

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Mark Small
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of C.G., (Minor
Child), a Child in Need of
Services;

A.G. (Mother)

Appellant-Respondent,

v.

The Indiana Department of
Child Services,

Appellee-Petitioner.

December 21, 2021

Court of Appeals Case No.
21A-JC-651

Appeal from the Owen Circuit
Court

The Honorable Kelsey B. Hanlon,
Judge

Trial Court Cause No.
60C02-2101-JC-6

Pyle, Judge.

Statement of the Case

- [1] A.G. (“Mother”) appeals the trial court’s order adjudicating her son, C.G. (“C.G.”), to be a Child in Need of Services (“CHINS”). Mother specifically argues that there is insufficient evidence to support the adjudication. Concluding that the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the CHINS adjudication, we affirm the trial court’s judgment.¹
- [2] We affirm.

Issue

Whether there is sufficient evidence to support the CHINS adjudication.

Facts

- [3] The evidence most favorable to the CHINS adjudication reveals that Mother is the parent of C.G., who was born in April 2019. In September 2020, when Mother and C.G. were living with Father, DCS received a report of drug use and domestic violence in the home. DCS investigated the report, recommended that both parents attend mental health assessments, and offered Mother an informal adjustment. Mother attended the recommended assessment and one counseling session before moving with C.G. to Florida to

¹ C.G.’s father (“Father”) is not a party to this appeal.

live with her mother. DCS took no further action on the case, and Mother did not continue with counseling while she was in Florida.

[4] Mother and C.G. lived in Florida for a few months before returning to Indiana. Mother did not return to counseling when she returned to Indiana. In January 2021, while Mother and C.G. were living with one of Mother's friends, Mother became hysterical when she believed that Father had entered her bedroom window and left methamphetamine in the room. Spencer Police Department Officer Kyle Jackson ("Officer Jackson") was dispatched to the scene and found Mother and then-twenty-one-month-old C.G. in the bedroom. C.G. was strapped in his car seat that was sitting on a bed, and both he and Mother were crying and screaming. Mother showed no concern for C.G. Instead, she was screaming that there was methamphetamine on the windowsill and that there were bags of methamphetamine on the floor. However, Officer Jackson did not see any loose or bagged methamphetamine. Because Mother believed that both she and C.G. had ingested methamphetamine, they were both transported to the local hospital by ambulance.

[5] Officer Jackson, who was concerned about C.G. "being in that household in general[,]” called the DCS hotline to report a possible case of child neglect. (Tr. Vol. 2 at 42). DCS Family Case Manager Robert Cheeseman ("FCM Cheeseman") went to the hospital to interview Mother. Mother told FCM Cheeseman that Father had placed methamphetamine in the bedroom and that C.G. had "gotten a hold of it." (Tr. Vol. 2 at 29). Mother, who "seemed confused and almost in a hallucinating state[,]” told FCM Cheeseman that she

did not know whether she had a place to stay after she left the hospital. (Tr. Vol. 2 at 30). Mother also told FCM Cheeseman that she had not taken any drugs but that she felt like someone had given her drugs. Mother tested positive for methamphetamine, but C.G did not.

[6] DCS removed C.G. from Mother because of concerns about Mother's substance abuse and erratic behavior and placed C.G. in the care of his paternal uncle. DCS Family Case Manager Tamara Whaley ("FCM Whaley") spoke with Mother the day after C.G.'s removal. Mother told FCM Whaley that she was addicted to opioids and was "taking Suboxone as a treatment." (Tr. Vol. 2 at 46). Mother also admitted that she had used methamphetamine in the past but denied recently using it. Mother further told FCM Whaley that she had a panic disorder and suffered from up to ten panic attacks every day. According to Mother, she was taking Zoloft and Buspar for the panic attacks but that the medications were possibly "no longer working for her." (Tr. Vol. 2 at 46).

[7] That same day, DCS filed a petition alleging that C.G. was a CHINS based on Mother's erratic behavior related to her mental health and/or substance abuse. At the two-day March 2021 CHINS fact-finding hearing, the trial court heard the evidence as set forth above.

[8] Also at the hearing, FCM Whaley testified that Mother had participated in weekly drug screens. Mother's drug screen test results had been positive for suboxone, for which Mother had a prescription, and negative for illegal drugs. One of Mother's drug screens had been positive for alcohol. FCM Whaley also

testified that Mother had stable housing and employment and had visited with C.G. Although FCM Whaley acknowledged Mother's progress in the six weeks since the January 2021 initial hearing, FCM Whaley recommended that C.G. remain in the care of his paternal uncle "due to the safety issues and the beginning stages of this case." (Tr. Vol. 2 at 51). FCM Whaley also testified that she would not yet recommend that C.G. have overnight weekend visits with Mother because of Mother's substance abuse and numerous daily panic attacks. FCM Whaley further explained that, because C.G. is less than two years old, FCM Whaley wanted to make sure that Mother established a period of sobriety.

[9] Mother's therapist, Kimberly Patrick ("Therapist Patrick") testified that Mother had attended weekly therapy sessions since the January 2021 initial hearing. Therapist Patrick further testified that she and Mother had been addressing Mother's panic attacks and had been working on relapse prevention.

[10] After the parties had presented evidence, counsel for DCS pointed out that Mother had not begun engaging in services until DCS had recommended them in September 2020. Counsel for DCS also acknowledged Mother's participation in services but further argued as follows:

I think the Court has within its discretion to determine whether or not that participation is because of the Court involvement and because of [DCS'] involvement. This is a very young child that does require a safe and sober caregiver at all times . . . I think the Court can determine from the family patterns of behavior that if [DCS] does not remain involved, it is unlikely that those services will continue.

(Tr. Vol. 2 at 88).

[11] At the end of the hearing, the trial court told the parties that it was going to take the matter under advisement. The trial court further explained as follows:

I think that there are, there were a lot of compelling arguments made today by counsel and I think the underlying situation with regard to the child's - kind of the confusion about the child possibly ingesting Methamphetamine and mother's behavior at that time, the fact that this is a two-year-old, this is all very concerning to me and I think it's not a good situation[.]

(Tr. Vol. 2 at 90).

[12] The following day, the trial court issued an order adjudicating C.G. to be a CHINS. The trial court's order summarized the facts as set forth above in the findings and concluded as follows:

20. Although each parent has voluntarily participated in services, absent DCS intervention in their lives, it is unlikely Respondent Parents would have sought out professional assistance in addressing their issues with substance abuse, domestic violence, and mental health concerns.

21. The Child is only two years old. The Child relies totally on his caregivers to meet all his needs. The Child needs sober caregivers in a safe, stable, drug-free and violence-free home. Respondent Parents need assistance and court intervention to provide the same. The same is unlikely to be provided without the coercive intervention of the Court.

(App. Vol. 2 at 49). Pursuant to the trial court's order, C.G. was to remain in the care of his paternal uncle.

[13] Mother now appeals the CHINS adjudication.

Decision

[14] Mother's sole argument is that there is insufficient evidence to support the CHINS adjudication. 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. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). This Court will not reweigh the evidence or reassess the credibility of the witnesses. *Id.* at 1286.

[15] Where, as here, a juvenile 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.* Findings are clearly erroneous when there are no facts or inferences to be drawn therefrom that support them. *Id.* A judgment is clearly erroneous if the findings do not support the juvenile court's conclusions or the conclusions do not support the resulting judgment. *Id.*

[16] 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.*

[17] As a preliminary matter, we note that Mother does not challenge the trial court’s findings. As a result, she has waived any argument relating to whether these unchallenged findings are clearly erroneous. *See McMaster v. McMaster*, 681 N.E.2d 744, 747 (Ind. Ct. App. 1997) (explaining that unchallenged trial court findings are accepted as true). We now turn to the substantive issue in this case.

[18] A CHINS proceeding is a civil action. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). Therefore, DCS must prove by a preponderance of the evidence that the child is a CHINS as defined by the juvenile code. *Id.* INDIANA CODE § 31-34-1-1 provides that a child is a CHINS 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:

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

(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

(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.

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.

[19] Here, our review of the evidence reveals that Mother and C.G. first became involved with DCS in September 2020 when DCS received a report of drug use and domestic violence in the home. Mother attended a DCS-recommended mental health assessment and one counseling session before moving with C.G. to Florida. Mother did not continue counseling while in Florida. A few months later, Mother and C.G. returned to Indiana. Mother did not return to counseling until she and C.G. became involved with DCS again in January 2021 after a police officer had been dispatched to the home where Mother lived with C.G. Mother and C.G., who was strapped in a car seat that was sitting on a bed, were both screaming and crying. Mother, who seemed to be hallucinating and who showed no concern for C.G., believed that there was methamphetamine on the windowsill and in bags on the floor. Mother also believed that she and C.G. had ingested the methamphetamine. However, the police officer who had been dispatched to the scene did not see any

methamphetamine. Mother and C.G. were transported to the hospital by ambulance, and Mother tested positive for methamphetamine.

[20] After DCS had filed a petition alleging that C.G. was a CHINS based on Mother's drug use and mental health issues, Mother returned to counseling. Six weeks later, following a CHINS fact-finding hearing, the trial court expressed concern about the seriousness of the January 2021 incident and concluded that two-year-old C.G., who relied totally on his caregivers to meet all his needs, needed sober caregivers in a safe, stable, drug-free, and violence-free home. The trial court further concluded that Mother needed court intervention to provide the same and that the same was unlikely to be provided without the coercive intervention of the court. The trial court's findings, which Mother did not challenge, support these conclusions. There is sufficient evidence to support the CHINS adjudication.

[21] Affirmed.

May, J., and Brown, J., concur.