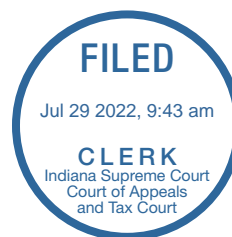


MEMORANDUM DECISION

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 C.H. and C.B.,
Minor Children Alleged to be
Children in Need of Services;

A.E. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

July 29, 2022

Court of Appeals Case No.
22A-JC-417

Appeal from the Hendricks
Superior Court

The Honorable Karen M. Love,
Judge

Trial Court Cause Nos.
32D03-2108-JC-46
32D03-2108-JC-47

Najam, Judge.

Statement of the Case

[1] A.E. (“Mother”) appeals the trial court’s adjudication of her children as Children in Need of Services (“CHINS”). Mother raises one issue for our review, namely, whether the trial court clearly erred when it adjudicated the children to be CHINS.

[2] We affirm.

Facts and Procedural History

[3] Mother has two children: C.H., born April 23, 2019, and C.B., born April 20, 2020 (collectively, the “Children”). Since September 2019, Mother has resided with her boyfriend, A.B., who is C.B.’s legal father.¹ On July 16, 2021, at around noon, Mother’s friend and neighbor, Julie Adair-Smith (“Julie”), saw C.H. and C.B. in Mother’s front yard without supervision. It was raining, and the Children were dressed only in diapers and pajamas. Julie brought the Children onto her porch and, for the next thirty to forty-five minutes, Julie and her daughter knocked on the doors to Mother’s house and yelled for Mother but got no response. Finally, Julie spoke with Mother, and Mother said that she was sick and did not know that the Children had been outside. That was not the first time that Julie had seen the Children outside the house unsupervised.

¹ C.H.’s father is G.H. G.H. is also presumed to be the biological father of C.B. Neither G.H. nor A.B. participates in this appeal.

On one prior occasion, Julie had seen C.H. “in the street,” and, on other occasions, Julie had seen the Children alone in the yard. Tr. at 57.

[4] Also on July 16, the Indiana Department of Child Services (“DCS”) received a report that Mother was “requesting someone else provide care for the Children, that [she was] having suicidal ideations, [that she] has no food in the home, and that there is ongoing domestic violence between Mother and [A.B.]” Appellant’s App. Vol. 2 at 38. DCS Family Case Manager (“FCM”) Justin Summay responded to Mother’s house. Mother told FCM Summay that she was breaking up with A.B. and needed to find a new place to live, and she asked him to take the Children to her mother’s house in Muncie. Mother told Summay that in June, A.B. had “chok[ed] her while she was driving,” which caused her to crash. Tr. at 76. Summay observed bug bites on C.B., and he saw rats in cages inside Mother’s home. Summay left the Children with Mother at that time.

[5] On July 19, DCS received a report of domestic violence in Mother’s home. FCM Angela McFeeley responded to Mother’s home and met with her for approximately two hours. Mother informed FCM McFeeley that “she had gone through therapy and counseling and it wasn’t working.” *Id.* at 81. FCM McFeeley observed “slash marks” on Mother’s arms and legs “from self-harming.” *Id.*

[6] On July 25, Mother told FCM McFeeley that she wanted to “harm herself” and that FCM McFeeley “needed to come and take her kids.” *Id.* FCM McFeeley

was out of town, so FCM Kristin Hannon met with Mother. FCM Hannon observed that Mother had “healing sores” on her arm that appeared to be the result of “self-harm.” *Id.* at 89. FCM Hannon believed that Mother was “under the influence” because Mother had a “lack of focus,” she could not maintain eye contact, she was “distracted,” she “appeared unbalanced,” and she “was stumbling.” *Id.* Mother stated that the Children were home but that they were “inside asleep.” *Id.* at 90. Mother then informed FCM Hannon that she “needed to go to a mental hospital” and that she wanted DCS to “temporarily” take the Children. *Id.* at 89. FCM Hannon told Mother that she would help Mother find a friend or relative to care for the Children, and Mother mentioned Julie. Julie agreed to care for the Children while Mother sought treatment.

[7] At that point, FCM Hannon suggested that Mother gather items for the Children to take to Julie’s. Mother then brought the Children outside and left them there while she went inside to pack their belongings. Mother did not have “a conversation of any kind” about FCM Hannon watching the Children. *Id.* at 90. FCM Hannon saw the Children put a “bottle cap” and “a nail” in their mouths, so she intervened to remove those items. *Id.* Then, C.B. started crawling through the yard, and a dog leash “became wrapped around his neck.” *Id.* at 90-91. FCM Hannon unwrapped the leash from C.B.’s neck, but, while she was doing that, C.H. “ran out into the road.” *Id.* at 91. Julie then took the Children. When Julie first received the Children, she took them to urgent care because they had “bug bites . . . all up their legs.” *Tr.* at 61. Someone at urgent

care informed Julie that they had previously seen the Children for bug bites and had prescribed medication but that the medication “had not been picked up.”

Id.

[8] On August 3, FCM Charlotte Nungester received information that Julie was no longer able to care for the Children. FCM Nungester went to Mother’s home that morning to speak with her. When she arrived, FCM Nungester “could tell right away” that Mother was “intoxicated.” *Id.* at 96. Mother “couldn’t form complete sentences,” she “was shaking” and “[s]lurring her speech,” and she had “pin-point pupils” and “glossy eyes.” *Id.* at 97. Mother informed FCM Nungester that she had consumed “a full bottle” of liquor and that she “had started on another.” *Id.* FCM Nungester then asked Mother if she had followed through with the plan to obtain mental health treatment. Mother responded that she had not because she had “83 rats” that she needed to care for. *Id.* at 98. At that time, the Children were still with Julie, but Mother was supposed to pick them up later that day. Mother “was not willing to work on” a different safety plan with FCM Nungester, so DCS removed the Children from Mother’s care. *Id.* at 105.

[9] The next day, FCM Nungester returned to Mother’s home and saw “numerous” rat cages, and she observed that there was “rat feces” “on the floor of the home[.]” *Id.* at 99-100. FCM Nungester saw “multiple” rat cages with fecal matter “covering the bottom.” *Id.* at 100. And she observed a cat scratching post that was also covered in fecal matter. FCM Nungester noticed that the home smelled like “urine” and “body odor.” *Id.* Animal control

officers arrived to remove the rats and other animals. As they removed the rat cages, FCM Nungester noticed that several rats were “eating the carcasses of some of the other rats in the cage.” *Id.* at 101. DCS filed petitions alleging the Children to be CHINS. And, at some point thereafter, the State charged Mother with six counts of cruelty to an animal, as Class A misdemeanors. *See Ex.* at 12.

[10] On August 5, FCM Nungester had a child and family team meeting with Mother, Julie, and some other DCS workers. During the meeting, Mother stated that she had been diagnosed with post-traumatic stress disorder, depression, anxiety, and bipolar disorder. And Mother admitted that she was “supposed to be on prescription medication” but that she had “stopped” taking it. *Id.* at 102. Mother informed FCM Ella Souvannavong that she had stopped taking her mental health medication because it “made her feel ill.” *Id.* at 109. Mother also informed FCM Souvannavong that A.B. had “choked her four times in the last two years.” *Id.* at 110.

[11] The court held a fact-finding hearing on the CHINS petitions. During the hearing, Lisa Dure, a family support therapist, testified that she had met Mother weekly from May 2020 through August 2021 and that she had worked with Mother on some “parenting concerns” and “developing a parent/child interaction.” *Tr.* at 22. Dure testified that she had “concerns” about domestic violence between Mother and A.B. *Id.* at 23. In particular, she testified that, “[p]eriodically” throughout the time she had worked with Mother, she had heard A.B. “yelling” at Mother in the background during phone calls. *Id.* at 24.

[12] Tara Steinaker, an outpatient therapist with Cummins Behavioral Health Systems also testified. Steinaker, who had been providing Mother with individual therapy for approximately nine months, testified that she was using dialectic behavior therapy to treat Mother for post-traumatic stress disorder and to help Mother “learn how to better manage times of distress in her life.” *Id.* at 51. Steinaker then testified that the next step for treating Mother would be a treatment called eye movement desensitization and reprocessing, but Steinaker stated that Mother was not ready to begin that treatment and that she would not be ready until she could “display at least more of a control or acknowledgment of when there was something” she could have done during a stressful situation. *Id.* at 41.

[13] Mother then testified and acknowledged that she was “not right in the head most of the time.” *Id.* at 137. Mother admitted that she had stopped taking her medication and that she would not admit herself into a hospital “until she could find a place” for the rats. *Id.* at 131. And Mother testified that her relationship with A.B. has “been better” in that they “don’t argue as much.” *Id.* at 137.

[14] Following the hearing, the court issued extensive findings of fact and conclusions thereon. In relevant part, the court found:

62. The home environment was in poor condition and the extent of filth and animal excrement endangered the Children. [C.H.] is 2 years old and [C.B.] is 1 year old.

* * *

65. FCM Souvannavong testified that [Mother] is compliant in all of her services, that a medication management appointment is scheduled 10/19/21 and that there is not a service needed for Mother that is not currently in place. Court disagrees with FCM Souvannavong. Mother needs a complete psychological evaluation. Mother admits to extensive mental health needs. Both [C]hildren are too young to advocate for themselves. They require a sober stable caregiver at all times. FCM Souvannavong has also not referred Mother for a domestic violence assessment. Mother has accused [A.B.] and [G.H.] of domestic violence. The Court believes domestic violence assessments are necessary.

66. Mother needs a complete psychological assessment to determine what services Mother needs to address her mental illnesses. Mother's mental illness appears to be extensive given the evidence presented including but not limited to:

- a. Mother's claims that she has been raped by family members, foster parents, etc.
- b. Mother's claim that her daughter [] was murdered which is not true.
- c. Mother's scars from self-harm.
- d. Mother's suicidal ideations.
- e. Mother's admission that she had a mental breakdown in July 2021. . . .

* * *

70. These boys are too young to advocate for their own needs. The boys require an adult caregiver 24 hours a day who makes

sure their daily living needs are met and they are supervised at all times.

71. It is imperative that Mother receive mental health services and that she consistently participates in services.

72. Mother recognized that she needed mental health services but when Julie Adair-Smith agreed to take the boys under a safety plan on 7/25/2021, Mother did not seek mental health treatment and she did not follow up on how the boys were doing. Mother wasn't taking care of her "pets" either. Mother was charged criminally with six counts of animal cruelty.

73. This Court does not believe that Mother will receive mental health services that she needs without the coercive intervention of the Court.

76. Ms. Dure further identified concerns for Mother to include having [a] prior DCS history, financial burdens, and minimal social connections and minimal community connections.

77. Ms. Dure never observed any domestic violence in the home although she had concerns for domestic violence. Ms. Dure heard [A.B.] yelling at the dogs and at [Mother]. She observed these concerns periodically throughout the entire time that she worked with [Mother].

* * *

87. The next step that is planned for Mother's ongoing treatment is eye movement desensitization and reprocessing. The purpose of this is to decrease sensitivity to different situations that have happened in the past. Mother is not yet prepared to proceed with this next stage of her treatment because Mother needs further

progress in handling how she manages her own stress and distressing situations. Mother needs to be able to display more control/acknowledgement of when there was something she could have done versus how she was able to go about it that actually caused her to have a lower level or a no reaction at all that would have otherwise made her feel overwhelmed.

* * *

89. In Mother’s current mental state, when she has distress she is inclined toward having an overwhelming emotional response that makes it difficult for Mother to behave and react in a way that helps resolve the distressful situation.

90. Mother’s mental health negatively impacts her ability to parent the Children—particularly in light of the fact that Mother is attempting to parent and raise two very young Children with limited to no support from either father, and with limited to no community or family resources for assistance.

91. FCM Souvannavong has discussed the relationship of [G.H.] and Mother with the parents. [G.H.] and Mother were only living together for about 4 months after [C.H.] was born—Mother stated that he attacked her and almost made her drop [C.H.] off of the side of a balcony during a dispute. . . .

Appellant’s App. Vol. 2 at 61-64. Accordingly, the court concluded that the Children’s “physical or mental condition is seriously impaired or seriously endangered” as a result of Mother’s inability, refusal, or neglect to supply them with necessary supervision. *Id.* at 66. And the court concluded that the “coercive intervention of the Court is necessary to be sure Mother receives the mental health services that she needs to safely parent these young boys[.]” *Id.*

As such, the court adjudicated the Children to be CHINS. Thereafter, the court entered a dispositional order and a parental participation order in which it ordered Mother to participate in services. This appeal ensued.

Discussion and Decision

[15] Mother appeals the court’s order adjudicating the Children to be CHINS. As our Supreme Court has stated:

When reviewing a trial court’s CHINS determination, we do not reweigh evidence or judge witness credibility. *In re S.D.*, 2 N.E.3d 1283, 1286 (Ind. 2014). “Instead, we consider only the evidence that supports the trial court’s decision and [the] reasonable inferences drawn therefrom.” *Id.* at 1287 (citation, brackets, and internal quotation marks omitted). When a trial court supplements a CHINS judgment with findings of fact and conclusions law, we apply a two-tiered standard of review. We consider, first, “whether the evidence supports the findings” and, second, “whether the findings support the judgment.” *Id.* (citation omitted). We will reverse a CHINS determination only if it was clearly erroneous. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). A decision is clearly erroneous if the record facts do not support the findings or “if it applies the wrong legal standard to properly found facts.” *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997) (citation omitted).

Gr.J. v. Ind. Dep’t. of Child Servs. (In re D.J.), 68 N.E.3d 574, 577-78 (Ind. 2017) (alterations in original).

[16] DCS alleged, and the trial court found, that Child was a CHINS pursuant to Indiana Code Section 31-34-1-1 (2022), which provides that a child is a child in need of services if, before the child becomes eighteen 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 (B) is unlikely to be provided or accepted without the coercive intervention of the court.

[17] Our Supreme Court has interpreted that statute 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 at 1287. “A CHINS adjudication focuses on the condition of the child.” *In re N.E.*, 919 N.E.2d at 105. And, when determining whether a child is a CHINS under Section 31-34-1-1, the juvenile court “should consider the family’s condition not just when the case was filed, but also when it is heard.” *In re S.D.*, 2 N.E.3d at 1290.

Serious Endangerment

[18] Mother first asserts that DCS failed to demonstrate that her actions or inactions have seriously endangered the Children. Mother maintains that there was “no evidence at the fact[-]finding hearing that C.B.’s or C.H.’s mental and/or physical conditions were impaired or endangered.” Appellant’s Br. at 27. Rather, relying on Dure’s testimony, Mother contends that: the Children were never “without shelter, food or clothing”; they never lacked “proper medical care”; that Mother “was doing much better” at the time of the hearing; and that

there were “no concerns regarding supervision.” *Id.* And she maintains that the CASA “noted no concerns for the safety of the [C]hildren during visitation.” *Id.*

[19] But the evidence most favorable to the juvenile court’s judgment demonstrates that Mother has not adequately supervised the Children and that the lack of supervision has resulted in unsafe situations for the Children. In particular, Julie testified that she had witnessed Children, who were only one and two years old, playing alone outside on multiple occasions, including one time when C.H. was “in the street” and one time when both Children were outside in the rain dressed only in diapers and pajamas. Tr. at 57. In addition, when FCM Hannon arrived at Mother’s house on July 25, Children were in the home, but Mother was “under the influence,” could not maintain eye contact, “appeared unbalanced,” and “was stumbling.” Tr. at 90. Then, when FCM Hannon suggested that Mother pack some of the Children’s items so that the Children could go to Julie’s house, Mother left the Children outside without any sort of “conversation” as to whether FCM Hannon would watch the Children. *Id.* at 90. While Mother was inside the house, FCM Hannon observed the Children put a “bottle cap” and a “nail” in their mouths, she saw a dog leash get entangled around C.B.’s neck, and she saw C.H. run into the road. *Id.* at 90-91. And Mother was again “intoxicated” on the morning of August 3 after she had consumed a “full bottle” of liquor and “started on another” even though she was supposed to pick the Children up from Julie’s home. *Id.* at 97.

[20] In addition, the Children were not living in a safe environment. Mother's dogs had fleas, which resulted in the Children receiving numerous bug bites. And when Julie took the Children to urgent care for treatment, she discovered that the Children had previously been seen for the bug bites, but that Mother had never picked up the prescribed medication. Further, Mother had eighty-three rats in the home, there was "rat feces" on the floor, and the home smelled of "urine" and "body odor." *Id.* at 100. Those are not sanitary conditions for anyone, let alone two very young children. And while animal control removed most of the animals from Mother's care, she still has a dog, two cats, and two rats.

[21] Finally, Mother continues to stay in a relationship with A.B., who has abused her. Mother admitted that A.B. had choked her "four times in the last two years," including on one occasion when A.B. had "chok[ed Mother] while she was driving" which resulted in Mother's crashing the vehicle. *Id.* at 76, 110. And Dure testified that she had heard A.B. "yelling" at Mother throughout the time she worked with Mother, which caused her to have "concerns" about domestic violence between Mother and A.B. *Id.* at 23. But despite the history of domestic violence, Mother has not sought a domestic abuse assessment or any assistance for that problem.

[22] In other words, the evidence most favorable to the trial court's judgment demonstrates that Mother has mental health issues and that those issues have interfered with Mother's ability to parent the Children. But Mother has declined to seek treatment at a mental health facility, and Mother has elected to

stop taking her medication. In addition, Mother continues to stay in a relationship with a person who has committed acts of domestic violence against her, but she has not sought assistance for that problem. The evidence supports a reasonable inference that Mother is not able to provide the care or supervision that the young Children need in order to stay safe. Contrary to Mother's assertions on appeal, the evidence of her refusal to treat her mental health illness and her continued relationship with a man who has repeatedly abused her demonstrates that her actions or inactions have seriously endangered the Children.²

State Coercion

[23] Finally, Mother contends that DCS failed to demonstrate that Children's needs would not be met without the coercive intervention of the court. In particular, Mother asserts that she "sought out services through Healthy Families," that Cummins had helped her "put additional services in place that were adequately addressing her mental health needs," and that she "has been willing to comply with all services." Appellant's Br. at 28. And Mother maintains that "the

² Mother challenges four of the trial court's findings. However, we need not determine whether those findings are supported by the record. It is well settled that erroneous findings do not warrant reversal if they amount to mere surplusage and add nothing to the trial court's decision. *See Lasater v. Lasater*, 809 N.E.2d 380, 398 (Ind. Ct. App. 2004). Here, as discussed above, the remaining findings, which Mother does not challenge, are supported by the record and support the court's conclusion. Accordingly, even if erroneous, the four findings challenged by Mother are mere surplusage and do not warrant reversal.

source of her stress and conflict in the home with A.B. was no longer present.”

Id.

[24] But Mother disregards the evidence favorable to the trial court’s judgment.

While Mother was participating in individual therapy, the record also indicates that Mother was not ready to move to the next step of her treatment plan and that she would not be ready until she could “display at least more of a control or acknowledge of when there was something she could have done” during a stressful situation. Tr. at 41. In addition, Mother repeatedly informed DCS that she needed mental health treatment, and Mother even arranged for Julie to take care of the Children while she sought treatment. However, Mother never followed through with her plan to obtain treatment and did not admit herself into a hospital. And the record shows that Mother stopped taking her medication. Further, and importantly, Mother remains in an abusive relationship, and she has not sought any sort of assistance with the domestic violence. That evidence supports the court’s conclusion that the coercive intervention of the court is needed. The trial court did not clearly err when it adjudicated the Children to be CHINS. We therefore affirm the trial court.

[25] Affirmed.

Bradford, C.J., and Bailey, J., concur.