrdak.

[11] Unlike her sessions with Susan, Mother’s time with Aleksandra was not beneficial. Mother felt that Aleksandra was disrespectful and that “[s]he would nit-pick . . . like it was either her way or the highway.” *Id.* at 28, 113–14.<sup>2</sup> So, although Mother met with Aleksandra “eight times” for parenting-education sessions, it was not for the “full two hours” each time, and the two “didn’t complete what [they] were supposed to complete” during their time together. *Id.* at 96–97. Aleksandra also supervised “ten to twelve” visits between Mother and C.W. *Id.* at 86. All but one of those visits, however, was with both parents. And Aleksandra observed “a lot of bickering” between Mother and Father. *Id.*

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<sup>2</sup> Father expressed a similar sentiment. *See* Tr. pp. 39–42

Ultimately, Aleksandra stopped working with the family on parenting education in July, and she stopped visitation in August.<sup>3</sup>

[12] On August 31 and September 3, the court held a fact-finding hearing on the CHINS petition. At that time, Mother was no longer living with Father and had recently rented a three-bedroom home where she had a bed, clothes, and food for C.W. She was still taking her medication and maintaining consistent sessions with her psychiatrist and therapist—all of which had been “helpful.” *Id.* at 23–24, 106–07. Mother explained that she “got the [postpartum] help” she needed and that she “know[s] how to do that differently.” *Id.* at 18. Additionally, Mother had learned how to appropriately feed C.W., she had not used any illicit substances “since the case started,”<sup>4</sup> and there had not been “any instance of domestic violence” between her and Father. *Id.* at 25–26, 29, 108–11. Mother also noted that she was employed and had transportation to get C.W. to his pediatric appointments. Accordingly, Mother reasoned that C.W. was no longer in need of services and could safely be returned to her care.

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<sup>3</sup> It is not clear why Mother’s last visit with C.W. was “shortly after July fourth.” Tr. p. 14. Mother said she “tried to reach out to [Aleksandra]” to understand why the visitations had stopped but received “no response.” *Id.* at 114; *see also id.* at 14. Mother also asked DCS family case manager Kim Reid why the visitations had stopped, but “all she really stated was [the facilitator] quit.” *Id.* at 114. FCM Reid indicated that she “put another [facilitator] in place” after Aleksandra cancelled the referral, but the record is silent as to when that occurred. *Id.* at 64. The gap may have been due to the foster home going under a two-week quarantine based on COVID-19 concerns, *see id.* at 71, but the record is also silent on when that took place.

<sup>4</sup> Mother also testified that she had been participating in drug screens but stated that they had ended “about a month” before the fact-finding hearing. Tr. pp. 15–16. There is no evidence on either the results of those screens or why they ended. We note, however, that DCS did not recommend Mother continue with drug screening at the fact-finding hearing. *See id.* at 57.

[13] Aleksandra, DCS family case manager (“FCM”) Kim Reid, and C.W.’s court appointed special advocate (“CASA”) Michelle Ferree did not agree with Mother. Aleksandra was troubled by her observation that Mother “forgets a lot” and demonstrates “a lack of reflection.” *Id.* at 100. She felt that Mother “still needs to work on parenting skills, she wants to learn and she is eager to learn but I think she needs to learn more.” *Id.* Aleksandra also expressed concern with Mother’s mental health issues. *Id.* at 100–01.

[14] FCM Reid acknowledged that Mother had previously indicated “she was feeling much better” due to receiving mental health treatment and taking medication, but the FCM wanted “to see some documentation” to verify Mother’s claims. *Id.* at 61–62, 70. FCM Reid said that she had asked Mother to “sign a release” for documentation back in February but acknowledged she had not followed up since then. *Id.* at 61, 72. And though FCM Reid knew Mother had moved, she had not yet seen the home and needed to do so to ensure it was “appropriate for [C.W.]” *Id.* at 60. As to Mother’s lack of success in parenting-education sessions with Aleksandra, FCM Reid noted that Mother was frustrated because she felt those sessions “didn’t directly relate to why the case was opened.” *Id.* FCM Reid explained to Mother that they “were going off the recommendations of the [parenting] assessment which reflected the needs or what services would be beneficial.” *Id.* at 61. And she wanted Mother to continue the parenting classes.

[15] The CASA recommended C.W. remain in foster care until “documentation is provided for the mental welfare of [Mother].” *Id.* at 82.<sup>5</sup> When asked why she had never requested this documentation from Mother, the CASA responded, “I thought that was the responsibility of the case worker.” *Id.* at 83. The CASA also acknowledged that she had never spoken with Mother about her mental health and that Mother had previously indicated, at a team meeting, that she was in treatment and taking medication.

[16] Notably, on the second day of the fact finding hearing, Mother brought documentation of her mental health treatment to alleviate the aforementioned concerns. *Id.* at 119–20. When Mother was questioned about why she had not previously provided documentation, she responded, “I was never asked so I thought maybe they didn’t need it.” *Id.* at 126. She also said that DCS had never asked her to sign “a release of information.” *Id.* at 107, 118–19.

[17] At the conclusion of the hearing, the trial court took the CHINS matter under advisement and then considered Mother’s request that C.W. be placed with her on temporary trial visitation (“TTV”). After hearing argument on the request, the court authorized TTV with Mother contingent on her establishing both compliance with mental health treatment and a safe home for C.W. Three weeks later, Mother apparently satisfied both requirements as C.W. was placed

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<sup>5</sup> The CASA also wanted to see clean drug screens for Father. Tr. p. 83.



in Mother's care. And DCS subsequently informed the court of the child's placement change. Appellant's App. p. 95.

[18] On December 9, after C.W. had been in Mother's care for about two-and-one-half months, the trial court issued a ruling adjudicating C.W. a CHINS and ordering DCS to prepare a predispositional report. *See id.* at 96–98. In the subsequently filed predispositional report, DCS noted that C.W. “is at home with” Mother where he “is a happy 1-year old boy” who has “gained significant weight and appears to have maintained the weight.” *Id.* at 110. The report also revealed that Mother was employed and receiving “community based therapy and medication management.” *Id.* at 109, 113. On December 18, the court held a dispositional hearing and entered a dispositional order.

[19] Mother now appeals.

### **Standard of Review**

[20] When reviewing a CHINS determination, we neither reweigh the evidence nor judge the credibility of witnesses. *In re D.J.*, 68 N.E.3d 574, 577–78 (Ind. 2017). Rather, we consider only the evidence supporting the court's decision and the reasonable inferences drawn therefrom. *Id.* at 578. Where, as here, the court supplemented its CHINS determination with findings of fact and conclusions of law, we undertake a two-step process. *Id.* We first consider whether the evidence supports the court's findings and, second, whether the findings support the ultimate decision. *Id.* Reversal of a CHINS determination is warranted if the court's decision was clearly erroneous. *Id.* “A decision is clearly erroneous if the

record facts do not support the findings or if it applies the wrong legal standard to properly found facts.” *Id.* (cleaned up).

## Discussion and Decision

[21] The focus of a CHINS determination is on the status of the child, not on an act or omission of the parent. *See, e.g., In re N.E.*, 919 N.E.2d 102, 105–06 (Ind. 2010); *In re S.C.*, 96 N.E.3d 579, 585 (Ind. Ct. App. 2017). A child therefore cannot be a CHINS “based solely on conditions that no longer exist.” *In re R.S.*, 987 N.E.2d 155, 159 (Ind. Ct. App. 2013). So, before entering a CHINS adjudication, our trial courts should consider the child’s status at the time the case is heard and the finding is made. *See D.J.*, 68 N.E.3d 574 at 576, 580; *In re A.R.*, 121 N.E.3d 598, 603 (Ind. Ct. App. 2019). Doing so avoids punishing a parent for a lapse in judgment or a past mistake when that parent has already taken corrective action. *D.J.*, 68 N.E.3d at 581. These considerations are vital in this context, as “a CHINS adjudication may have long-lasting collateral consequences for the family.” *In re S.D.*, 2 N.E.3d 1283, 1285 (Ind. 2014).

[22] Mother asserts that, at the time of the fact-finding hearing and the ultimate disposition, C.W. was not a CHINS under “the elements set forth in the black letter of the relevant statute.” Reply Br. at 4. That relevant statute here is [Indiana Code section 31-34-1-1](#), which requires DCS to prove the following elements by a preponderance of the evidence:

- (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.

I.C. § 31-34-1-1. The latter 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.’” *D.J.*, 68 N.E.3d at 580 (quoting *S.D.*, 2 N.E.3d at 1287).

[23] Mother concedes that “C.W.’s condition *was* at risk during the time following his birth” and that DCS’s emergency removal and implementation of services “may have been warranted” at the time. Appellant’s Br. at 9, 13. Her position on appeal, however, is that at the time of the fact-finding hearing and the CHINS determination, “there was no evidence that C.W. needed any particular ‘care, treatment or rehabilitation,’ much less evidence that his Mother would not provide same absent ‘coercive intervention’ from the court.” *Id.* at 15. She therefore asserts that the court’s contrary conclusions are clearly erroneous. On the unique facts of this case, we agree.

[24] In adjudicating C.W. a CHINS, the trial court concluded that coercive intervention was necessary to ensure that Mother receive (1) parenting education, and (2) consistent mental health treatment. As shown below, the court’s factual findings amply support a conclusion that coercive intervention was necessary early in the process. But those findings do not establish that such intervention was still necessary at the time of the fact-finding hearing and CHINS determination.

***1. The court erred in concluding that C.W. is a CHINS based on Mother’s parenting education.***

[25] In support of its conclusion that, without court intervention, Mother is unlikely to receive the parenting education necessary to enable her to provide appropriate care for C.W., the trial court found that Mother “did not ma[k]e progress” during sessions with Aleksandra, and that Mother believed she did not need “parenting education and it is irrelevant.” Appellant’s App. p. 97. These findings are flawed in two respects and do not support the court’s CHINS determination.

[26] We acknowledge that Aleksandra testified she and Mother “didn’t complete what [they] were supposed to complete in” their eight sessions together. Tr. p. 97. The court’s order, however, ignores uncontroverted evidence of Mother’s parenting-education sessions with her first facilitator, Susan, which were productive and addressed the original reason for DCS’s involvement. During several biweekly sessions with Susan, Mother learned how to appropriately feed and care for C.W. And Mother explicitly acknowledged that learning this

information was “helpful for a new mom.” Tr. p. 17. This uncontroverted evidence reveals that Mother made progress with Susan in addressing the reason for C.W.’s removal and that Mother benefitted from the relevant parenting education. And these observations lead to a second flaw in the court’s findings.

[27] The court’s findings do not support a conclusion that, at the time of the fact-finding hearing and the CHINS determination, C.W. needed care, treatment, or rehabilitation that he was not receiving or that Mother was unlikely to provide absent coercive court intervention.<sup>6</sup> The CHINS petition was based in relevant part on the allegation that Mother failed to provide C.W. “with adequate nutrition” due to the child “not being fed appropriately.” Appellant’s App. p. 22. And, at the time the petition was filed, DCS’s concern was well founded. But Mother resolved that concern over the ensuing months: she learned how to appropriately feed C.W. and provide the child with adequate nutrition. Indeed, the predispositional report reveals that since living with Mother for over two-and-one-half months, C.W. had “gained significant weight and appears to have maintained the weight.” *Id.* at 110.<sup>7</sup> *Cf. D.J., 68 N.E.3d at 576* (recognizing that

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<sup>6</sup> To the extent the CHINS determination is based on concerns with Father, the record establishes that C.W. has been living with only Mother for several months and that Mother and Father have not lived together since summer 2020. Tr. pp. 7, 31, 124, 140.

<sup>7</sup> We also take judicial notice of a February 5, 2021 order providing that C.W. “is thriving in Mother’s care” and “DCS does not have safety concerns.” *See Ind. Evid. R. 201.*

the record failed to support the court’s finding that coercive intervention was needed “at the time of the dispositional hearing”).

[28] As for the court’s conclusion that Mother needs unspecified “parenting education in order to provide [C.W.] with appropriate care and supervision,” Appellant’s App. pp. 97–98, we make two observations. First, Mother received and benefited from parenting-education sessions covering nutrition and feeding—the reason for C.W.’s removal from her care. The need for other generalized education is purely speculative. See *In re K.D.*, 962 N.E.2d 1249, 1256 (Ind. 2012) (“Speculation is not enough for a CHINS finding.”); see also *In re M.P.*, 162 N.E.3d 585, 592 (Ind. Ct. App. 2021). Second, Mother is a young, first-time parent. And “[i]f it were sufficient for the purposes of CHINS adjudications that a parent has no prior parenting experience or training, then all new parents would necessarily be subject to DCS intervention.” *In re S.A.*, 15 N.E.3d 602, 612 (Ind. Ct. App. 2014), *aff’d on reh’g*, 27 N.E.3d 287 (Ind. Ct. App. 2015), *trans. denied.*; see *In re E.K.*, 83 N.E.3d 1256, 1261 (Ind. Ct. App. 2017) (observing that a CHINS finding cannot be based solely on the fact that a parent “suffers from shortcomings”), *trans. denied.*

[29] In short, the record reveals that Mother loves C.W. and is providing him with a safe and stable home environment. So, while Mother’s young age and parenting inexperience may be a cause for concern in the eyes of DCS and the court, “a cause for concern is not the touchstone of a CHINS determination.” *In re L.N.*, 118 N.E.3d 43, 49 (Ind. Ct. App. 2019). We turn now to the court’s findings on Mother’s mental health issues.

**2. *The court erred in concluding that C.W. is a CHINS based on Mother's mental health issues.***

[30] In support of its conclusion that C.W. was in need of services because of Mother's mental health issues, the trial court expressed "significant concern that [Mother] will not continue to comply with mental health treatment and she will not sustain good mental health." Appellant's App. p. 97. Although, it was certainly within the court's discretion to discredit Mother's testimony about her treatment, we find no basis in the record to support the court's conclusion that—at the time of the fact-finding hearing and the CHINS determination—C.W. was in need of services based on Mother's mental health.

[31] The uncontroverted evidence reveals that Mother independently sought mental health treatment in February 2020. Since then she has consistently received treatment and taken prescribed medication. The predispositional report explicitly indicates that Mother had been receiving "community based therapy and medication management." Appellant's App. p. 107. Thus, while we do not question the sincerity of the court's concern, it does not support a conclusion that coercive intervention is needed to ensure Mother maintains treatment she sought out independently and had been receiving for nearly a year before the CHINS adjudication.

[32] In sum, C.W. was in need of services when DCS filed its petition. But by the time of the fact-finding hearing and the CHINS determination, the reasons for DCS's involvement had been rectified: Mother had learned how to appropriately feed C.W., who was thriving in her care; she was receiving

mental health services and taking prescribed medication; and there was no evidence of illicit drug use by Mother or domestic violence between Mother and Father since well before DCS's involvement. In turn, we agree with Mother that "[i]n this case, the system worked." Appellant's Br. at 17. But while DCS's early intervention was necessary, its continued intervention is not. The court's findings do not support its conclusion that, at the time of the fact-finding hearing and the ultimate adjudication, C.W. was in need of services.

### **Conclusion**

[33] The trial court erred when it found C.W. to be a CHINS. We therefore reverse the CHINS adjudication and remand for proceedings consistent with this opinion.

[34] Reversed and remanded.

Riley, J., and Crone, J., concur.