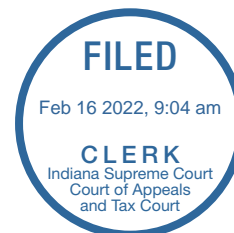


MEMORANDUM DECISION

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

In the Matter of K.B., a Child in
Need of Services;

R.B. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

February 16, 2022

Court of Appeals Case No.
21A-JC-2087

Appeal from the Hendricks
Superior Court

The Honorable Karen M. Love,
Judge

Trial Court Cause No.
32D03-2105-JC-30

Najam, Judge.

Statement of the Case

- [1] R.B. (“Mother”) appeals the juvenile court’s adjudication of her minor child, K.B. (“Child”), as a child in need of services (“CHINS”). Mother¹ raises one issue for our review, namely, whether the juvenile court erred when it admitted certain evidence at the fact-finding hearing.
- [2] We affirm.

Facts and Procedural History

- [3] Mother gave birth to Child on December 17, 2010. Child was diagnosed with autism, and she has a “limited” ability to communicate. Tr. at 43. Child uses “vague responses,” does not engage in “back-and-forth communication,” and “repeat[s]” what other individuals say. *Id.* Child also has a history of “[s]creaming,” “[c]rying,” and “[h]itting herself or others with her hands and kicking.” *Id.* at 45.
- [4] On May 2, 2021, the Indiana Department of Child Services (“DCS”) received a report that Mother was physically abusing Child because she was unable to control Child’s behaviors. The next day, DCS Family Case Manager (“FCM”) Melissa Connell assessed the family. FCM Connell observed that Child had “slight bruising” around her eye. Appellant’s App. Vol. 2 at 24. In addition, during the assessment, DCS obtained voicemails that Mother had left her adult

¹ Child’s father does not participate in this appeal.

son, Ry.B. (“Brother”), and Brother’s wife, M.B. In those voicemails, Mother indicated that she was “done with” Child and that she would “kill” Child if Brother did not get her from Mother’s care. *Id.*

[5] DCS substantiated the allegation and removed Child from Mother’s care. Following several unsuccessful placements, DCS ultimately placed Child at DAMAR Residential Services. On May 4, DCS filed a petition alleging Child to be a CHINS. Thereafter, the court held a fact-finding hearing on DCS’s petition. During the hearing, Brother testified that, when he was five years old, Mother’s boyfriend had touched him “in a sexual manner,” and that he had reported it to Mother. Tr. at 93. Brother then began to testify about Mother’s response, but Mother objected on the ground that that testimony was irrelevant. The court overruled Mother’s objection, and Brother testified that Mother did not believe him.

[6] Following the fact-finding hearing, the court found and concluded in relevant part as follows:

5. Child is diagnosed with autism. Child has some ability to communicate with others, but it is limited. Child uses very vague responses and does not engage in reciprocal back-and-forth conversation in the way a traditional conversation between two individuals may play out. Child commonly repeats back what has been said to her by other individuals and will repeat a single word or phrase.

* * *

8. Dr. [Danielle] Nance's [the Director of Psychological Services at DAMAR] conclusions include a recommendation that Mother would benefit from support services for caregivers of Children with autism, and that Mother harbors misperceptions of Child's abilities that Mother has interpreted from previous service providers that are inaccurate and negatively impacting Mother's care of Child. Further, Dr. Nance concluded that additional education, support, and validation of normative behaviors for adolescents with autism will increase Mother's parenting confidence and the overall well-being of Child.

9. Mother struggles to fully understand what Child has the ability to interpret given Child's autism diagnosis.

* * *

13. Child has sustained multiple bruises while placed at DAMAR. There is no conclusive information indicating causation of these bruises. [Mia] Craven[, a case manager at DAMAR,] received reports of these bruises appearing after Child has visits with Mother at DAMAR. There were no prior incident reports indicating any events that occurred at DAMAR to cause Child's bruising.

* * *

17. DCS involvement with Child, Mother, and Father was most recently prompted through a report received on May 2, 2021[,] of alleged neglect of Child by Mother. The report alleged that Child had been struck in the face and that Mother was behaving aggressively. During the course of this assessment, the DCS received three voicemails left by Mother with [Brother] and [M.B.] on May 2 and May 3, 2021.

18. The three voicemails Mother left were volatile and aggressive toward [Brother] and [M.B.]. The voicemails pertained to Mother's desire for [Brother] and [M.B.] to provide care for Child, and that [Brother] would be Child's legal caregiver if Mother were to pass away. Mother expressed that she "can't take it anymore" in reference to Child's daily behaviors resulting from her autism diagnosis, and Child's interruptions to Mother's efforts to sleep. Mother stated she would be dropping Child off at [Brother's] residence, exclaiming "I'm tired of it," "I can't handle it no more," "I'm done with her," "If you don't come get her I will f***ing kill her," "I'm done trying to give a s**t," "I'm done fighting for her," "I'm done caring," "If you don't come and get her, I'm leaving in a half-hour to drop her off at your front door and you better f***ing take care of her cause God only knows what's gonna f***in [sic] happen to her."

19. Mother's references to "her" in the voicemails were in reference to Child.

* * *

22. Since August 2016, the local DCS office has completed nine assessments for alleged physical abuse or neglect of Child by Mother. All of these reports have been unsubstantiated until the May 2, 2021[,] report, which was substantiated against Mother for physical abuse

* * *

31. [The Court Appointed Special Advocate] has ongoing safety concerns for Mother's ability to safely attend to Child's high level of needs, and does not believe Child can safely resume placement with Mother at this time.

* * *

37. On or around May 2, 2021, Mother disclosed to [M.B.] that Mother physically struck Child and that Child likely had “busted” blood vessels around her eye as a result of this strike. This information is consistent with the report that prompted DCS involvement that same day.

38. [M.B.] also participated in a video phone call with Mother on May 2, 2021. [M.B.] could observe Child in the background of this video call and observed bruising and an inflamed blood vessel around Child’s right eye that was consistent with Mother’s description.

39. Mother has made ongoing disclosures to [M.B.] within the last two years regarding Mother having suicidal ideations. The most recent occurrence of this was on or around May 2, 2021[,] when Mother sent text messages to [Brother] expressing that Mother “prayed tonight God will just take us both so I don’t have to worry about who will give a s**t about her and care for her if my life ends”—this message was Mother referencing herself and Child.

40. In the winter of 2020, Mother disclosed to [M.B.] that Mother was contemplating abandoning Child at a fire station after Child had a bout of vomiting.

41. [Brother] is the adult sibling of Child. Mother physically abused [Brother] during his childhood when he was approximately five to seven years old. Mother would throw [Brother] up against walls, threw him into a bed frame, and would strike him with clothes hangers and objects with enough force to cause the objects to break. During his childhood, [Brother] disclosed to Mother that he was sexually abused by

Mother's boyfriend, and Mother took no action in response to that disclosure.

42. The Court finds [M.B.] and [Brother] to be credible.

43. During or around November 2020, Mother contacted [M.B.] and disclosed that Mother had thrown a phone at Child's face, resulting in a gash above Child's right eyebrow. Mother contacted [M.B.] to ascertain whether or not Mother should seek medical attention for Child. Mother further disclosed that she intended to inform medical staff that Child had r[u]n into a countertop if Mother was questioned about the causation of the injury. Mother further disclosed that she felt her cellphone case was too hard, which was why throwing the phone had caused an injury to Child. Mother further disclosed that she intended to throw her phone at Child's chest in the future as a result.

* * *

45. Child has been a client of KidsCount [ABA Therapy] for approximately three years and has received full time weekly care and therapy for autism during this time. KidsCount has provided transportation during this time as well.

46. KidsCount attempted to provide family therapy to Mother and Child, but Mother would not participate due to the need to drive to KidsCount and attempt this service in another building.

47. [Alexandria] Crumb[, the Director of KidsCount,] has personally joined transport visits to Mother's residence over the past year. During these interactions, Ms. Crumb has observed Mother to yank Child's arm with enough force to cause Child's body to stumble forward. Ms. Crumb has also had to separate

Mother and Child during these meetings as a result of Mother yelling and escalating emotions.

48. KidsCount has an internal procedure for documenting when children arrive at their center with bruises or injuries. Child has arrived with bruises on a monthly basis since 2018. Child also arrived with a black eye in Spring of 2021.

* * *

50. Despite provision of services to Mother through KidsCount, Mother continues to struggle to safely attend to Child's daily needs.

51. [Child] is a special needs Child, and her ability to communicate is very limited and she cannot meaningfully participate in her own development of a safety plan to attend to her ongoing care and relies upon caregivers to keep her safe.

52. Mother requires additional education and training on how to safely manage and address Child's basic needs given Child's autism diagnosis.

53. The coercive intervention of the Court is necessary in this case. Mother has physically abused this special needs child. Mother has threatened to kill this child. Mother has threatened suicide. Mother needs extensive help with her own mental health and mental stability. Mother also needs education and support to help Mother manage [Child's] daily behaviors in ways that are physically and mentally safe for [Child].

A parent's past conduct is a good indicator of future conduct. Before DCS was involved KidsCount attempted to provide

Mother with family therapy and Mother refused to participate in family therapy at KidsCount.

The Court carefully observed Mother as evidence was presented. Based on Mother's demeanor, her tone of voice and Mother's overall testimony, the fact that Mother participated in some services at KidsCount but [Child's] care continued to deteriorate, and [Child's] inability to articulate and advocate for her own needs, the coercive intervention of the Court is essential. An informal adjustment is not appropriate.

54. The Court carefully observed Mother during her testimony via ZOOM. Although Mother has voluntarily participated in homebased case management since July 2021 and has agreed to complete a psychological evaluation, based on all the evidence presented, the Court finds that the coercive intervention of the Court is necessary for this special needs child to be physically and emotionally safe.

Appellant's App. Vol. 2 at 82-87. Accordingly, the court adjudicated Child to be a CHINS. This appeal ensued.

Discussion and Decision

[7] Mother contends that the court abused its discretion when it admitted certain evidence at the fact-finding hearing. "Our standard of review of a trial court's admission or exclusion of evidence is an abuse of discretion." *E.B. v. Ind. Dep't of Child. Servs. (In re Des.B.)*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014). A trial court abuses its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

[8] Mother specifically asserts that the court abused its discretion when it admitted Brother's testimony regarding Mother's lack of response to his disclosure of sexual abuse when he was five years old because that testimony was irrelevant. Indiana Evidence Rule 401 provides that evidence is relevant if it "has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." On appeal, Mother maintains that "[r]elevance would be expanded beyond all recognition if a 20-year-old mistake involving a different child during a different phase of life can be applied to a parent's credibility in the present." Appellant's Br. at 8.

[9] However, we need not decide whether Brother's testimony was relevant. Rather, we agree with the State that any error in the admission of that evidence was harmless. It is well established that errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. *In re Des.B.*, 2 N.E.3d at 834. To determine whether the admission of evidence affected a party's substantial rights, we assess the probable impact of the evidence upon the finder of fact. *Id.*

[10] Here, Mother does not challenge any of the trial court's findings. As such, they are accepted as true. *See L.M. v. Ind. Dep't of Child. Servs. (In re S.S.)*, 120 N.E.3d 605, 610 (Ind. Ct. Ap. 2019). And as the trial court found, the evidence demonstrates that Mother has: "misperceptions" about Child's abilities, which "negatively" impacted her ability to care for Child; threatened to kill Child if Brother did not take her from Mother's care; "physically struck" Child;

threatened to abandon Child at a fire station; “thrown a phone” at Child’s face and “intended to throw her phone at Child’s chest in the future”; “yank[ed]” Child’s arm hard enough to cause Child to “stumble forward”; and had suicidal ideations. Appellant’s App. Vol. 2 at 82-86. And those findings support the trial court’s conclusion that Mother “needs extensive help with her own mental health and mental stability. Mother also needs education and support to help Mother manage [Child’s] daily behaviors in ways that are physically and mentally safe for [Child].” *Id.* at 87.

[11] In other words, while the court mentioned Mother’s lack of response to Brother’s disclosure in one finding, there is ample independent evidence to support the CHINS adjudication. As such, we can say with confidence that the probable impact of R.B.’s testimony was sufficiently minor so as to not affect Mother’s substantial rights. Accordingly, any error in the trial court’s admission of Brother’s testimony was harmless. We therefore affirm the trial court.

[12] Affirmed.

Vaidik, J., and Weissmann, J., concur.