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IN THE  
COURT OF APPEALS OF INDIANA

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In the Matter of  
J.N. (Minor Child), Child in  
Need of Services,  
and  
J.N. (Father),  
*Appellant-Respondent*,

v.

Indiana Department of  
Child Services,  
*Appellee-Petitioner*.

April 29, 2021  
Court of Appeals Case No.  
20A-JC-2116  
Appeal from the Hendricks  
Superior Court  
The Honorable Mary G. Willis,  
Senior Judge  
Trial Court Cause No.  
32D03-2006-JC-44

**Weissmann, Judge.**

- [1] A juvenile court in a paternity action refereed a dispute between A.A. (Mother) and J.N. (Father) over custody of their four-year-old daughter. While that case was pending, the Indiana Department of Child Services initiated a separate action against the same family in the same court, but before a different judge. The new petition alleged the child was a child in need of services (CHINS) because Father had molested her and Mother was unable to care for or protect her. The CHINS court judge ultimately found the molestation allegations unproven. But that judge still found the child to be in need of services based on the parents' "early pattern of weaponizing" the courts in their disputes.
- [2] Although the evidence failed to show Father misused the courts or that the child exhibited harm from any parental conflict, the CHINS court judge restricted Father's access to the child. This contrasted with an order from the paternity court judge specifically authorizing Father's parenting time, including a transfer of custody to him if Mother was hospitalized. Finding DCS failed to prove the child was endangered or that further State intrusion was necessary in light of the paternity court's pending supervision over this family, we reverse the CHINS determination.

## Facts

- [3] This case centers on four-year-old J.N. Six months after J.N.'s birth in 2016, Mother filed a paternity action and Father filed a cross-petition, seeking paternity, custody, and parenting time determinations. The paternity court

ultimately approved the parties' agreement as to those issues in February 2018. Ex., p. 9.

[4] On March 8 and 11, 2019, DCS received reports that Father molested J.N. Tr. Vol. II, pp. 124-126, 129, 186-187. DCS investigated and concluded those allegations were unsubstantiated. *Id.* at 134, 176. On February 2, 2020, DCS received another report that Father molested J.N. Tr. Vol. II, pp. 130-131. J.N. underwent a forensic interview on February 4, 2020. Tr. Vol. II, p. 50. In April 2020, DCS received a report that Mother had been hospitalized for a psychotic episode. Tr. Vol. II, p. 150.

[5] On May 12, 2020, Father filed a motion for contempt, seeking custody of J.N. *Id.* at 50; App. Vol. II, p. 15. At the time, Father exercised parenting time with J.N. on Thursday evenings and every other weekend. Tr. Vol. II, p. 181. One week after Father petitioned for custody, DCS received another report that Father molested J.N. *Id.* at 49. On May 22, 2020, DCS closed its investigation of the February and April 2020 reports after finding both were “unsubstantiated” and that no further DCS involvement or services were needed. *Id.* at 133, 151-152. The May 2020 report of alleged molestation remained pending at the time. *Id.* at 152.

[6] As part of its investigation of the May 2020 report, J.N. participated in another forensic interview—this time by a novice forensic interviewer. *Id.* at 45. Although the child's statements were conflicting, DCS found the May 2020 report “substantiated.” *Id.*; DCS Ex. 1.

- [7] In the meantime, the paternity court conducted a hearing on Father’s emergency custody petition May 29, 2020. Noting Mother was undergoing treatment for her mental illness and had suffered no further episodes since her hospitalization, the paternity court ordered Mother to continue treatment but left the child in her care. *Ex.*, p. 23. The paternity court also authorized Father to care for the child if Mother were hospitalized again. *Id.* The paternity court set the matter for further hearing in September 2020. *Id.*
- [8] On June 1, 2020, DCS filed a CHINS petition in the same court in which the paternity action was pending. *App. Vol. II*, p. 17. That case ultimately was assigned to a senior judge—not the magistrate who was conducting the paternity hearings. *Id.* at 6. DCS alleged J.N. was a child in need of services because Father had molested her and Mother was unable or unwilling to care for or protect her. *Id.* at 18. The CHINS court entered a preliminary order keeping J.N. in Mother’s care but prohibiting Father from contact with the child. *Id.* at 21.
- [9] After a hearing, the CHINS court ruled the evidence insufficient to establish J.N. had been molested. *Id.* at 55. However, the court concluded the child’s mental condition was seriously endangered or impaired by the parents’ contentious litigation. *Id.* The court concluded that “the coercive intervention of the Court is required to address the safety concerns for the physical, mental, and emotional condition of the Child in her parents’ care.” *Id.*

[10] The CHINS court ordered the child to remain in Mother’s care. *Id.* at 56. Despite the lack of proof of molestation or any other allegations of mistreatment of J.N. by Father, the court concluded that “[t]he severity of the allegations of Father’s actions rendered the Child unsafe in his care until additional services can be provided.” *Id.* at 57. The court ruled that “it is in the best interests of the Child for Father’s access to remain restricted at this time as returning the Child to his care would be contrary to the welfare of the Child without services until such time as visitation can be conducted safely based upon supervision and progress in services by Mother and Father.” *Id.* at 56-57. Only Father appeals the CHINS judgment.

## Standard of Review

[11] DCS found J.N. to be a child in need of services under Indiana Code § 31-34-1-1. That statute requires proof by a preponderance of the evidence that: (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 to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and (2) the child needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court. Ind. Code § 31-34-1-1; *Matter of N.C.*, 72 N.E.3d 519, 523 (Ind. Ct. App. 2017).

[12] When reviewing a CHINS determination, we do not reweigh the evidence or assess witness credibility. *Id.* We consider only the evidence and related

inferences supporting the juvenile court's judgment. *Id.* As the juvenile court entered findings of fact and conclusions of law, we consider whether the evidence supports the factual findings and then whether those findings support the judgment. *Id.* We will not set aside the findings or judgment unless they are clearly erroneous. *Id.*

## Discussion and Decision

[13] Father contends the CHINS court exaggerated the conflict between the parents and erroneously determined, without supporting evidence, that the child's mental health is seriously endangered. In response, DCS claims the trial court correctly found the child was endangered by the parents' ongoing tug-of-war over her. We agree with Father that the evidence does not support the CHINS court's judgment.

[14] Two critical findings underly the CHINS court's conclusions. First, the court found:

The parents have engaged in ongoing, continuing and sustained legal proceedings involving the custody and parenting of this 4 year old (sic) child. The parents['] continuous resort to the court system and government agencies for emergency custody and other proceedings in their toxic relationship have resulted in repeated reports to the Indiana Department of Child Services by both parties for the purpose of securing the ultimate weapon in their domestic proceedings. The parents are establishing an early pattern of weaponizing the court to support their respective acts of parental alienation. A highly contentious domestic relationship does not, in itself, support a finding that a child [is] in need of services. This case is the rare exception.

App. Vol. II, p. 55.

- [15] Second, the trial court found the child’s mental condition is seriously impaired or endangered in her parents’ care. *Id.* at 56. Neither of these findings is supported by the evidence.
- [16] The record shows legal disagreements between the parties, but not the intense, never-ceasing, ever-escalating battle the CHINS court describes. Parents filed a total of eleven motions in the paternity action over four years. *Ex.*, pp. 3-18. Several of those filings, including the paternity petition and cross petition, were routine. *Id.* Father’s custody petition was filed because Mother had been hospitalized for her mental illness without allowing Father to care for the child or informing him of the child’s whereabouts. *Ex.*, p. 23. As Father notes, such filings are “indicative of separate parents seeking to maximize their own time with the child, but nothing more.” Appellant’s Br., p. 16. The parties’ filings in the paternity action amounted to occasional shots fired but not the missile bombardment the trial court and DCS describe.
- [17] The record also does not support the trial court’s finding that Parents have made “repeated reports” to DCS “for the purpose of securing the ultimate weapon in their domestic proceedings.” App. Vol. II, p. 55. The trial court granted DCS’s objection and specifically excluded evidence of the identity of whoever initiated the three molestation allegations. Tr. Vol. II, pp. 130-131, 186. The record reflects no other evidence of “reports” to DCS—only the

parents' statements to DCS during its investigation or during the resulting CHINS proceedings.<sup>1</sup>

[18] The repeated, unproven reports of molestation—particularly the third report closely following Father's petition for custody—are extremely troubling. Without evidence of the source of those reports, however, the CHINS court could not reasonably find Parents made or caused the reports. The CHINS court also could not reasonably find Parents “are establishing an early pattern of weaponizing the court to support their respective acts of parental alienation” based on the relatively innocuous course of paternity filings and the lack of any evidentiary connection between the molestation reports and Parents.

[19] Nor does the evidence support a finding that J.N. was a casualty of Parents' conflict. The record is silent as to the impact of Parents' litigation on the child. During the second forensic interview, the child appeared bored occasionally, but not troubled. DCS Ex. 1. DCS did not refer the child to therapy after receiving an evaluator's recommendation—an action which suggests the evaluator found the child did not need therapy. Tr. Vol. II, p. 172. A psychologist who evaluated J.N. in August 2020 reported that J.N. was a “happy and social little girl” who was developing normally and had no severe

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<sup>1</sup> Mother testified she “reported” J.N.'s statements “both times.” Tr. Vol. II, p. 138. However, the record does not reveal exactly when Mother made those reports—that is, either before or after DCS began investigating molestation reports. If the record established Mother was responsible for each of the three unproven reports of molestation and she subjected J.N. unnecessarily to two forensic interviews and several physical examinations as a result of false or baseless reports, Mother's actions could be viewed as endangering J.N. But the Record does not support that conclusion.



behaviors or outward indications of severe emotional problems.” Ex., p. 30. In March 2020, DCS found the girl “happy” and “bonded” with her parents. Tr. Vol. II, p. 133.

[20] Given the dearth of evidence indicating J.N. suffered ill effects from Parents’ conflict, the CHINS court’s finding that Parents’ actions endangered J.N.’s mental and physical health is mere speculation. We do not minimize the potential impact on a child of being repeatedly questioned by strangers about sexual matters, especially in the formal setting of a recorded forensic interview. We also acknowledge that parental conflict may be damaging to children. However, DCS offered no evidence suggesting J.N.’s mental or physical health was endangered<sup>2</sup>.

[21] DCS also failed to establish by a preponderance of the evidence that the child needs care, treatment, or rehabilitation that the child was not receiving and was unlikely to be provided or accepted without the coercive intervention of the court. I.C. § 31-34-1-1. The latter requirement “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 when they ‘encounter difficulty in *meeting* a child’s needs.’” *In re S.D.*, 2 N.E.3d 1283, 1288

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<sup>2</sup> We are equally troubled by the notion that an innocent person accused of a serious crime might be dissuaded from vigorously defending a false claim of child molestation for fear that this action could be construed as “weaponizing the court to support their respective acts of parental alienation.”

(Ind. 2014) (*quoting Lake Cnty. Div. of Fam. & Child. Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[22] J.N. was a happy, bonded, normally developed child who was living in homes that surpassed DCS's minimum requirements. Tr. Vol. II, pp. 133, 179; Ex., p. 30. DCS did not request J.N. engage in any services other than a therapeutic evaluation, which resulted in no further referrals or services for the child. Such evidence alone suggests the inaccuracy of the CHINS finding because a "CHINS adjudication focuses on the condition of the child, not the culpability of the parents." *In re N.E.*, 919 N.E.2d 102, 105-06 (Ind. 2010).

[23] DCS presented no evidence that Mother's home, where the child lived most of the time, was inappropriate. The only failings DCS attributed to Mother were her mental illness and failure to protect the child from Father's alleged molestation, which was unsubstantiated. App. Vol. II, p. 18; Tr. Vol. II, p. 150. The paternity court had already addressed the issue of Mother's mental illness by ordering her to participate in treatment and requiring her to contact Father if she were hospitalized again. Ex., p. 23. The record contains no evidence of any further psychotic episodes or hospitalizations since that order. The paternity court found Mother stable enough under the circumstances to maintain, at least temporarily, primary custody of the child. Ex., p. 23. Even at the time of Mother's hospitalization, DCS found her mental illness did not warrant intervention. Tr. Vol. II, pp. 47, 155.

[24] The only failings DCS attributed to Father were his alleged molestations of J.N., his threatening comments when the CHINS petition was filed, and his alleged domestic violence toward Mother.<sup>3</sup> Father was convicted of domestic battery against Mother in 2017 for an incident in 2016. Tr. Vol. II, pp. 197-198, 211. Father’s alleged verbal aggression led Mother to obtain a protective order against him in August 2020. Tr. Vol. II, pp. 183, 197-198.

[25] All of these “failings” either were unproven and/or did not justify state intrusion. A CHINS finding should consider the family’s condition not just when the case was filed but also when it was heard. *S.D.*, 2 N.E.3d at 1290. Doing so avoids punishing parents for past mistakes when they have already corrected them. *Matter of M.P.*, 162 N.E.3d 585, 591 (Ind. Ct. App. 2021). As to Father, not only did DCS fail to prove the molestation allegations, but it also did not prove that Father could not properly care for the child. Although Father had been convicted of domestic battery toward Mother for an incident four years earlier, the record contains no other incidents of violence between Mother and Father. *Id.* at 211, 215. The record contains no evidence that Father ever had been violent toward J.N.

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<sup>3</sup> Upon being served the CHINS petition alleging his molestation of J.N., Father became extremely upset and told the DCS worker that he was “gonna kill ‘em” and “[y]ou’re gonna have a homicide on your hands.” Tr. Vol. II, p. 148. The CHINS court’s findings do not refer to that specific evidence. Although Father’s statements were extremely inappropriate, the CHINS court’s failure to mention them suggests it reasonably viewed the statements as emotional outbursts lacking any underlying criminal intent.

- [26] DCS’s own findings immediately prior to its filing of the CHINS petition establish the inadequacy of its claims. On May 22, 2020, DCS closed its investigation of: (1) the February 2020 report alleging Father’s molestation; and (2) the April 2020 report about Mother’s hospitalization for mental health problems. Tr. Vol. II, pp. 151-152. DCS found both reports “unsubstantiated” and determined no further DCS involvement was needed. Tr. Vol. II, p. 152. At the time, the latest report alleging Father’s molestation of J.N. was pending. *Id.* That report led to the filing of the CHINS petition approximately a month later.
- [27] In short, the record shows no need for further State intervention. Even if such intervention were needed due to parental conflict, the paternity court was well able to ensure the child was protected. Not every child whose parents engage in a custody battle in is need of court-ordered services. Similarly, not every endangered child is in need of services, and not every endangered child needs the State’s intrusion into the ordinarily private sphere of the family. *M.P.*, 162 N.E.3d at 590. The focus is on the best interests of the child and whether the child needs help that the parents will not be willing or able to provide. *Matter of L.T.*, 145 N.E.3d 864, 871 (Ind. Ct. App. 2020). In this case, the record contains no evidence of any care, treatment, or services the child needs and will not receive absent state intervention.
- [28] The judgment of the CHINS court is reversed, and this matter remanded to the CHINS court to enter judgment in favor of Parents.

Kirsch, J., and Altice, J., concur.