

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

Zachary J. Stock
Carmel, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of K.D. and J.D.,
Children in Need of Services,
J.W. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

March 31, 2021

Court of Appeals Case No.
20A-JC-1867

Appeal from the Hendricks
Superior Court

The Honorable Mary G. Willis,
Judge

Trial Court Cause Nos.
32D03-2005-JC-22
32D03-2005-JC-23

Brown, Judge.

- [1] J.W. (“Mother”) appeals the trial court’s order that her children are children in need of services (“CHINS”). Her sole claim is that the court erred in admitting evidence of an interview of the children. We affirm.

Facts and Procedural History

- [2] Mother had K.D., who was born in 2010, and J.D., who was born in 2012. According to its preliminary inquiry report, the Indiana Department of Child Services (“DCS”) received a report on May 20, 2020, alleging neglect which indicated there was methamphetamine and heroin use in the home, Mother had sores all over her body and her face was sunken in, she had been in a domestic violence incident with her boyfriend the previous day with the children present, her boyfriend threatened to burn the house down, and syringes were seen in the home. The preliminary inquiry report stated DCS Family Case Manager Angela McFeeley (“FCM McFeeley”) called Hendricks County Dispatch and requested law enforcement assistance at Mother’s home, FCM McFeeley was met at the home by law enforcement and was informed they had fourteen calls to the home in the prior three months, Mother did not permit FCM McFeeley to enter the home and at times the things she said did not make sense, and that, under exigent circumstances, FCM McFeeley interviewed the children at the home of their adult sister, B.W. The report described the statements of the children, including that K.D. indicated she had not been doing her schoolwork, they did not eat lunch, they have eggs for dinner and sometimes crackers after dinner, she cooked the eggs for herself and J.D., and Mother sits in her bed all day. The children described domestic violence between Mother and her ex-

boyfriend. The report stated FCM McFeeley spoke with the children's father, who indicated he had concerns for the children with Mother, she uses drugs, and he was unable to care for the children. The report indicated that B.W. stated Mother had been an opiate user for about fifteen years and that Mother had contacted her to pick up the children for a couple of days, and B.W.'s spouse, J.R., stated he picked up the children. The report indicated Mother refused to cooperate with DCS, was belligerent, demanded that DCS and law enforcement leave her home, and refused to allow FCM McFeeley inside the home, and the children's father was in agreement with the children being placed with their adult sister. The report indicated the date of removal was May 20, 2020, and the children were placed with their adult sister.

- [3] On May 21, 2020, DCS filed Requests for Authorization to File a Petition and Request for Taking or Continued Custody requesting that the court consider the preliminary inquiry report and evidence of probable cause in the report and authorize petitions alleging the children were CHINS. At the same time, DCS filed petitions alleging the children were CHINS. On May 22, 2020, the court issued orders authorizing the filing of the petitions and stating that it had considered the preliminary inquiry report and found probable cause to believe the children were CHINS. The petitions alleged in part that DCS received a report of alleged neglect, there was methamphetamine or heroin use in the residence, and Mother's boyfriend threatened to burn down the house and battered Mother; FCM McFeeley interviewed the children and their adult sibling B.W.; the children reported being responsible for their daily food and

hygiene; Mother refused to work with FCM McFeeley to create a safety plan to avoid DCS involvement; the residence was observed to be laden with trash, and syringes were visible in open areas accessible to the children; and the children's father reported that he was unable to provide care for them. The petitions indicated the children had been removed with the assistance of law enforcement.

- [4] On May 22, 2020, the court held a detention/initial hearing, and on June 10, July 8, and August 6, 2020, the court held an evidentiary hearing. The court heard testimony from FCM McFeeley, J.R., B.W., the children's father, the children's CASA, J.D.'s teacher, and a DCS permanency worker. At one point during FCM McFeeley's testimony, Mother's counsel objected and stated "[s]he's speaking to the statements that the children made," and the court sustained the objection. Transcript Volume II at 55. The court found the children were CHINS and stated "specifically, under educational neglect." *Id.* at 179. On August 21, 2020, the court entered an order that the children were CHINS which included fifty-six numbered findings of fact. The court held a dispositional hearing and issued a dispositional order.

Discussion

- [5] Mother argues that DCS interviewed the children without her permission and that the product of the interview should not have been admitted into evidence. The State argues that Mother does not specify the evidence she believes should have been excluded, that it appears she is challenging one of the reasons in the

preliminary inquiry report in support of DCS bringing a CHINS action, and that any error is harmless.

[6] The admission of evidence is entrusted to the sound discretion of the juvenile court. *Matter of A.F.*, 69 N.E.3d 932, 941-942 (Ind. Ct. App. 2017), *trans. denied*. We will find an abuse of discretion only where the juvenile court's decision is against the logic and effect of the facts and circumstances before the court. *Id.* at 942. If a juvenile court abuses its discretion by admitting challenged evidence, we will reverse for that error only if it is inconsistent with substantial justice or if a substantial right of the party is affected. *Id.*

[7] Ind. Code § 31-33-8-1 requires DCS to “initiate an appropriately thorough child protection assessment” of every report of known or suspected child abuse or neglect it receives and provides that, if the safety or well-being of a child appears to be endangered or the facts otherwise warrant, the assessment shall be initiated regardless of the time of day. Ind. Code § 31-33-8-7(a) provides the assessment, to the extent reasonably possible, must include the nature, extent, and cause of the known or suspected child abuse or neglect; the identity of the person allegedly responsible for the child abuse or neglect; the names and conditions of other children in the home; an evaluation of the parent, guardian, custodian or person responsible for the care of the child; the home environment and the relationship of the child to the parent, guardian, or custodian or other persons responsible for the child's care; and all other data considered pertinent. Ind. Code § 31-33-8-7(b) provides the assessment may include a visit to the child's home and an interview of the child. Ind. Code § 31-33-8-7(d) provides

that, if consent to an interview cannot be obtained, DCS may petition a court to order the custodial parent, guardian, or custodian of the child to make the child available to be interviewed. The assessment as described by Ind. Code § 31-33-8-7 is a preliminary process by DCS following the receipt of a report in order to evaluate whether a basis exists to substantiate the report and which may require action of some nature by the state to protect the child or children. *In re A.H.*, 992 N.E.2d 960, 967 (Ind. Ct. App. 2013), *trans. denied*.

- [8] The statutory provisions related to the filing of a petition alleging that a child is a CHINS, found at Ind. Code §§ 31-34-9, provide that DCS must request the juvenile court to authorize the filing of a CHINS petition, *see* Ind. Code § 31-34-9-1, that the juvenile court shall “[c]onsider the preliminary inquiry and the evidence of probable cause that is contained in the report of the preliminary inquiry or an affidavit of probable cause” and authorize the filing of a petition if the court finds probable cause to believe the child is a CHINS. Ind. Code § 31-34-9-2. A child is a CHINS if 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 the child needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court. Ind. Code § 31-34-1-1. *See* Ind. Code § 31-34-2-3 (permitting a child to be taken into custody without a court order under certain circumstances including that a caseworker has probable cause to believe the child is a

CHINS). “The extent and nature of DCS’s role in completing an assessment under Ind. Code § 31-33-8-7, including a child interview, to determine whether a report is substantiated is clearly distinct from the coercive intervention of DCS on behalf of the state under the CHINS proceedings in Ind. Code §§ 31-34.” *In re A.H.*, 992 N.E.2d at 968.

[9] Here, Mother does not point to the evidence which she challenges or to interview statements of the children which were admitted as evidence at the evidentiary hearing in support of DCS’s allegations the children were CHINS. Moreover, the trial court’s order adjudicating the children to be CHINS contained numerous findings of fact supporting the conclusion that the children’s physical or mental condition is seriously impaired or seriously endangered and they need care, treatment, or rehabilitation that they are not receiving and are unlikely to be provided or accepted without the coercive intervention of the court. Mother does not challenge these findings of fact, and thus they stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*. The court found that the children appeared dirty and disheveled, had noticeable body odor and spots of dirt on their clothing, and K.T.’s hair was substantially matted; for approximately five weeks, Mother refused to engage in addressing DCS’s safety concerns; and Mother was removed from a family team meeting for refusing to cease recording. At another family team meeting, Mother used excessive profanity and behaved in a threatening manner, stating she did not

want CASA speaking to her children; the children's father stated he has safety concerns for the children being in Mother's care due to her use of methamphetamine and marijuana; the father is unable to provide ongoing care for the children at this time; and the father resided with Mother for eight months during which time she spent substantial portions of her time locked in her bedroom and the residence commonly smelled of marijuana.

[10] The court found that the children missed around thirty-five days of school during the 2019-2020 academic year, multiple absences were reflected for being out of town, illness, or oversleeping; from April 13 through May 22, 2020, the children failed to submit any e-learning materials after their school closed in-person education; both children have an incomplete reflected on their report cards for the fourth academic quarter of the 2019-2020 school year; and J.D. has an ongoing individualized education plan due to having health impairments. J.D.'s ongoing pleas regarding his hunger escalated to the point that his teacher purchased snacks with her own funds and sent them home with him; the school provided J.D. with toothbrushes and the opportunity to brush his teeth at the nurse's office; B.W. and J.R. resided with Mother for approximately one year starting in November 2017, and during that time observed her spend approximately seventy-five percent of her time in her bedroom outside the children's presence and observed domestic violence between Mother and her then-boyfriend; and CASA opined the children's lack of participation in e-learning and extensive absences from school will not be corrected without coercive court intervention.

[11] The court further found that Mother reported there are groups of individuals on the internet whose goal is to ruin her life based on her claims of being a public figure in child welfare; Mother was charged with false informing and disorderly conduct in 2017 and convicted of disorderly conduct in June 2018; and Mother created a post in June 2020 claiming the government kidnapped the children in retaliation of her speaking for child protective services reform and included a link where money could be forwarded under the pretense that doing so would help reunify her and the children. The court also found that, during the evidentiary hearing held via Zoom, Mother repeatedly left her computer for durations ranging from thirty seconds to thirty minutes or more, and she was observed to be vaping and gesticulating wildly throughout DCS's presentation and could be seen to be yelling or vocally commenting on testimony despite being muted. The court found it is in the children's best interests to be removed from the home environment because of an inability, refusal, or neglect to provide shelter, care, education and/or supervision at the present time and the children need protection that cannot be provided in the home.

[12] Under the circumstances, and in light of the unchallenged findings and evidence, we cannot say that Mother's substantial rights were affected or that reversal is warranted.

[13] For the foregoing reasons, we affirm the trial court.

[14] Affirmed.

Vaidik, J., and Pyle, J., concur.