

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT C.G.:

Nathaniel S. Connor
Jordan Law, LLC
Richmond, Indiana

ATTORNEY FOR APPELLANT R.G.:

Ronald J. Moore
The Moore Law Firm, LLC
Richmond, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Deputy Attorney
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

Bra.G. & Bry.G. (*Minor Children*),
Children in Need of Services,
and

C.G. (*Mother*) & R.G. (*Father*),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner,

February 3, 2022

Court of Appeals Case No.
21A-JC-1442

Appeal from the Wayne Superior
Court

The Honorable Darrin Dolehanty,
Judge

Trial Court Cause Nos.
89D03-2101-JC-16
89D03-2101-JC-17

Robb, Judge.

Case Summary and Issue

- [1] R.G. (“Father”) and C.G. (“Mother”) (collectively, “Parents”) are the parents of two children, Bra. and Bry. (“Children”). The Children were removed from Parents’ care in January 2021 and adjudicated children in need of services (“CHINS”) in May. A dispositional order was entered in June granting wardship to the Indiana Department of Child Services (“DCS”) with a permanency plan of reunification. Father and Mother each appeal the CHINS adjudication, both essentially raising one issue for our review: whether DCS provided sufficient evidence to support the CHINS finding. Concluding the evidence is sufficient and the CHINS adjudication is not clearly erroneous, we affirm.

Facts and Procedural History

- [2] Bra. was born to Parents in July 2019. In July 2020, Mother was the victim of domestic violence at Father’s hands. Mother was pregnant with Bry. at the time and Bra. was present during the incident. Responding officers reported Father was extremely intoxicated when they arrived. They also reported the home was “in disarray, filthy and dirty[,]” with broken glass and “stuff” all over the floor. [Father’s] Appendix, Volume 2 at 29. As a result of this incident, Mother and Bra. were transported to the hospital and Father was arrested and charged with domestic battery, a Level 6 felony. Immediately following this

incident, Mother and DCS developed a safety plan that entailed Mother and Bra. no longer living with Father and Mother filing for divorce and a protective order. However, Mother failed to follow through, and she and Bra. continued to live with Father.

[3] In August 2020, the family and DCS entered into and the juvenile court approved a six-month Program of Informal Adjustment (“IA”) and the family began intensive family preservation services, encompassing substance and alcohol abuse assessments and services, family and individual counseling and therapy, a domestic violence assessment, and case management services under one service provider. During the IA, Parents were generally cooperative with service providers, but their progress was slow and very minimal. They failed to attend all scheduled appointments and refused to submit to drug screens. Father failed to attend therapy to address acts of domestic violence. Mother tested positive for amphetamine when Bry. was born in December 2020. Parents neglected to take Bry. to his first scheduled doctor’s appointment.

[4] In early January 2021, the IA was extended as to Bra. for three months. On January 8, 2021, a team meeting was held at Parents’ home. The home was very messy, despite counseling a couple of weeks earlier about the importance of keeping the home clean, especially since Bra. was mobile and many unsanitary and unsafe items were within his reach. Father appeared to be under the influence of some substance, as his eyes were glassy, he was very agitated, and he was disheveled, wearing his underwear over his pants. During this meeting, the team discussed with Parents their failure to attend scheduled

appointments with service providers, inability to pay their utilities, and failure to cooperate with safety checks.

[5] On January 15, 2021, Mother suffered a mental health episode that led to a 72-hour in-patient admission for “delirium due to amphetamine intoxication, methamphetamine induced psychosis, and maybe some unspecified depressive disorder.” [Father’s] Transcript of Evidence, Volume II at 56. A urine screen conducted upon Mother’s admission showed the presence of amphetamines, cannabis, and MDMA. Mother maintained that she had a prescription for amphetamines, but that was never verified. After three days of treatment with medication, Mother had made a significant improvement and was discharged with a recommendation for follow-up outpatient care.

[6] In Mother’s absence, Father and DCS had developed a safety plan requiring him to constantly supervise the Children, observe safe sleep practices with them, and improve the condition of the home to make sure hazardous items were out of reach. The behavioral clinician who had been working with Parents during the IA drove Mother home after her discharge and saw a plastic pipe with smoke residue in the rounded end in the home. Father also appeared to be intoxicated at this time. The clinician made a report and DCS responded to the assessment request. Over the course of the next several days, DCS found concerning conditions in the home, including unsafe sleeping practices for the children and potentially dangerous items such as tools strewn about within the Children’s reach. Both Parents refused to submit to drug testing and DCS was therefore unable to confirm there was a sober caregiver in the home.

[7] Thereafter, DCS filed a CHINS petition and requested the Children be removed from Parents' custody "[d]ue to concerns of parental drug use while caring for the children, as well as [Mother's] unstable mental health and concerns with ongoing domestic violence[.]" [Father's] App., Vol. 2 at 44. On January 27, 2021, the juvenile court found that it was in the Children's best interest to be removed from Parents' home "because of Mother's and Father's inability to provide drug-free, sober care, and supervision" despite DCS efforts to prevent removal of the Children. *Id.* at 87. The juvenile court subsequently terminated the IA.

[8] During the time between the Children's removal and the CHINS fact-finding hearing, Parents were not under a dispositional order, but DCS continued services from the IA and put additional services in place. Parents had supervised visits with the Children three times per week which went well and during which they showed love, care, and a family bond. But otherwise, Parents were no longer cooperative with DCS after the Children were removed. Father was erratic, verbally aggressive, and appeared to be intoxicated at a meeting with DCS shortly after the Children's removal. Mother missed slightly less than half of her scheduled meetings with her behavioral clinician, though her attendance improved as time went on. Both Parents repeatedly declined requested drug screens. Father made several threatening phone calls and sent several threatening texts to a family case manager, and she felt unable to go to the home alone because of Father's instability. Father also made numerous calls to the DCS hotline alleging abuse of Bra. by his foster family, none of

which were substantiated. Referrals and services for both Parents were closed out because of non-cooperation or non-compliance, although they did both complete an intake assessment a week prior to the fact-finding hearing (but again declined to participate in a drug screen as part of the assessment). That assessment recommended that both Parents participate in services to address serious mental health issues.

[9] In sum, DCS pursued a CHINS adjudication because

[w]e've offered services to parents to address their needs that are not being engaged with. We've attempted to be in the home to work with the parents. Not allowed to be in the home. We've asked for drug screens. Have not been provided drug screens. So, at this point, it's for the overall safety and stability [of the Children] until parents can engage in services and demonstrate the ability to provide for their [Children] in a safe environment.

[Father's] Tr., Vol. II at 116.

[10] Following a fact-finding hearing in May, the trial court concluded:

2. Since August 2020, Mother and Father have been given opportunities to participate in needed services without the Court's coercive intervention.
3. During the Informal Adjustment Programs, Mother and Father did not participate in all scheduled services.
4. In these cases, Mother and Father have not voluntarily participated in all referred and scheduled services.

5. Mother and Father continue to need services, including mental health services.

6. The DCS has met its burden by a preponderance of the evidence that the children are CHINS pursuant to I.C. 31-34-1-1, specifically that:

a. the children's physical and mental conditions are seriously endangered as a result of Mother's and Father's inability to provide the children with shelter, care, and supervision;

b. the children need care; and

c. the children's care is unlikely to be provided without the coercive intervention of the Court and financial assistance from DCS.

Appealed Order at 6. Accordingly, the Children were adjudicated CHINS.

After the dispositional order was entered in June, Mother and Father timely filed their notices of appeal.

Discussion and Decision

I. Standard of Review

[11] A CHINS proceeding is a civil action; thus, "the State 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); *see also* Ind. Code § 31-34-12-3. We neither reweigh the evidence nor judge the credibility of the witnesses but consider only the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom and will reverse only upon a showing that the juvenile court's decision was clearly erroneous. *Egley v.*

Blackford Cnty. Dep't of Pub. Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992).

Further, in family law matters, we generally grant latitude and deference to trial courts in recognition of their unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied*.

II. CHINS Adjudication

[12] In this case, DCS alleged the children were CHINS under the general category of neglect defined in Indiana Code section 31-34-1-1.¹ The statute reads as follows:

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

¹ There are several different statutory circumstances that, if proven, would make the child a CHINS. Ind. Code §§ 31-34-1-1 to -11. Most CHINS adjudications, as this one did, fall under subsection 1, the "neglect" statute. See *In re K.D.*, 962 N.E.2d 1249, 1254 (Ind. 2012).

(B) is unlikely to be provided or accepted without the coercive intervention of the Court.

Ind. Code § 31-34-1-1. Our supreme court has interpreted the neglect statute to require proof of three basic elements: 1) that the parents' actions or inactions have seriously endangered the child; 2) that the child's needs are unmet; and 3) that those needs are unlikely to be met without State coercion. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014).

[13] A CHINS adjudication focuses on the condition of the child and does not establish culpability on the part of a particular parent. *In re N.E.*, 919 N.E.2d at 105. Thus, a child can be adjudicated a CHINS based on one or both parents' behavior. *In re K.D.*, 962 N.E.2d at 1255 (noting situations in which a CHINS adjudication is based on only one parent's behavior such as a child being born positive for alcohol or drugs); *see also In re N.E.*, 919 N.E.2d at 105 (noting that a CHINS adjudication can also arise through no wrongdoing by either parent, such as when a child substantially endangers his own health or the health of another). Because a CHINS determination establishes the status of the child alone, a separate analysis as to each parent is not required at the CHINS determination stage. *In re N.E.*, 919 N.E.2d at 106.

[14] Father argues that the juvenile court's conclusions that the Children's condition was seriously endangered and that the Children's needs were unmet are unsupported by the evidence and contrary to law. *See* Brief of [Father] at 13-15. Mother argues that the juvenile court's conclusion that the Children's needs are unlikely to be met without the coercive intervention of the court is unsupported

by the evidence.² *See* [Mother's] Brief at 8. Essentially, Parents collectively challenge whether the juvenile court clearly erred in finding that DCS proved each element (aside from age) of the CHINS neglect statute.³

A. Neglect

[15] The juvenile court concluded that DCS proved the Children's physical and mental conditions were seriously endangered as a result of Mother's and Father's inability to provide them with shelter, care, and supervision. The CHINS statute does not require a court to wait until a tragedy occurs to intervene. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is not to punish the parents, but to protect the child. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied.*

[16] The record contains evidence showing that DCS's involvement with the family began when Father became intoxicated and battered Mother while she was pregnant with Bry. and Bra. was just a few feet away. At that time, Parents'

² To the extent Father argues that the evidence does not support that *he* is unable or has refused or neglected to provide needed care and support for the Children and Mother argues the evidence does not support that *she* will not provide care for the Children without the court's intervention, we note again that the CHINS adjudication focuses on the children and not on a particular parent's behavior. *See supra* ¶ 13. We consider the evidence as a whole, not as to each Parent.

³ Neither Parent specifically challenges any of the juvenile court's findings of fact. Therefore, we accept the findings as true and determine only whether the unchallenged findings are sufficient to support the juvenile court's judgment. *In re A.M.*, 121 N.E.3d at 562.

home exhibited dirty, hazardous, and inappropriate conditions for a child and continued to do so even after DCS counseled Parents repeatedly about the need to keep the home clean and put dangerous items out of the Children's reach. Parents also required multiple reminders of safe sleeping practices for the Children as providers often found the Children in their cribs surrounded by blankets, coats, and other items. Father appeared intoxicated on several occasions throughout the IA and leading up to the CHINS adjudication, including on one occasion when he was solely responsible for supervising and caring for the children in Mother's absence. Mother tested positive for drugs when Bry. was born and again a month later when she was hospitalized due to a mental health breakdown. When Mother returned home after three days of inpatient mental health treatment, there was used drug paraphernalia in the home. Neither Parent ever submitted to a drug screen when requested by DCS.

[17] Evidence that Parents exposed the Children to an environment of domestic violence, alcohol and illegal drug use, and unsafe home conditions is more than sufficient to support the juvenile court's finding that the Children's physical and/or mental conditions were seriously impaired or endangered by Parents' acts and omissions.

B. Coercive Intervention

The "need for coercive intervention" element of the CHINS statute "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." *In re S.D.*, 2 N.E.3d

at 1287 (quotation omitted). When considering this element, “courts should consider the family’s condition not just when the case was filed, but also when it is heard.” *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.

[18] The juvenile court heard testimony regarding the Parents’ history of failing to comply with and benefit from services offered during the IA, which continued even after the CHINS petitions were filed. Despite their voluntary agreement to the IA, the Parents did not readily accept the help offered through that program and did not make progress on the goals of the IA. They did not participate in therapy to address the domestic violence that precipitated these events, nor did they address the substance abuse or mental health issues that were evident throughout their involvement with DCS. They were unable or unwilling to remedy their home conditions and to employ safe sleep practices for the Children despite repeated instruction. And once the CHINS petitions were filed, Parents not only did not engage in the services that continued to be offered other than supervised visitation, but they also actively pushed back against efforts to monitor their substance use and home conditions by refusing drug screens and access to their home. Because of this, it is unlikely that Parents’ own issues and their repeated failures to adequately supervise and care for the Children will be resolved without court intervention.

[19] Mother’s and Father’s attempts to minimize their own culpability are not well taken, as they disregard the evidence most favorable to the juvenile court’s

judgment concerning the condition of the Children. As a whole, the juvenile court's findings support its judgment that the Children's mental or physical conditions were seriously endangered by Parents' inability, refusal, or neglect to supply necessary shelter, care, or supervision, and that the Children need care that they are not receiving and that is unlikely to be provided without the coercive intervention of the court.

Conclusion

[20] DCS presented sufficient evidence to support the juvenile court's determination that the Children are CHINS and the juvenile court's judgment is affirmed.

[21] Affirmed.

Riley, J., and Molter, J., concur.