

## 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 the Matter of A.A. (Minor  
Child), a Child in Need of  
Services,

M.M. (Mother),  
*Appellant-Respondent,*

v.

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

January 13, 2022

Court of Appeals Case No.  
21A-JC-1671

Appeal from the Hendricks  
Superior Court

The Honorable Karen M. Love,  
Judge

Trial Court Cause No.  
32D03-2102-JC-16

**Weissmann, Judge.**

[1] During a drunken melee in February 2021, M.M. (Mother) battered her baby's putative father, C.A. (Putative Father), her baby's putative paternal great-grandfather, and the family dog, leading to M.M.'s arrest on domestic violence and animal cruelty charges. The Indiana Department of Child Services (DCS) alleged, and the trial court found, that the baby (A.A.) was a child in need of services (CHINS). Mother appeals, contending the domestic violence was an aberration and that Putative Father is aptly able to care for A.A. without court supervision. As paternity of the child has not been established and Mother was uncooperative and combative throughout the CHINS proceeding, we reject Mother's claims that state intervention is not justified and affirm the CHINS determination.

## Facts

[2] When Mother gave birth to A.A. in September 2020, the boy tested positive for THC due to Mother's marijuana use. Tr. Vol. II, pp. 81, 97. DCS investigated, substantiated the report of drugs in A.A.'s system, and ultimately closed the case without removing A.A. from Mother. *Id.* at 97. When A.A. was about five months old, Mother struck Putative Father, A.A.'s putative great-grandfather, and the family dog in A.A.'s presence during a wine-fueled rage at the putative great-grandparents' home, where Mother and Putative Father were living. Police responded, and Mother was charged with intimidation, animal cruelty, and two counts of battery. The criminal court entered a no-contact order barring Mother's contact with Putative Father and A.A.'s putative great-

grandfather. Mother eventually pleaded guilty to misdemeanor battery, and the other charges were dismissed. The no-contact order ended.

- [3] While the charges were pending, DCS petitioned for a finding that A.A. was a CHINS, as Mother was in jail and Putative Father had no legal right to custody of A.A. because he had not established paternity. At the CHINS factfinding hearing, at which Mother did not appear, Putative Father admitted A.A. was a CHINS. The trial court found A.A. to be a CHINS, placed A.A. with Putative Father, and eventually ordered Mother to complete various services, including a parenting assessment, substance abuse assessment, and random drug screens.

## Discussions and Decision

- [4] Mother contends the evidence is insufficient to support the trial court's determination that A.A. is a CHINS. She essentially argues that continued court intervention is not required because she engaged in domestic violence only once and Putative Father is readily capable of caring for A.A. without court intervention. Given Putative Father's lack of custodial rights at the time of the CHINS determination and Mother's continuing pattern of troubling behavior, we disagree.

## I. Applicable Law

- [5] DCS alleged, and the trial court found, that A.A. was a CHINS under Indiana Code § 31-34-1-1. That statute provides in relevant part:

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:

(A) when the parent, guardian, or custodian is financially able to do so . . . 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.

Ind. Code § 31-34-1-1.

[6] DCS bears the burden of proving by a preponderance of the evidence that a child is a CHINS. Ind. Code § 31-34-12-3; *see also In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). In an appeal from a CHINS determination, we will not reweigh evidence or judge witness credibility. *In re D.J. v. Ind. Dep't of Child Servs.*, 68 N.E.3d 574, 577-78 (Ind. 2017). Instead, we consider only the evidence and reasonable inferences supporting the trial court's decision. *Id.* at 577-78. We will reverse a CHINS determination only if the decision is clearly erroneous. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012).

## II. CHINS Determination

- [7] Mother contends A.A. was not a CHINS under Indiana Code § 31-34-1-1 because his endangerment was only temporary. She also contends that court intervention is unnecessary in light of Putative Father's ability to care for A.A. independently. Mother, however, ignores important facts that justified continuing court intervention.
- [8] Father indicated he had not filed the paternity paperwork as of the date of the CHINS factfinding hearing. Tr. Vol. II, p. 46. Although the paternity action was pending at the time of the dispositional hearing, a paternity finding had not been made. *Id.* at 117. Therefore, Mother, who was not married to Putative Father, was the sole legal custodian of the child. Ind. Code § 31-14-13-1. In that capacity, Mother legally could remove A.A. from Putative Father's home absent a pending court action.
- [9] Yet Mother had shown that she was not able to care for A.A. Mother admitted to having high levels of THC in her system after DCS first became involved with the family and while A.A. was in her care. *Id.* at 97. A DCS worker testified that she had concerns about Mother's ability to supervise A.A. while using marijuana. *Id.* at 93. DCS also warned Mother that breastfeeding while using illegal substances was dangerous to A.A. Tr. Vol. II, p. 62. Mother refused to stop either activity. *Id.*
- [10] Mother also endangered A.A. through domestic violence. Although Mother casts the domestic violence incident as aberrational, Mother showed volatility

repeatedly after her arrest. She was combative and uncooperative with DCS workers throughout the CHINS proceeding. She did not see A.A. for months as a result and admitted to needing to “get [herself] better” before parenting A.A. Tr. Vol. II, p. 95. She threatened suicide to persuade Putative Father to allow her to visit with A.A. in his home, despite orders barring such visits without outside supervisors. Mother told one DCS worker to kill herself and lashed out at DCS workers again at the dispositional hearing. *Id.* at 90, 97, 99. Mother’s behaviors led DCS to suspect mental illness. *Id.* at 90.

[11] These circumstances are far different from those in *Ad.M. v. Ind. Dep’t of Child Servs.*, 103 N.E.3d 709, 714 (Ind. Ct. App. 2018), upon which Mother relies heavily. 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 [§] 31-34-1-1.” But in *Ad.M.*, the permanency case manager admitted that she “really [couldn’t] see the way” the mother’s marijuana use impacted the children and DCS presented no evidence that the parents had ever used drugs while the children were present or that they ever were impaired by substance abuse while the children were in their care.

[12] Unlike in *Ad.M.*, DCS adequately proved that Mother’s behaviors, including her drug use, endangered A.A., who needed care from a custodial parent that he was not receiving and was unlikely to be provided without coercive court

intervention. *See* I.C. § 31-34-1-1. As the CHINS determination was not clearly erroneous, we affirm the trial court's judgment.

Najam, J., and Vaidik, J., concur.