

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

In the Matter of C.F., A.J., and D.J., Jr. (Minor Children);
T.J., (Mother),
Appellant-Respondent

v.

The Indiana Department of Child Services,
Appellee-Petitioner

March 22, 2024

Court of Appeals Case No.
23A-JC-2140

Appeal from the Lawrence Superior

The Honorable Nathan G. Nikirk, Judge
The Honorable Anah H. Gouty, Referee

Trial Court Cause No.
47C01-2305-JC-201
47C01-2305-JC-202
47C01-2305-JC-203

Memorandum Decision by Judge Pyle
Judges Tavitas and Foley concur.

Pyle, Judge.

[1] **Statement of the Case**

[2] T.J. (“Mother”) appeals the trial court’s order adjudicating her three children, C.F. (“C.F.”), D.J., Jr., (“D.J.”), and A.J. (“A.J.”) (collectively “the children”), to be Children in Need of Services (“CHINS”). Mother specifically argues that there is insufficient evidence to support the adjudications. Concluding that the Department of Child Services (“DCS”) presented sufficient evidence to support the CHINS adjudications, we affirm the trial court’s judgment.¹

[3] We affirm.

[4] **Issue**

[5] Whether there is sufficient evidence to support the CHINS adjudications.

[6] **Facts**

[7] The evidence most favorable to the CHINS adjudications reveals that Mother is the parent of daughter C.F., who was born in February 2009; son D.J., who

¹ C.F.’s father was served with notice but failed to attend any of the proceedings. He is not participating in this appeal. The father of D.J. and A.J. stipulated that his children were CHINS.

was born in October 2014; and daughter A.J. who was born in November 2018. Mother first became involved with DCS in June 2018, when someone called 911 to report that then three-year-old D.J. was wandering unattended in the street. By the time that a law enforcement officer had arrived at the scene, Mother had located D.J. Mother told the officer that she had been watching D.J. through the kitchen window while he was playing outside with other children in the unfenced back yard. Mother further told the officer that she was pregnant and that she had left the kitchen when she had become nauseous. Mother believed that D.J. must have left the back yard while she was in the bathroom.

[8] A few days later, a DCS case manager went to Mother's home to speak with Mother about D.J. leaving the back yard. As the case manager knocked at the front door, she smelled the strong odor of marijuana. The case manager also heard a child, who was trying to turn the door knob, yell for Mother. When no one answered the front door, the case manager called the Bedford Police Department ("the Police Department"), and a police officer arrived at the scene. Thereafter, Mother opened the front door. After a search of the home revealed marijuana and paraphernalia, Mother told the case manager that she used marijuana to help with the nausea that she suffered as a result of being pregnant.

[9] The following day, Mother submitted to a urine drug test, which was positive for methamphetamine, amphetamine, and THC. When the case manager confronted Mother with the positive test results, Mother "disclosed a life[-]long

struggle with depression and ideation for self-harm.” (Ex. Vol. at 12). Mother further “disclosed long-term marijuana use, prior alcohol abuse which was prior to her current pregnancy, [and] long-term methamphetamine use, which she smoked.” (Ex. Vol. at 12). In addition, Mother told the case manager that she had previously used methamphetamine “regularly and then quit but had ‘a moment of weakness’ due to the friends she was hanging out with and [had] used[.]” (Ex. Vol. at 12-13).

[10] Mother participated in a substance abuse evaluation, which revealed that Mother met “the criteria to be diagnosed with moderate and recurrent major depressive disorder, moderate cannabis use disorder, mild amphetamine use disorder, and severe alcohol use disorder that [was] currently in sustained remission.” (Ex. Vol. at 13). As a result of Mother’s diagnoses, the evaluator recommended that Mother attend individual therapy to address her mental health issues and an intensive outpatient program to work on her substance abuse. In August 2018, Mother and DCS entered into an informal adjustment, which was discharged in January 2019.

[11] Four years later, in January 2023, the Police Department received a telephone call that now eight-year-old D.J. was wandering around Bedford without parental supervision. The Police Department received a similar telephone call in March 2023. Following the March 2023 telephone call, DCS Case Manager Lindsay McGuire (“Case Manager McGuire”) met with Mother at Mother’s home. During the meeting, Mother showed Case Manager McGuire the measures that she had taken to keep D.J. from escaping from her home.

Specifically, Mother had installed door alarms and locks in the home. She had also installed a fence around the home with locks on the gate. Mother explained that when she was at work, her brother and fourteen-year-old C.F., who attended school remotely, were responsible for watching D.J. According to Mother, her brother and C.F. did not always utilize the alarm system or lock the doors, and D.J., who did not attend school, “was getting out[.]” (Tr. Vol. 2 at 75). Case Manager McGuire observed that the measures that Mother had put in place “were what [DCS] would’ve recommended initially.” (Tr. Vol. 2 at 42). Case Manager McGuire referred Mother to the Lawrence County Sheriff’s Department Project Save a Life program, which would provide Mother with a tracking device for D.J. Mother accepted the referral and “asked for all the help she could get.” (Tr. Vol. 2 at 47). Case Manager McGuire also referred Mother to Ireland Home-Based Services, and, that same week, Mother began working to address D.J.’s behaviors with family preservation specialist Tina Burres (“Specialist Burres”).

[12] One month later, on April 24, 2023, the Police Department received another telephone call about D.J. wandering around Bedford without parental supervision. Bedford Police Department Major Jeremy Bridges (“Major Bridges”) was dispatched to the scene and recognized D.J., who was barefooted. Major Bridges took D.J. home and spoke to Mother about his concerns regarding D.J. Major Bridges considered arresting Mother that day for neglecting D.J. but instead contacted DCS.

[13] When Case Manager McGuire returned to Mother's home to speak with her about D.J., Case Manager McGuire learned that Mother's home did not have electricity because Mother had been unable to pay the electric bill. Mother and the children were living in the garage, where Mother had set up a generator and a space heater. During the meetings with Mother, Mother told Case Manager McGuire that D.J. had participated in multiple assessments and evaluations, therapy, and inpatient psychiatric treatment. In her interactions with D.J., Case Manager McGuire noticed that he suffered from "significant mental health behavioral issues."² (Tr. Vol. 2 at 45). Mother also told Case Manager McGuire that D.J. was not enrolled in school because the school had refused to accept him.³

[14] Following the meeting with Mother, Case Manager McGuire offered her an informal adjustment. Mother told Case Manager McGuire that she wanted the help. Four days later, on April 28, 2023, Case Manager McGuire reviewed the informal adjustment paperwork with Mother. Mother and DCS signed the paperwork, and Case Manager McGuire submitted it to the trial court.

² D.J.'s pre-dispositional report reveals that he "has a significant history of physical aggression and violence towards people and animals – including three cats that he has killed. He has stolen, deliberately engaged in fire setting, and has a general defiance towards authority figures. He engages in significant property destruction when his access to preferred items is limited." (App. Vol. 2 at 84-85).

³ D.J.'s pre-dispositional report further reveals that "Mother reported that she attempted to enroll [D.J.] in Kindergarten at [the local public school] but was asked to take him home after being there for twenty minutes after he proceeded to strip off all of his clothing and then began urinating on his peers because the other children would not do what he wanted them to do." (App. Vol. 2 at 86-87).

[15] The very next day, two or three people contacted the Police Department to report that they had seen a child who was “almost naked” on a busy street. (Tr. Vol. 2 at 33). Bedford Police Department Major Clint Swanson (“Major Swanson”) responded to the scene and recognized D.J., who was wearing only underwear, from previous incidents. Major Swanson took D.J. home and arrested Mother for neglect of a dependent. As Mother was being arrested, her brother left the scene. Because there was no adult in the home to care for the children, DCS removed them and placed them in foster care. D.J. was “removed from his foster home after one day for being visibly aggressive to the other children in the home where he had caused blood by punching and biting.” (Tr. Vol. 2 at 20). DCS then placed D.J. in emergency shelter care at Firefly Children and Family Alliance. On May 1, 2023, the State charged Mother with Level 6 felony neglect of a dependent. Also, on May 1, DCS filed a petition alleging that the children were CHINS.

[16] Shortly after the children’s removal and her arrest, Mother began suffering from mental health issues and tested positive for methamphetamine. Specialist Burres recommended that Mother attend an inpatient mental health program, which Mother successfully completed. After Mother had completed the inpatient program, she began working with Specialist Burres to address her housing issue. Mother was still living in the garage because she had not been able to pay the electric bill. No shelter would take her because she had the pending felony charge for neglect of a dependent. Mother met regularly with

Specialist Burres and was “[v]ery open and engaged” during their sessions. (Tr. Vol. 2 at 64).

[17] The trial court heard the facts as set forth above at the August 2023 CHINS factfinding hearing. In addition, at the time of the hearing, D.J. was at Damar Services for a diagnostic evaluation, which included a thirty to sixty-day psychological assessment, and he was on the waiting list for residential treatment. Testing had revealed that D.J. has a full-scale IQ of 64, and he was diagnosed with a mood dysregulation conduct disorder and ADHD. The conduct disorder would require life-long treatment, including a need to protect the community. Also, at the time of the hearing, fourteen-year-old C.F., who was in foster care, was experiencing symptoms of anxiety and depression and was engaged in therapy. In addition, C.F. had been enrolled “in inclusion in the 8th grade at the local middle school to try and make sure that she [was] caught up to the grade level.” (Tr. Vol. 2 at 54). C.F. had been a good student until sixth grade. However, when she transitioned to remote learning in the seventh grade and became responsible with her uncle for watching D.J. throughout the day, her grades had dropped. Specifically, she had “about a 26 or 27 percent overall for the 7th grade year, cumulative. So she didn’t really get a 7th grade education[.]” (Tr. Vol. 2 at 54-55). Four-year-old A.J, who was in foster care in a different county, was scheduled for an assessment to determine what role trauma might be having on her behavior and emotions.

[18] DCS Family Case Manager Amy Grafton (“Case Manager Grafton”) testified that she had referred Mother for a substance abuse assessment because Mother

had admitted that she had used methamphetamine again in July 2023, just a few weeks before the CHINS factfinding hearing. Case Manager Grafton further testified that Mother had maintained regular communication with DCS. In addition, according to Case Manager Grafton, Mother was “[v]ery engaged with” the children. (Tr. Vol. 2 at 55). Case Manager Grafton also testified that Mother had continued to participate in home-based case management services and was scheduled to participate in a psychological assessment. According to Case Manager Grafton, Mother was cooperative and wanted to participate in these services.

[19] Mother also testified at the hearing. She acknowledged that she had last used methamphetamine just a few weeks before the hearing and that she had missed her last six scheduled drug screens. She further acknowledged that her felony case was still pending. In addition, Mother testified that the medication that she had been prescribed during her inpatient mental health treatment had caused her to have suicidal ideation but that she had scheduled a doctor’s appointment “to try to get that all figured out.” (Tr. Vol. 2 at 73). Mother also testified that she was still looking for housing. In addition, Mother testified that although she believed that her children had been traumatized by the removal from her home, she was willing to cooperate with DCS and participate in recommended services. Specifically, according to Mother, she was willing to “do anything to get [her] children back.” (Tr. Vol. 2 at 70).

[20] Following the hearing, in August 2023, the trial court issued a detailed order finding that the children were CHINS. That order provides, in relevant part, as follows:

[21] 34. [D.J.] needs evaluated by Damar to ensure his mental and physical health conditions are met with appropriate care and services. [D.J.] needs a caregiver who can provide appropriate supervision to ensure his safety.

[22] 35. [A.J.] needs proper supervision free from substance abuse use by her caregiver.

[23] 36. [C.F.] needs ongoing mental health treatment and/or therapy and assistance in schooling to help her catch up academically as well as appropriate supervision.

[24] 37. The Minor Children's physical and/or mental conditions are seriously impaired or seriously endangered due to Mother's inability to properly supervise and care for the Minor Children.

[25] 38. Mother needs substance use treatment to ensure she maintains sobriety and Mother needs services to help her improve the home conditions and ability to provide necessities and mental health treatment for the Minor Children.

[26] 39. The coercive intervention of the Court is necessary to ensure the services are provided to the Minor Children.

[27] (App. Vol. 2 at 29-30).

[28] Mother now appeals the CHINS adjudications.

[29] **Decision**

[30] Mother argues that there is insufficient evidence to support the CHINS adjudications. A CHINS proceeding is a civil action. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). Therefore, DCS had to prove by a preponderance of the evidence that the children were CHINS as defined by the juvenile code. *See id.* Indiana Code § 31-34-1-1 provides that a child is a CHINS if, before the child becomes eighteen (18) years of age:

[31] (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 the necessary food, clothing, shelter, medical care, education, or supervision:

[32] (A) when the parent, guardian, or custodian is financially able to do so; or

[33] (B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so; and

[34] (2) the child needs care, treatment, or rehabilitation that:

[35] (A) the child is not receiving; and

[36] (B) is unlikely to be provided or accepted without the coercive intervention of the court.

[37]

- [38] The Indiana Supreme Court has synthesized this statutory language, explaining that a CHINS adjudication requires proof of “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.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). “When determining whether a child is a CHINS, particularly in weighing the “coercive intervention” element, courts should consider the family’s condition not just when the case was filed, but also when it is heard.” *Matter of E.K.*, 83 N.E.3d 1256, 1261 (Ind. Ct. App. 2017) (cleaned up), *trans. denied*.
- [39] A CHINS adjudication focuses on the child’s condition rather than the parent’s culpability. *In re N.E.*, 919 N.E.2d at 105. The purpose of a CHINS adjudication is to provide proper services for the benefit of the child, not to punish the parent. *Id.* at 106. A CHINS adjudication in no way challenges the general competency of parents to continue relationships with their children. *Id.* at 105.
- [40] When determining whether there is sufficient evidence to support a CHINS adjudication, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. *S.D.*, 2 N.E.3d at 1287. This Court will not reweigh the evidence or reassess the credibility of the witnesses. *Id.* at 1286.

[41] We further note that, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). “This deference recognizes a trial court’s unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court’s only being able to review a cold transcript of the record.” *Id.*

[42] Where, as here, a trial court’s order contains specific findings of fact and conclusions of law, we engage in a two-tiered review. *In re A.G.*, 6 N.E.3d 952, 957 (Ind. Ct. App. 2014). First, we determine whether the evidence supports the findings, and then, we determine whether the findings support the judgment. *Id.* We will not set aside the findings or judgment unless they are clearly erroneous. *Matter of R.G.*, 130 N.E.3d 1171, 1178 (Ind. Ct. App. 2019), *trans. denied*. Findings are clearly erroneous when the record contains no facts to support them either directly or by inference. *Id.* at 1178-79. A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the resulting judgment. *A.G.*, 6 N.E.3d at 957. We will reverse “only upon a showing of ‘clear error’ - that which leaves us with a definite and firm conviction that a mistake has been made.” *Masters v. Masters*, 43 N.E.3d 570, 575 (Ind. 2015) (cleaned up).

[43] Here, Mother argues that there is insufficient evidence that the coercive intervention of the court was needed to assure that the children got the care, treatment, or rehabilitation that they needed. Mother specifically argues that “[w]hen a parent cooperates as fully as [she] did with DCS, a CHINS finding is

precluded: the coercive intervention of the [trial] court is not necessary.”
(Mother’s Br. 25).

[44] In support of her argument, Mother directs us to *S.D.*, 2 N.E.3d at 1283. In the *S.D.* case, a single mother (“mother”) of five children struggled to care for two-year-old S.D., who had severe health problems. Mother consented to DCS removing her four other children so she could focus on S.D.’s medical needs, and DCS initiated CHINS proceedings over all five children. By the time of the CHINS factfinding hearing, mother had obtained housing, S.D.’s medical needs had somewhat abated, and DCS had returned S.D.’s siblings to mother’s care. However, S.D. was still hospitalized because hospital policy prohibited releasing her until mother and a second caregiver participated in a home-care simulation. The trial court recognized that mother had obtained housing and was providing for S.D.’s siblings and closed their CHINS cases. But the trial court found that S.D. was a CHINS because mother had not completed the home-care simulation.

[45] Our Indiana Supreme Court reversed the CHINS adjudication. *S.D.*, 2 N.E.3d at 1283. Specifically, the supreme court noted that mother “was still one step away from S.D. returning home” but emphasized that it was “*only* one step[.]” *Id.* at 1290 (emphasis in the original). The supreme court concluded that the evidence, “even viewed most favorably to the judgment, [could not] reasonably support an inference that [m]other was likely to need the court’s *coercive intervention* to finish the home-care simulation.” *Id.* (emphasis in the original). See also *In re D.J. v. Indiana Department of Child Services*, 68 N.E.3d 574, 581 (Ind.

2017) (reversing the CHINS adjudication, which DCS had initiated based on one incident of Mother leaving her two young sons unattended in the bathtub, where the parents had cooperated with DCS's services and had satisfactorily completed all services (except those deferred by DCS or the trial court) by the time of the factfinding hearing); *E.K.*, 83 N.E.3d at 1262-63 (reversing the CHINS adjudication, which DCS had initiated based on one incident of excessive discipline, where parents had fully cooperated with DCS's services and explaining that "[o]ne lapse in judgment by [f]ather is not enough to warrant a CHINS finding . . . where the parents have been fully cooperative in addressing that lapse").

[46] The facts of Mother's case are similar to those in *S.D.*, *D.J.*, and *E.K.* in that Mother voluntarily sought treatment and took advantage of the services provided by DCS during the CHINS proceedings. However, there are also several important distinctions between those cases and this one.

[47] First, there was no evidence of prior DCS involvement in *S.D.*, *D.J.*, or *E.K.* Here, however, Mother was previously involved with DCS for the same issues, including D.J.'s flight from Mother's home and Mother's methamphetamine use, which are present in the current case. Second, there was no evidence that the parents in *S.D.*, *D.J.*, or *E.K.* faced criminal charges. Here, however, Mother was charged with Level 6 felony neglect of a dependent for knowingly placing D.J. in a situation that endangered his life or health by allowing him to walk in the streets unattended without wearing clothes. Further, that charge was

pending at the time of the CHINS factfinding hearing and Mother's incarceration was, and remains, a possibility.⁴

[48] Third, in *D.J.* and *E.K.*, at the time of the CHINS factfinding hearings, parents had already remedied the single event that had precipitated the CHINS proceedings. Further, in *S.D.*, mother was just one step away from *S.D.* returning home. Here, however, Mother, who had previously disclosed long-term methamphetamine use and who had been diagnosed with an amphetamine use disorder, began using methamphetamine again during the pendency of the CHINS proceedings. Indeed, Mother's last use of methamphetamine was just a few weeks before the CHINS factfinding hearing.

[49] Further, Mother, who had also previously disclosed a life-long struggle with depression and suicidal ideation, testified at the CHINS factfinding hearing that the medication prescribed for her during her inpatient mental health treatment had caused her to have suicidal ideation. In addition, at the time of the hearing, Mother was still living in the garage because she had been unable to pay her electric bill. Thus, to the extent that Mother relies on *S.D.* as support for reversal, that case is distinguishable.

⁴ Mother's jury trial is scheduled for May 1, 2024.

[50] We note that trial court judges are “faced with the challenge of balancing multiple factors and multiple voices in a CHINS case.” *In re K.D.*, 962 N.E.2d 1249, 1255 (Ind. 2012). Here, the trial court judge, who had the opportunity to see the witnesses, observe their demeanor, and scrutinize their testimony, found that Mother required the coercive intervention of the court to ensure that her children had a stable and sober parent, who was capable of providing a safe environment and making good decisions for them. The trial court’s finding does not leave us with a definite and firm conviction that a mistake has been made. As a result, we hold that there is sufficient evidence to support the CHINS adjudications.

[51] Affirmed.

[52] Tavitas, J., and Foley, J., concur.

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