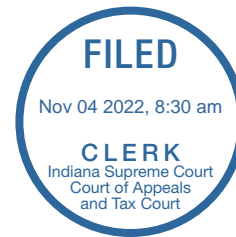


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Cathy Serrano
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Indianapolis, Indiana

Frances Barrow
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of D.L., A.P.L.,
and D.A. (Minor Children),
and

S.P.L. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

November 4, 2022

Court of Appeals Case No.
22A-JC-1585

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

The Honorable Beth A. Webber,
Magistrate

Trial Court Cause Nos.
02D08-2203-JC-116
02D08-2203-JC-117
02D08-2203-JC-118

May, Judge.

[1] S.P.-L. (“Mother”) appeals the adjudication of her three children, D.L., A.P.-L., and D.A. (collectively, “Children”) as Children in Need of Services (“CHINS”). Mother argues the trial court’s findings do not support its conclusion that Children are CHINS because: (1) Children are not endangered; and (2) Children’s needs were met without coercive intervention of the court. We affirm.

Facts and Procedural History

[2] Mother and D.M.A. (“Father”)¹ are the parents of D.L., A.P.-L., and D.A., born March 6, 2010, October 30, 2012, and December 20, 2018, respectively. In 2018, DCS became involved with the family because the hospital reported D.A. was born drug-exposed. The 2018 investigation did not result in a CHINS adjudication. In 2019, DCS was again involved with the family after D.L. accessed a firearm in the family’s home and sustained a self-inflicted gunshot wound that resulted in the loss of his left pinkie finger. It is unclear from the record whether the 2019 incident resulted in a CHINS adjudication.

[3] In June 2021, Mother and Children moved in with Mother’s parents (“Maternal Grandparents”). On January 23, 2022, Mother left Maternal Grandparents’ home to go to the grocery store, and Maternal Grandmother supervised Children in Mother’s absence. While Mother was away, nine-year-old A.P.-L.

¹ Father is a party in the CHINS proceeding but he does not participate in this appeal.

accessed the garage through the kitchen door. Therein he located “some type of semiautomatic handgun rifle” and accidentally shot himself with it. (Tr. Vol. II at 10.)

[4] In response to a 911 call, police arrived at the residence to find A.P.-L. on the floor of the garage with a gunshot wound to the “upper left chest.” (*Id.*) Officers also noticed “a large pool of blood coming from his mouth[.]” (*Id.* at 9.) An ambulance transported A.P.-L. to the hospital, where doctors treated A.P.-L.’s gunshot wound and his resulting injuries, which included a broken rib and lacerated lung. Police subsequently searched Maternal Grandparents’ home and removed ten unsecured firearms.

[5] DCS received a report of the shooting from police and began an investigation. Family Case Manager John Qualls (“FCM Qualls”) testified he observed the scene of the shooting and talked to Mother about the incident. A.P.-L. was released from the hospital on January 29, 2022, and joined Mother, D.L., and D.A. at Mother’s sister’s house, where the family had relocated immediately following the shooting.

[6] On February 17, 2022, Mother and FCM Qualls agreed to a safety plan that required Mother to secure all firearms in the home, not allow Children to be around adults who have unsecured firearms in their home or possession, schedule counseling appointments for D.L. and A.P.-L., enroll in counseling, and refrain from the use of illegal substances in Children’s presence. Mother also agreed as part of the safety plan to engage with Community Partners, a

homebased services organization, to address Mother’s lack of housing and employment.

[7] On March 3, 2022, Mother sent a text message to FCM Qualls and asked DCS to take custody of Children because “she was concerned about her ability to care for [them].” (*Id.* at 33.) On March 4, 2022, Mother met with FCM Qualls regarding her request that DCS take custody of Children. During that meeting, Mother “indicated that she would continue to use marijuana [and she] did not want to follow through with the Community Partners referral[.]” (*Id.* at 38.) Because DCS had not yet filed a petition alleging Children were CHINS, FCM Qualls could not force Mother to participate in any services, and Children remained in her care.

[8] On March 15, 2022, DCS filed a petition alleging Children were CHINS based on the January 23, 2022, shooting incident, Mother’s marijuana use, and the family’s prior interactions with DCS. Mother and Father denied the allegations in the petition and the trial court allowed Children to remain with Mother as long as there were no firearms inside the residence where they stayed. On June 6, 2022, the trial court held a factfinding hearing.

[9] Father, who was incarcerated for committing Level 5 felony carrying a handgun without a license,² admitted Children were CHINS. FCM Qualls testified regarding the shooting incident and DCS’s prior contact with the

² Ind. Code § 35-47-2-15(e).

family. DCS also presented evidence that Mother tested positive for marijuana on March 9, March 18, April 5, and April 13, 2022. Family Case Manager Sarah Weinewald (“FCM Weinewald”) testified A.P.-L.’s gunshot wound was healed but he “does have some issues with his left hand and arm where it’s numb and some tingling sensation” and Mother was taking him to all scheduled medical appointments to address those issues. (*Id.* at 55.)

[10] Mother testified she and Children still resided with Mother’s sister, she was employed by Amazon, and she had her own transportation. She further testified that A.P.-L. was in counseling and had a case manager at Park Center and that D.L. did not yet have a therapist but received homebased services. Mother also indicated she was participating in therapy and medication management through Park Center. Mother testified her Medicaid benefits paid for the services for Mother, A.P.-L., and D.L. While Mother agreed some of the services provided by DCS were “a little helpful[,]” Mother stated she did not need DCS services because she “feel[s] like [she] can manage on [her] own.” (*Id.* at 75.)

[11] On June 6, 2022, the trial court adjudicated Children as CHINS. On June 16, 2022, the trial court held a dispositional hearing on the matter. The same day, the trial court entered its dispositional order requiring Mother to, among other things, enroll in family and individual counseling, refrain from criminal activity and illegal drug use, submit to random drug screens, complete mental health and substance abuse assessments and follow all recommendations, follow all

recommendations regarding Children's treatment plan, and ensure there are no firearms in the home or around Children.

Discussion and Decision

[12] Mother challenges Children's adjudications as CHINS. Because a CHINS proceeding is a civil action, 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). The CHINS petition was filed pursuant to Ind. Code § 31-34-1-1, which states:

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.

DCS must also prove “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.” Ind. Code § 31-34-1-2.

[13] A CHINS adjudication focuses on the needs and condition of the child, rather than the culpability of the parent. *In re N.E.*, 919 N.E.2d at 105. The purpose of a CHINS adjudication is not to punish the parent but to provide proper services for the benefit of the child. *Id.* at 106. “[T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* at 105. “A CHINS adjudication can also come about through no wrongdoing on the part of either parent[.]” *Id.*

While we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that - a determination that a child is in need of services. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. Only when the State moves to terminate a particular parent’s rights does an allegation of fault attach. We have previously made it clear that CHINS proceedings are “distinct from” involuntary termination proceedings. The termination of the parent-child relationship is not merely a continuing stage of the CHINS proceeding. In fact, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child.

Id. (citations omitted).

[14] When a trial court enters findings of fact and conclusions of law in a CHINS decision, we apply a two-tiered standard of review. *In re Des. B.*, 2 N.E.3d 828,

836 (Ind. Ct. App. 2014). We first consider whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We may not set aside the findings or judgment unless they are clearly erroneous. *Id.*

Findings are clearly erroneous when the record contains no facts to support them either directly or by inference, and a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.* We give due regard to the trial court's ability to assess witness credibility and do not reweigh the evidence; we instead consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.* We defer substantially to findings of fact but not to conclusions of law. *Id.* Unchallenged findings "must be accepted as correct." *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1991).

Mother does not challenge any of the trial court's findings.

[15] The trial court issued an order adjudicating Children as CHINS in which the court found:

1. That since June, 2021 to January 23, 2022, Mother and [Children] were residing the home with multiple firearms, one of which was unsecured and in the garage within access to nine-year-old [A.P.-L.]. These firearms were removed from the home by police on January 23, 2022.

2. That on January 23, 2022, [A.P.-L.], was alone and unsupervised and entered the garage where a firearm was within the access of the child. [A.P.-L.] accessed a firearm and sustained a self-inflicted a [sic] gunshot wound to his chest. The Court finds the bullet exited the child, went through the wall of the garage, and then through the wall in the kitchen. The Court

finds the other two children were in the residence at the time, and that Mother was getting groceries.

3. That prior to January 23, 2022, Mother had instructed [Children] not to go into the garage, however, [A.P.-L.] was unsupervised in the garage that he accessed through the kitchen door.

4. That [D.L.] had previously accessed a firearm in the home of Mother and Father in 2019, and self-inflicted a gunshot wound resulting in the loss of his left pinkie finger, resulting in a substantiated assessment with the Department of Child Services.

5. That on January 23, 2022, [D.L.] (age 12) found [A.P.-L.] after he was shot and has suffered trauma as a result.

6. That [A.P.-L.] has suffered trauma from his injuries that included ongoing physical and psychological injuries.

7. At the time of the investigation on January 23, 2022, there was a strong odor of marijuana in the home when officers first entered the home where [Children] resided.

8. On January 23, 2022, the Department referred Mother to a number of services, namely, Community Partners, to provide her with community-based services to assist the family.

9. It is uncontroverted that on or about March 3, 2022, Mother contacted the Department of Child Services and asked them to remove [Children]; that she would not stop using marijuana; and that she was not going to participate in services. Ultimately, [Children] were not removed, but the Department sought Court intervention.

10. During the course of this matter, Mother has tested positive for marijuana on three occasions, that she contends she uses for her anxiety. Mother has a prior substantiated when her youngest child, [D.A.], was born drug-exposed in 2018.

* * * * *

12. Ultimately, Mother disputes that the coercive intervention of the Court is required.

13. At the time of the factfinding, Mother contended that she and [Children] had accessed services through Park Center. Although this was not verified by the State, the Court will assume she is testifying truthfully. At the time of the trial, the Court also finds through Mother's testimony, that [A.P.-L.] has been assigned a case manager, and [D.L.] has an upcoming appointment. The Court also finds that Mother contends she was participating in therapy, but had not yet received a benefit from services with respect to her drug use.

14. The Court finds that Mother is also receiving Family Preservation Services through the State of Indiana. These services include homebased casework services, and Mother has found them "a little helpful."

(App. Vol. II at 39-40) (errors in original).

[16] Based thereon, the trial court concluded:

A. The Court concludes that it was only upon the intervention of the State that protective measures were taken to ensure [Children] did not have access to firearms. This is even after one child had already accessed a firearm and injured himself in 2019. The Court concludes that if a lesson were to be learned and

protective measures to be taken, it would have been in 2019. Mother had a duty to protect and supervise; however, under her supervision, or lack thereof, two tragedies have occurred. The State attempted to provide services prior to seeking Court intervention and Mother refused; even asking the State to remove [Children] at one point.

B. Mother contends that the Courts [sic] intervention is no longer necessary as she has accessed services through Park Center that are covered by her own Medicaid benefit. However, this does not account for the Family Preservation Services which will address the condition of the home, which has been the most dangerous condition faced by [Children]. Although, services may have been started, even Mother agrees a benefit has not yet been realized, and this Court is gravely concerned whether she will continue to comply without the coercive intervention of the Court, given her historical pattern of conduct.

C. A CHINS adjudication under Indiana Code section 31-34-1-1 requires 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. The Court concludes [Children] are Children in Need of Services.

(*Id.* at 40.)

[17] Mother provides two arguments why the trial court erred when it adjudicated Children as CHINS. First, Mother contends the trial court's findings do not support its conclusion that her actions or inactions have seriously endangered Children or that Children's needs are unmet. Second, Mother argues coercive intervention of the court is not necessary.

1. Children Seriously Endangered or Needs Unmet

- [18] To support her argument that the trial court's findings do not support its conclusion that Children are seriously endangered or their needs are unmet, Mother likens the facts here to those in *Perrine v. Marion Cnty. Office of Child Servs.*, 866 N.E.2d 269 (Ind. Ct. App. 2007). In *Perrine*, we held a "single admitted use of methamphetamine, outside the presence of the child and without more, is insufficient to support a CHINS determination." *Id.* at 277. Mother asserts the facts of her case are similar to those in *Perrine* because the trial court adjudicated Children as CHINS based on her marijuana use, which she contends was outside Children's presence. She also argues there is no nexus between her drug use and Children's endangerment.
- [19] Mother's argument ignores the fact that Children were not adjudicated as CHINS based solely on Mother's multiple instances of drug use. Children were adjudicated as CHINS based on Mother's drug use, Mother's request that Children be removed from her care, and perhaps most importantly, Mother's inability to protect Children from gun-related injuries. Unlike *Perrine*, this is not a case of a single incident of drug use prompting DCS intervention. Instead, the facts here show a history of Children's endangerment stemming from Mother's repeated inability to protect them from unsecured firearms and illegal drug use. The trial court's unchallenged findings indicate A.P.-L. and D.L. were victims of self-inflicted gunshot wounds, Mother tested positive for marijuana three times prior to the trial court's order adjudicating children as CHINS, and D.A. was born drug-exposed in 2018. Therefore, the trial court's

findings support its conclusion that Children were endangered based on Mother's inability to meet their needs. *See Matter of L. T.*, 145 N.E.3d 864, 872 (Ind. Ct. App. 2020) (child endangered and needs unmet based on history of domestic violence and physical abuse of child and older siblings).

2. Coercive Court Intervention

[20] Mother also asserts the trial court's findings do not support its conclusion that Children's needs will be unmet without coercive intervention of the court because she took A.P.-L. to all medical appointments to address his ongoing injuries from his self-inflicted gunshot wound to the chest and had secured therapy for herself, D.L., and A.P.-L. through Medicaid. However, the trial court found Mother admitted some of the homebased services she received through Family Preservation Services were "a little helpful." (App. Vol. II at 40.) Additionally, the trial court found that, while Mother was engaged in services, she had not yet "received a benefit from services with respect to her drug use" as was evident from her multiple positive screens for marijuana. (*Id.*) Based thereon, we conclude the trial court's findings support its conclusion that Children's needs will remain unmet without coercive intervention of the court. *Contra Matter of E. Y.*, 126 N.E.3d 872, 878 (Ind. Ct. App. 2019) (family did not have a history of DCS intervention or criminal charges and, after initial DCS involvement based on unsubstantiated allegations of domestic violence, the coercive intervention of the court was not required as to father because he had participated in services and children were provided services).

Conclusion

[21] The trial court's findings supported its conclusions that Children were endangered because of Mother's inability to meet their needs and that Children's needs would remain unmet without the court's coercive intervention. Accordingly, we affirm the trial court's adjudication of Children as CHINS.

[22] Affirmed.

Crone, J., and Weissmann, J., concur.