

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of W.M., IV,
A.M., G.M., A.H., and K.H.,
Minor Children Alleged to be
Children in Need of Services;
W.M., III (Father) and H.S.
(Mother),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

March 22, 2021

Court of Appeals Case No.
20A-JC-1697

Appeal from the Delaware Circuit
Court

The Honorable Kimberly S.
Dowling, Judge

The Honorable Amanda L.
Yonally, Magistrate

Trial Court Cause Nos.
18C02-2001-JC-27
18C02-2001-JC-28
18C02-2001-JC-29
18C02-2001-JC-30
18C02-2001-JC-31

Najam, Judge.

Statement of the Case

- [1] W.M., III (“Father”) and H.S. (“Mother”) (collectively, “Parents”) appeal the trial court’s adjudication of their minor children, W.M., IV; A.M.; G.M.; A.H.; and K.H. (collectively, “the Children”) as Children in Need of Services (“CHINS”). Parents raise a single issue for our review, namely, whether the trial court clearly erred when it adjudicated the Children to be CHINS.
- [2] We affirm.

Facts and Procedural History

- [3] Parents are not married and have two children together: W.M., IV, born April 15, 2008, and A.M., born August 7, 2011. Also living with Parents in 2019 and early January 2020 were Father’s daughter by another mother, G.M., born May 8, 2011, and Mother’s children by another father, A.H., born September 1, 2005, and K.H., born August 1, 2006. On October 31, 2019, ten days after a final hearing in which the trial court found that the Children were not Children in Need of Services (“CHINS”) in an unrelated proceeding, the Indiana Department of Child Services (“DCS”) received a report of domestic violence between Father and Mother with “their children present.” Tr. at 73. Jennifer Shipley, a case manager with DCS, initiated an assessment and went to Parents’ home. When Shipley told them why she was there, Parents began “arguing and yelling” at each other. *Id.* at 74. Three of the Children were home from school that day, and two of them came downstairs crying. K.H.

asked Parents to “stop arguing.” *Id.* Parents stopped arguing after Shipley threatened to call the police.

[4] A few weeks later, DCS was notified that another incidence of domestic violence had occurred between Parents. Shipley talked to Parents, who each admitted to arguing and breaking things while the Children were present. A few weeks later, DCS received a report that K.H. had smoked marijuana. Then, on January 9, 2020, Shipley did an assessment with Parents to address “previous domestic violence between [Parents],” the “family having a chaotic home environment,” and three of the Children “having poor school attendance.” *Id.* at 76. At that time, Parents agreed to enter an informal adjustment for services.

[5] On January 16, DCS received a report of domestic violence at Parents’ home with the Children present. Father was arrested for domestic battery. Samantha Winans, a DCS case manager, visited Parents’ home that night to investigate. After talking to Father, Mother, and G.M., Winans learned that Parents had argued in the presence of the Children, and Father had thrown liquid at Mother. Inside the home, Winans observed that “there were clothes all over the place, there was food sitting out[,] there was a large hole in the ceiling[,]” and there was no “power, heat, or running water” in the first floor of the two-story home. *Id.* at 27. Winans did see that there was a light on upstairs. The responding police officers told Mother that she could not stay in the home that night, so she took four of the Children and stayed elsewhere. And Winans found a place for G.M. to stay.

- [6] On January 22, DCS filed petitions alleging that the Children were CHINS based on the domestic violence between Parents and the lack of utilities in the home. DCS placed the Children in foster care. Parents fully participated in supervised visitation with the Children, but neither Father nor Mother participated in recommended services, which included Fatherhood Engagement Services for Father and homemaking services for Mother.
- [7] Following a factfinding hearing on the CHINS petitions in July, the trial court found in part that: Parents both admitted to having “frequent arguments” that “often result in yelling and throwing and/or breaking items” in the presence of the Children; the Children have been “pushed down and/or physically injured when they have attempted to stop the fighting” between Father and Mother; the Children do not feel safe when Parents are fighting; Father sometimes turns off the utilities to the home when they are fighting; and Parents have not engaged in recommended services to address the domestic violence or conditions of the family home. Father’s App. Vol. III at 69. Accordingly, the trial court found that each of the Children’s physical or mental condition is seriously endangered as a result of the inability, refusal, or neglect of Parents to supply the Children with necessary shelter, education, and supervision free from domestic violence in the home. The Court also found that each of the Children needs care and treatment that they are not receiving and are unlikely to be provided or accepted without the coercive intervention of the court. The court then adjudicated the Children to be CHINS and entered dispositional orders following a hearing. This appeal ensued.

Discussion and Decision

- [8] Parents contend that the trial court clearly erred when it adjudicated the Children to be CHINS. As our Supreme Court has explained:

In all CHINS proceedings, the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. When reviewing a CHINS adjudication, we do not reweigh evidence or judge witness credibility and will reverse a determination only if the decision was clearly erroneous. 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.

V.B. v. Ind. Dep't of Child Servs., 124 N.E.3d 1201, 1208 (Ind. 2019) (citations and quotation marks omitted).

- [9] DCS alleged that the Children were CHINS pursuant to Indiana Code Section 31-34-1-1, which provides that a child under the age of eighteen is a CHINS under the following circumstances:

(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.

As our Supreme Court has explained, “[t]hat final 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.’” *J.B. v. Ind. Dep’t of Child Servs. (In re S.D.)*, 2 N.E.3d 1283, 1287 (Ind. 2014) (quoting *Lake Cty. Div. of Fam. & Child. Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)). When considering this requirement, “courts should consider the family’s condition not just when the case was filed, but also when it is heard.” *Gr. J. v. Ind. Dep’t of Child Servs. (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.

- [10] Parents filed separate briefs on appeal, but their arguments are identical. Parents assert that: the evidence does not support the allegation that Father had “pushed” Mother on January 16, 2020, or that he had thrown any liquid on Mother; the Indiana Department of Health has provided a “clearance” letter regarding the habitability of the family home; there was no evidence that the home was without electricity; the police had not been called to the home since January 16, 2020; and Parents have “participated very successfully in supervised visitation.” Father’s Br. at 13. Parents maintain that, “[b]ecause the conditions that arose [o]n January 16, 2020, either did not exist, or no longer existed at the time of the [factfinding] hearing” in July, the trial court erred when it found the Children to be CHINS. *Id.*

[11] Parents' contentions on appeal amount to a request that we reweigh the evidence, which we cannot do. DCS presented evidence that Father was arrested on January 16, 2020, because he threw a cup of liquid containing vinegar at Mother while the two were arguing. The Children were present during that altercation, and they have reported several occasions where Parents' fighting had been physical and occasions where the Children had been hurt trying to break up fights between Parents. Parents make no contention on appeal that they have done anything to address what they admitted to the court were "frequent arguments" that "often result in yelling and throwing and/or breaking items." Father's App. Vol. III at 69.

[12] This Court has held that "a child's exposure to domestic violence can support a CHINS finding." See *M.W.B. v. Ind. Dep't of Child Servs. (In re K.B.)*, 24 N.E.3d 997, 1003 (Ind. Ct. App. 2015). The CHINS statutes do not require that a trial court wait until a tragedy occurs to intervene. *N.P. v. Ind. Dep't of Child Servs. (In re R.P.)*, 949 N.E.2d 395, 401 (Ind. Ct. App. 2011). Instead, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.*

[13] At the factfinding hearing, Miles Hill, the Court Appointed Special Advocate testified that the Children "don't feel safe" and have "experienced trauma" due to Parents' fighting. Tr. at 135-36. On appeal, Parents assert that police have not been called to their home since January 16, 2020, but they do not direct us to any evidence that they have done anything to address the history of domestic violence between them. We hold that the trial court's detailed findings are supported by the evidence and are more than adequate to establish that the

family's need for court intervention to protect the Children is ongoing. In sum, we hold that DCS presented sufficient evidence to support the juvenile court's determination that the Children are CHINS.

[14] Affirmed.

Pyle, J., and Tavitas, J., concur.