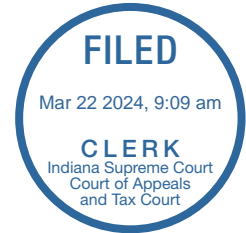


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

In the Matter of S.W., Child in Need of Services,

and

L.D. (Mother),

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner

March 22, 2024

Court of Appeals Case No.

23A-JC-2154

Appeal from the Lawrence Circuit Court

The Honorable Nathan G. Nikirk, Judge

Trial Court Cause No.

47C01-2303-JC-135

Memorandum Decision by Chief Judge Altice

Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

- [1] L.D. (Mother) appeals the juvenile court’s determination that her minor daughter, S.W., was a Child in Need of Services (CHINS). Mother contends that her right to due process was violated and that the Department of Child Services (DCS) failed to prove that S.W. was a CHINS.
- [2] We affirm.

Facts and Procedural History

- [3] Mother and K.W. (Father) (collectively, Parents) were married in August 2012, and S.W. was born on December 6, 2012. Parents separated shortly after S.W.’s birth and eventually divorced. Mother was awarded sole custody of S.W., and they resided in Bedford. Father, who lived in Linton, was awarded supervised parenting time.
- [4] In February and March 2023, DCS received reports that S.W. was abused or neglected because of “educational neglect” and Mother’s drug use. *Appellant’s Appendix Vol. II* at 111. When DCS family case manager (FCM) Emily Werner went to Mother’s Lawrence County home in the late afternoon on February 16, 2023, Mother opened the door and was “groggy.” *Transcript* at 71. Mother

refused to drug screen, and she told Werner that she had “car trouble” and it was “difficult getting S.W. to school.” *Id.*

[5] As a result of that visit, DCS representatives offered to assist Mother with car repairs and gas cards to ensure S.W.’s attendance at school. Mother, however, declined those offers. DCS also consulted with Mother about transferring S.W. to a school that was closer to her residence, but Mother was not interested in having S.W. attend a different school.

[6] DCS personnel remained concerned about Mother’s educational neglect and drug abuse. S.W. had missed so many school days that she was ineligible to participate in standardized testing to determine whether she was learning at grade level. S.W.’s school attendance did not improve, and staff from the school repeatedly called DCS to report S.W.’s absences. When FCM Werner texted Mother at some point to further discuss S.W.’s school attendance, Mother could not recall who FCM Werner was.

[7] During a visit to Mother’s home in March 2023, Mother did not answer the door, so FCM Werner contacted law enforcement to conduct a welfare check. When Mother eventually opened the front door, she was “groggy,” refused a drug screen, and was aggressive toward FCM Werner. *Appellant’s Appendix Vol. II* at 112. Upon further investigation, FCM Werner and the police observed a homemade smoking device in a parked vehicle outside Mother’s residence.

[8] On March 23, 2023, DCS filed a verified CHINS petition as to S.W.¹ Thereafter, on June 8, 2023, DCS case manager, Debra Kerr, filed an affidavit requesting that S.W. be detained and removed from Mother’s care and custody because of Mother’s drug use, her failure to ensure S.W.’s attendance at school, and instances of domestic violence against Mother by her boyfriend, Jeremy New. On June 12, Kerr notified Mother of a scheduled June 13 detention hearing. Mother responded that neither she nor her attorney were aware of any hearing. Kerr then sent Mother a “screenshot” of the court’s calendar displaying the date and time of the hearing. *Transcript* at 30.

[9] On June 13, DCS filed its written motion for S.W.’s detention, alleging that it was in S.W.’s best interest “to be removed from the home environment, and [that] remaining in the home would be contrary to [S.W.’s] health and welfare.” *Appellant’s Appendix Vol. II* at 79.² The juvenile court then conducted the detention and removal hearing. While neither Mother nor her assigned attorney appeared, a different public defender appeared and requested a continuance on Mother’s behalf. The juvenile court denied the continuance, noting that DCS had alleged in its request that S.W. was not safe in Mother’s home. The juvenile court further commented:

¹ DCS amended the petition three times. On March 31, 2023, the first amended petition included corrected information about Father; on May 19, allegations were added concerning Mother’s drug abuse; and a June 19 amendment included allegations of domestic violence against Mother by her former boyfriend.

² DCS points out—and Mother does not disagree—that, on occasion, the juvenile court will set a hearing in advance of a filed written motion, especially in emergency circumstances.

I think hearing some evidence on the issue and whether detention is necessary is . . . appropriate and in the best interest of the child if there's a threat to the child's safety in the home. *So we'll have the hearing and then if [Mother's assigned attorney] wants to immediately request an additional detention hearing, even within 48 hours, the Court will make sure that that would happen.*

Transcript at 24-25 (emphasis added).

[10] During the hearing, Kerr testified about Mother's positive tests for methamphetamine on two different occasions in May 2023. Kerr also testified about New's domestic violence against Mother and his violation of a no contact order. Kerr expressed concern that S.W. was not currently enrolled in school. In light of these circumstances, Kerr requested that the juvenile court remove S.W. from Mother's care and place her with Father.

[11] Father—who appeared at the hearing with counsel—testified that he and his wife resided in Linton with their children. They were prepared to take custody of S.W., and planned to enroll S.W. in summer school in the Linton school system.

[12] Following the presentation of evidence, the juvenile court ordered S.W. removed from Mother's care and placed with Father. Subsequent review hearings were conducted as to S.W.'s detention, and the juvenile court ordered S.W. to remain in Father's care following each review.

[13] At the CHINS factfinding hearing on July 21, 2023, the school superintendent from the Bloomington Project School testified that there were countless issues with S.W.'s attendance every year. From January 2022 to March 2022, S.W.

missed 70% of instructional time. From August 2022 to March 2, 2023, S.W. was present for only 17% of the 118 instructional days. S.W. had to repeat third grade because of those excessive absences and could not participate in student winter assessments during the 2022-2023 school year.

[14] Lori Branam, a caseworker with Family Preservation Services, testified that she tried to assist Mother with enrolling S.W. in a different school. Branam was not sure, however, whether Mother ever withdrew S.W. from her former school. Branam also testified that Mother would not permit her to enter the home to conduct required safety checks.

[15] DCS presented evidence that New—Mother’s now former boyfriend—was charged with invasion of privacy for violating a no contact order between him and Mother. New had also been charged with two counts of domestic battery and intimidation against Mother. At some point, Mother told Branam that she was “terrified” of New. *Appellant’s Appendix Vol. II* at 115. Mother told a different caseworker in June 2023, that she was trying to stay away from New because he had hit her in the face.

[16] Evidence was also presented regarding Mother’s illegal drug use. The drug screens collected on May 10, 18, and on June 8, 2023, were positive for methamphetamine and/or THC.

[17] Mother testified that she had been attending services at “Limelight Recovery” for about a month, had ended her relationship with New, and had applied for a job in Martinsville. Mother also testified that her vehicle had been repaired and

that she currently had reliable transportation. Mother was also meeting with a therapist on a weekly basis that was arranged through DCS.

- [18] The evidence further established that S.W. was adjusting well to living with Father, his wife, and their children in Linton. While Father had a conviction for possession of methamphetamine in 2016, he had been sober for nearly four years. Father planned to file a motion to modify the custody order that was previously entered, and he had enrolled S.W. in the Linton school system. S.W. was scheduled for a grade level assessment several days prior to her first day of school on August 10, 2023.
- [19] Following the presentation of evidence, the juvenile court adjudicated S.W. a CHINS. The juvenile court concluded, among other things, that S.W.'s "mental and/or physical condition is seriously endangered . . . by [Parents'] . . . inability to provide her with the proper education and home environment free from the presence of domestic violence and substance abuse." *Id.* at 117. The order further provided that S.W. requires services "to address her education" and "to ensure she is in a safe living environment with proper supervision." *Id.*
- [20] The juvenile court observed that coercive intervention of the court is necessary to ensure that services are made available to Mother and S.W. because "it took months for the DCS to communicate with Mother and Mother has not been receptive to DCS's services in the past." *Id.* Thus, it was determined that Mother required services to address her drug abuse and domestic violence

issues, and that it was DCS’s responsibility to provide placement and care for S.W.

[21] Mother now appeals.³ Additional information will be provided as needed.

Discussion and Decision⁴

I. Due Process

[22] Mother argues that the CHINS order must be set aside because her procedural due process rights were violated. More specifically, she claims that she was not given adequate notice of the initial detention hearing or the opportunity to be heard at that hearing.

[23] As the United States Supreme Court and the Indiana Supreme Court have held, a parent’s right to raise their children is “perhaps the oldest of the fundamental liberty interests.” *Matter of Bl.B.*, 69 N.E.3d 464, 466-67 (Ind. 2017) (quoting *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005), in turn quoting *Troxel v. Granville*, 530 U.S 57, 66 (2000)). In addition, the State’s interests “in protecting a child’s welfare are substantial.” *In re I.P.*, 5 N.E.3d 750, 752 (Ind. 2014).

³ Father does not participate in this appeal.

⁴ Mother has filed a “Motion to Take Judicial Notice of Court Records.” We grant this motion by separate order issued contemporaneously with this opinion.

[24] The CHINS statutes afford the parents of a child alleged to be abused or neglected a number of legal rights when the child is detained by DCS, including the right to be represented by an attorney at each court proceeding on a petition alleging that the child is a CHINS. *In re G.P.*, 4 N.E.3d 1158, 1162 (Ind. 2014) (citing Ind. Code § 31-34-4-6(2)(A)). Due process concerns at all stages of a CHINS proceeding are of paramount concern. *Matter of Eq. W.*, 124 N.E.3d 1201, 1209 (Ind. 2019). To be sure, due process requires notice and the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

[25] In accordance with I.C. § 31-34-9-5, DCS is permitted to request in writing “that the child be taken into custody.” And that request must “be supported with sworn testimony or affidavit.” *Id.* The juvenile court may grant the request if it “makes written findings of fact upon the record that a ground for detention exists under I.C. 31-34-5-3.” More particularly, the juvenile court “may order the child detained if [it] makes written findings upon the record of probable cause to believe that the child is a [CHINS] and that (1) *detention is necessary to protect the child.*” *Id.* (Emphasis added).

[26] In this case, DCS caseworker Kerr completed an affidavit requesting S.W.’s removal from Mother’s care on June 7, 2023, after receiving the positive results of Mother’s methamphetamine drug screens. And after considering Mother’s drug use, S.W.’s excessive absences from school, and Mother’s continued contact with New in violation of the protective order, DCS filed its motion to detain S.W. on June 13. DCS specifically alleged in its request that it would be

contrary to S.W.'s "health and welfare" to remain in Mother's home, that detention is "necessary to protect" S.W., and that it had provided services to Mother and S.W. in an effort to prevent the need for removal. *Appellant's Appendix Vol. II* at 79.

[27] Kerr testified that she notified Parents of the date and time of the detention hearing at least one day before DCS filed the petition. Although Mother did not appear at the hearing and the juvenile court denied substitute counsel's motion for a continuance, the juvenile court commented that the hearing would proceed, considering the "emergency nature of the motion to take custody of S.W." and the allegations that S.W. was "unsafe in the home." *Transcript* at 24. The trial court further noted, however, that it would hold an additional hearing regarding S.W.'s detention if Mother's counsel made such a request "at any point in time." *Id.* at 34.

[28] Here, the juvenile court complied with the statutes regarding DCS's motion to remove S.W. from Mother's care and custody. Indeed, the evidence presented at the hearing supported the conclusion that S.W. should be removed from Mother for her protection. And while the juvenile court afforded Mother the opportunity to immediately request an additional detention hearing, she did not do so until June 21. And at each subsequent detention hearing, Mother appeared with counsel, the juvenile court heard evidence and reconsidered S.W.'s placement, and consistently determined that the detention should continue. Hence, Mother cannot successfully maintain that her due process rights were violated at the initial detention hearing, as the juvenile court granted

her a meaningful opportunity to be heard in subsequent CHINS proceedings. *See, e.g., Hite v. Vanderburgh Cnty. Off. of Fam. & Child.*, 845 N.E.2d 175, 184 (Ind. Ct. App. 2006) (finding that the trial court did not deny a parent’s right to due process where that parent did not receive notice of the initial CHINS proceedings but was afforded opportunities to appear and present evidence at later CHINS hearings). For these reasons, we conclude that Mother’s due process claim fails.

II. Sufficiency of the Evidence

[29] Mother argues that DCS failed to present sufficient evidence that S.W. is a CHINS. Specifically, Mother argues that the CHINS order must be set aside because DCS did not demonstrate that S.W. was seriously endangered and that her needs were not being met.

[30] When reviewing the sufficiency of the evidence to support a CHINS determination, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re K.D.*, 962 N.E.3d 1249, 1253 (Ind. 2012). We consider only the evidence that supports the juvenile court’s decision and reasonable inferences drawn therefrom. *Id.* And we reverse only upon a showing that the decision of the juvenile court was clearly erroneous. *Id.* In family law matters, great deference is given to the juvenile court due to its proximity to the issues. *E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind. 2018).

[31] A CHINS adjudication “focuses on the condition of the child.” *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). The purpose of a CHINS adjudication is to

“protect children and not punish parents.” *In re D.J. v. Ind. Dep’t of Child Servs.*, 68 N.E.3d 574, 580-81 (Ind. 2017). In a CHINS proceeding, the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.3d at 1253.

[32] Here, DCS alleged that S.W. was a CHINS under Ind. Code § 31-34-1-1, which our Supreme Court has interpreted to require “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).

[33] At the factfinding hearing, DCS presented evidence that Mother failed to ensure S.W.’s attendance at school for over two years, had remained dependent on her violent relationship with New, and that she used illegal substances that caused her to be impaired. More specifically, it was established that from January 1, 2022 to March 2, 2022, S.W. attended only six full days of school, and she failed to complete any assignments. And from August 2022 through March 2, 2023, S.W. was present and on time for only twenty of 118 instructional days. S.W. did not attend school at all from March 3, 2023, through May of that year. Because of those absences, S.W. was unable to complete her winter assessments and she had to repeat third grade.

[34] Evidence at the factfinding hearing also established that Mother did not demonstrate sobriety, and she failed to comply with her addiction treatment.

As we have recognized, exposing a child to an environment of illegal drug use poses an actual and appreciable danger to them. *See In re J.L.*, 919 N.E.2d 561, 563 (Ind. Ct. App. 2009). The issue is not merely whether the children see the parent using drugs, but, instead, whether the parent who is responsible for the children’s care and custody is unimpaired. *Id.* When the parent is under the influence of drugs in the child’s presence, the parent “essentially abandon[s] the child, without any responsible supervision.” *Id.*

[35] Mother tested positive for methamphetamine and THC use on multiple occasions from May through June 2023. While Mother was prescribed Suboxone as part of her addiction treatment, her drug screens established that she did not take that drug. Thus, S.W. remained endangered until Mother could demonstrate continued sobriety.

[36] DCS also presented evidence that Mother failed to demonstrate the ability to provide S.W. with a home that was free of domestic violence. Our Supreme Court has determined that children living in the home with violence are affected by it even if they do not view it directly. *In re E.M.*, 4 N.E.3d 636, 644 (Ind. 2014). Indeed, “[c]hildren exposed to domestic violence are more likely to suffer significant psychological and development issues.” *S.H. v. D.W.*, 139 N.E.3d 214, 216 (Ind. 2020).

[37] The evidence at the factfinding hearing showed that there was at least one incident of domestic violence between Mother and Father shortly after S.W. was born in 2012. And Mother’s relationship with New included incidents of

domestic violence and an invasion of privacy criminal offense. Mother also ignored the terms of a safety plan that was created in April 2023 by asking New to help her abscond with S.W. And notwithstanding the no contact order, Mother continued to live in the house that New owned throughout the CHINS proceedings.

[38] Although Mother claimed at the CHINS hearing that she had ended her relationship with New and, therefore, the issues of domestic violence were remedied, the evidence showed that Mother only stayed away from New when he was incarcerated. In fact, New was in jail at the time of the factfinding hearing and there was a risk that Mother would reconnect with him following his release.

[39] In sum, the evidence established that Mother continued to abuse drugs after DCS's involvement, and while Mother promised to ensure S.W.'s attendance at school, she failed to do so. And although Mother claimed that she desired to end her relationship with New, she resumed contact with him every time he was released from jail. In other words, nothing established that Mother had addressed her drug use, her repeated involvement in violent relationships, or her poor parenting choices in refusing assistance that DCS had offered. We therefore conclude that the evidence was sufficient to support S.W.'s CHINS adjudication.

[40] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.

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