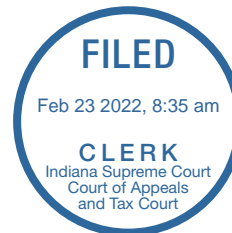


## MEMORANDUM DECISION

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

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In the Matter of L.Q. (Minor  
Child), a Child in Need of  
Services,

B.Q. (Mother) and  
M.C. (Father),

*Appellants-Respondents,*

v.

Indiana Department of  
Child Services,

*Appellees-Petitioners.*

February 23, 2022

Court of Appeals Case No.  
21A-JC-1884

Appeal from the Hendricks  
Superior Court

The Honorable Karen M. Love,  
Judge

Trial Court Cause No.  
32D03-2104-JC-24

**Weissmann, Judge.**

[1] B.Q. (Mother) and M.C. (Father) appeal the juvenile court's determination that their seven-month-old child, L.Q. (Child), is a child in need of services (CHINS). The court's unchallenged findings reveal ongoing concerns with Mother using unsafe sleep practices with Child, Mother not consistently taking her mental health medications as prescribed, and unresolved domestic violence by Father against Mother. As these findings support a conclusion that Child is seriously endangered, we cannot say the juvenile court's CHINS determination is clearly erroneous. We therefore affirm.

## Facts

[2] DCS became involved with Parents prior to Child's birth, when, in June 2019, Parents' other son, M.C., Jr. (Sibling), was born with THC in his blood. The involvement escalated five months later, after Mother was arrested for Level 6 felony battery and Class B misdemeanor possession of marijuana.<sup>1</sup> Mother subsequently disclosed to DCS that she was living with bi-polar disorder and post-partum depression for which she was not taking her prescribed medications. DCS therefore removed Sibling from Parents' care, placed him with his maternal aunt, and filed a petition alleging Sibling was a CHINS. Sibling was adjudicated as such in January 2020.

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<sup>1</sup> Though Mother and Father jointly appeal the juvenile court's CHINS determination, their arguments focus solely on Mother's conduct. We note, however, that Father conceded his inability to care for Child due to his incarceration on drug charges. Tr. Vol. II, p. 93.

[3] Child was born in September 2020. Three months later, Mother and Child began residing at a domestic violence shelter. Mother also obtained a protective order against Father based, in part, upon the following sworn allegations of domestic violence:

On or about December 5, 2020, . . . I told [Father] I was going to leave because I was tired of the constant disrespect from him, I was tired of him not following the court orders that were put in place for our children, and him constantly mentally and verbally abusing me, making me feel awful and beneath him. He quickly loses his temper and puts his finger in my face, he begins screaming “I’m going to break your f\*\*\*ing neck!” At this point I was afraid for my life. I told him, I was tired of him treating me and his son like a punching bag. He then grabs my finger and begins biting down on my finger as hard as he could. There are still scars on my fingers from him doing this. He then began choking me with one hand while he was driving. I then became afraid that he was going to kill me, I tried telling him I could not breath and he then let go.

On or about October 29, 2020, . . . at 4 o clock in the morning [Father] came into his [adult] son’s camper and woke me and [Child] up. He was high on meth, his pupils were very dilated, and [he] was very loud. I then asked him why he came home so late . . . . He began screaming and telling me he can come home whenever he feels like it. I noticed then that the relationship was not working and I told him that me and the baby are going to leave and go to a shelter. . . . He then spit on me, while [Child] was in my arms and told me you and that baby are not going anywhere. I then pleaded with him to allow me to leave. He doesn’t allow me to shower, he does not allow me to talk to the opposite sex or anyone who supports me emotionally, one time last year he punched me with close fist so hard he busted my right ear drum, and he tells me that he does all of this protect me even though he is harming me.

App. Vol. II, p. 74.

- [4] In February 2021, DCS and Mother agreed to a program of informal adjustment as to Child, which the juvenile court subsequently approved. Pursuant to the program, Mother was required to abide by the terms of her protective order against Father, not to allow him to have contact with her, and to immediately report any such contact to DCS.
- [5] In March 2021, DCS began receiving reports that Mother was using unsafe sleep practices with Child. These included co-sleeping with Child in a twin bed and letting Child sleep in his car seat with a heavy blanket over his face. Despite repeated instruction on child sleep safety, Mother's unsafe practices persisted until DCS removed Child from Mother's care in April 2021. DCS placed Child with his maternal aunt and filed its petition alleging Child was a CHINS.
- [6] The juvenile court held a factfinding hearing on the CHINS allegations in May 2021. Mother's battery and possession of marijuana charges remained pending at the time, and DCS sought to introduce the chronological case summary and charging information from those cases as evidence in the CHINS proceeding. According to DCS, Mother's pending criminal charges—and her potential incarceration thereon—were relevant to the issue of Mother's ability to provide Child with stable housing. The court admitted the evidence over Mother's objection.
- [7] In July 2021, the juvenile court adjudicated Child a CHINS with written findings of fact and conclusions of law. Ultimately, the court continued Child's

placement with his maternal aunt and ordered Parents to participate in services. In its dispositional order, the court noted that “Child was found to be a [CHINS] due to ongoing concerns for Mother co-sleeping with Child, Mother not consistently taking her mental health medications as prescribed, domestic violence between the parents, Father being presently incarcerated, and Father struggling with substance abuse.” *Id.* at 118.

## Discussion and Decision

- [8] On appeal, Parents challenge the juvenile court’s determination that Child is a CHINS. They argue that the court erred by admitting evidence of Mother’s pending criminal charges and that DCS presented insufficient evidence that Child is in need of services.

### I. Admission of Evidence

- [9] Parents first argue that the trial court erred by admitting evidence of Mother’s pending criminal charges at the CHINS factfinding hearing. Trial courts have broad discretion whether to admit or exclude evidence, and appellate courts generally review such decisions only for an abuse of discretion. *Matter of K.R.*, 154 N.E.3d 818, 820 (Ind. 2020). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances and the error affects a party’s substantial rights. *Id.*
- [10] At the factfinding hearing, Mother objected to the evidence of her pending criminal charges under Indiana Evidence Rule 403. That rule provides: “The court may exclude relevant evidence if its probative value is substantially

outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.” Ind. Evid. R. 403.

- [11] Parents claim the evidence of Mother’s pending criminal charges risked confusing the issue of whether Child was presently endangered.<sup>2</sup> They emphasize that the conduct underlying the charges occurred before Child’s conception, but they do not explain how the risk of confusion substantially outweighs the evidence’s probative value. In fact, they do not reference the evidence’s purported relevance at all. A trial court’s evidentiary rulings are presumptively correct, and the defendant bears the burden on appeal of persuading us that the court erred in weighing prejudice and probative value. *Anderson v. State*, 681 N.E.2d 703, 706 (Ind. 1997). Parents have failed to carry their burden.
- [12] Moreover, errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. *E.B. v. Ind. Dep’t of Child. Servs.*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014). To determine whether the

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<sup>2</sup> Parents also claim the evidence of Mother’s pending criminal charges was unfairly prejudicial because it begs the inference that Mother has poor parental character based on conduct that occurred before Child was born. Mother, however, did not object on this basis during the factfinding hearing. The claim is therefore waived. *See Lashbrook v. State*, 762 N.E.2d 756, 759 (Ind. 2002) (“A defendant may not present one ground for an objection at trial and assert a different one on appeal.”); *see also Griffin v. State*, 16 N.E.3d 997, 1005 n.3 (Ind. Ct. App. 2014) (finding waiver where defendant’s trial objection and appellate argument were both based on Indiana Evidence Rule 403, but the appellate argument was substantially different than the one presented to the trial court).

admission of evidence affected a party's substantial rights, we assess the probable impact of the evidence upon the finder of fact. *Id.*

[13] Here, the juvenile court mentioned Mother's pending criminal charges in a single finding of fact. As explained in Section II below, there are ample findings and independent evidence to satisfy the court's determination that Child is a CHINS. Thus, we are confident that the probable impact of Mother's pending criminal charges is sufficiently minor. Finding Parents' substantial rights were not affected by the evidence of Mother's pending criminal charges, any error in the juvenile court's admission of that evidence was harmless.

## II. Sufficiency of Evidence

[14] Parents also argue that DCS presented insufficient evidence that Child is a CHINS. When reviewing the sufficiency of evidence, we neither reweigh evidence nor judge witness credibility. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). Instead, we consider only the evidence and reasonable inferences most favorable to the trial court's decision. *Id.* We reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.*

[15] The trial court here entered sua sponte findings and conclusions supporting its CHINS determination, although such findings and conclusions are not statutorily required. *See In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). "As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment." *Id.* "But we review the remaining issues under the general judgment

standard,” meaning we will affirm the judgment “if it can be sustained on any legal theory supported by the evidence.” *Id.*

[16] “A CHINS proceeding is a civil action; thus, the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code.” *K.D.*, 962 N.E.2d at 1253 (internal quotation omitted). Here, DCS alleged Child was a CHINS under Indiana Code § 31-34-1-1, which provides, in pertinent part: “A child is a [CHINS] if . . . 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 . . . supervision[.]” Ind. Code § 31-34-1-1(1).

[17] Parents claim that DCS failed to present evidence that Child’s physical or mental condition is seriously endangered. However, they do not specifically challenge any of the juvenile court’s findings of fact. As such, we simply determine whether the unchallenged findings are sufficient to support the judgment. *In re A.M.*, 121 N.E.3d 556, 562 (Ind. Ct. App. 2019). The relevant findings can be summarized as follows:

- Mother continued to use unsafe sleep practices with Child despite repeated instruction on child sleep safety. Children Child’s age are seriously endangered by the unsafe sleep practices Mother used.
- Mother’s mental health has been an ongoing point of focus in Sibling’s CHINS case. Though Mother has made substantial progress in this regard, she is still working to understand the importance of taking her medication as prescribed.



- Mother has continued communicating with Father and is likely to reunify with him upon his release from jail. There is no indication that Father has progressed in mitigating the domestic violence issues Mother alleged in her petition for a protective order.

App. Vol. II, pp. 67-77.

[18] These unchallenged findings stand as proven and sufficiently support a conclusion that Child’s physical or mental condition is seriously endangered. *See A.M.*, 121 N.E.3d at 563. Parents’ only claim to the contrary is that DCS failed to prove Mother was still using unsafe sleep practices at the time of the factfinding hearing. *See generally In re R.S.*, 987 N.E.2d 155, 159 (Ind. Ct. App. 2013) (“[A] CHINS adjudication may not be based solely on conditions that no longer exist.”). But Mother was unable to use any sleep practices—safe or unsafe—at the time of the factfinding hearing because Child had been removed from her care. Parents’ claim is therefore unavailing.

[19] Finding the juvenile court’s CHINS determination is not clearly erroneous, we affirm.

Najam, J., and Vaidik, J., concur.