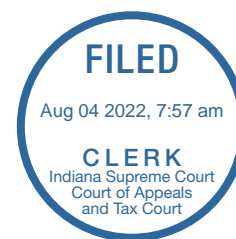


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

David W. Stone
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Monika Prekopa Talbot
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of F.B., Child
Alleged to be a Child in Need of
Services;

J.B. (Father) and K.B. (Mother),
Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

August 4, 2022

Court of Appeals Case No.
21A-JC-2876

Appeal from the Madison Circuit
Court

The Honorable Stephen J. Koester,
Judge

Trial Court Cause No.
48C02-2106-JC-178

Tavitas, Judge.

Case Summary

- [1] J.B. (“Father”) and K.B. (“Mother”) (collectively, “Parents”) appeal the trial court’s order finding their daughter, F.B., to be a child in need of services (“CHINS”). Parents argue that the Madison County Department of Child Services (“DCS”) failed to present evidence that F.B. was endangered. Finding that the evidence supports the trial court’s conclusion that F.B. is a CHINS, we affirm.

Issue

- [2] Parents raise one issue, which we restate as whether sufficient evidence supports the CHINS adjudication.

Facts

- [3] On June 29, 2021, DCS received a report alleging that: Parents physically abused and neglected nine-year-old F.B.; Parents were manufacturing and dealing methamphetamine; Mother had a warrant for her arrest; and domestic violence was occurring between Parents. Family Case Manager (“FCM”) Zach Allgood and deputies from the Madison County Sheriff’s Department went to Parents’ property. They discovered multiple trailers and RV’s on the property. The property was cluttered, overgrown, and not “well-maintained.” Tr. Vol. I p. 106.
- [4] In one of the trailers, they discovered Parents, who were groggy and slurring their words. Law enforcement suspected that Parents were under the influence of a substance based upon their behaviors. Initially, Father claimed that F.B.

was at a friend's home but later admitted that she was in another trailer on the property.

[5] In the other trailer, FCM Allgood and the deputies located F.B., who was sleeping on a couch at the time. FCM Allgood and the deputies learned that F.B. was living in the trailer while Parents lived in the other trailer. The trailer where F.B. was living was filthy and cluttered, had dog feces “all over the floor,” had dirty dishes and old food “all over the counter,” and smelled badly. *Id.* at 111. The two beds in the trailer were covered with items, including dirty clothes, auto parts, and a pile of lighters. A closet contained a toilet that “re[e]ked,” but no shower or bathtub was located in the trailer. *Id.* at 129. One deputy said that the trailer was “one of the filthiest houses [he] had been in” during his ten years as a police officer. *Id.*

[6] F.B. said that Parents went to an estate sale, and she did not think they had returned. F.B. reported that Mother checked on F.B. once a day and sometimes spent the night with her in the trailer. F.B. said that Parents usually stayed in their trailer. FCM Allgood did not see a cell phone or other means by which F.B. could communicate with Parents. F.B. reported she was grounded at the time because she had cooked food without supervision.

[7] Law enforcement reported that Father was uncooperative and “very stand offish [sic] [and] very aggressive towards law enforcement.” *Id.* at 133. When asked whether there was a plan in place for F.B. in case of an emergency, Father responded, “there wasn’t any reason to have a plan because no emergency had happened.” *Id.* at 150. Mother agreed to participate in a drug

screen, which was positive for amphetamine and methamphetamine. Father, however, refused to consent to a drug screen. Mother was transported to the Madison County Jail for pending theft charges. F.B. was removed from Parents' care and placed in relative care.

[8] On June 30, 2021, DCS filed a petition alleging that F.B. was a CHINS pursuant to Indiana Code Section 31-34-1-1. The fact-finding hearing was held on September 13 and October 19, 2021. On the first day of the fact-finding hearing, F.B. gave an *in camera* interview outside the presence of Parents. After this hearing, Mother began participating in supervised visits with F.B. At the second day of the fact-finding hearing, FCM Margaret Townes testified that she asked Parents to submit to substance abuse assessments, random drug screens, home-based case work to remedy the home conditions, and supervised visitation with F.B., but Parents did not respond or participate. When FCM Townes attempted to visit Parents and view their home, she was unable to access the home because a large wooden fence blocked the driveway and metal fences blocked the yard. FCM Townes testified that she did not believe Parents would cooperate with DCS without a court order.

[9] Court Appointed Special Advocate (“CASA”) Felicity Storm testified that, despite the supervised visitation requirement, Mother had been communicating with F.B. through F.B.’s school computer and that Mother had been helping F.B. complete her homework. In one message, Mother told F.B. not to tell anyone about the communications or what they discussed. F.B. told the CASA

that she knew how to drive a car. According to the CASA, F.B. “acts like a mini adult” and is too independent for her age. *Id.* at 221.

[10] Mother testified that F.B. was not left alone; rather, she was left in the care of neighbors. Mother claimed that she placed cameras in F.B.’s trailer; that the cameras were “synced” to Mother’s phone; and that Mother and F.B. could speak to each other through the cameras. *Id.* at 227. Mother testified that F.B. was in good health, had clothing, had food, had access to bathrooms, and received good grades in school. Mother testified that she had cleaned up the house “for the most” part. *Id.* at 233. Mother claimed that F.B. was spoiled and that they let her set up the trailer as “her little place.” *Id.* at 238. Mother denied any physical violence between her and Father. Mother testified that she did not believe the trial court needed to be involved in this case.

[11] The trial court entered findings of fact and conclusions thereon finding that F.B. is a CHINS. The trial court found:

At this hearing [F.B.] somewhat contradicted what she told the officers on June 29, specifically, that her mom and dad did sleep in the mobile home with her most nights, but not all nights, and her mom had cameras in the trailer to watch her. Her Mom could view the trailer on her cell phone via the cameras. FB couldn’t explain how she could contact her Mom in the event of an emergency. FB’s testimony appeared to have been coached and rehearsed.

* * * * *

Various statements [Mother] made during her testimony regarding FB were suspicious with regards to FB’s living

arrangements. She stated: “the trailer is set up the way FB wanted it, it is her space.” “FB is head strong.” “FB is a bit much to handle.” “The cameras were installed to monitor FB to make sure she didn’t do something she shouldn’t.” By a preponderance of the evidence the Court is convinced FB lives pretty much alone and independent of her parents in an unsafe and unsanitary condition in the mobile home. Her parents, [Mother and Father] were under the influence of substances on the evening of June 29th making them unfit to supervise or monitor the welfare of FB.

Appellee’s App. Vol. II p. 3. In December 2021, the trial court entered a dispositional order. Parents now appeal.

Analysis

[12] Parents challenge the sufficiency of the evidence to support the trial court’s determination that F.B. is a CHINS. CHINS proceedings are civil actions; thus, “the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code.” *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010); *see* Ind. Code § 31-34-12-3. On review, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.J.*, 68 N.E.3d 574, 577-78 (Ind. 2017). Here, the trial court entered sua sponte findings of fact and conclusions thereon in granting DCS’s CHINS petition. “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.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). We review the remaining issues under the general judgment standard, which provides that a judgment “will be affirmed if it can be sustained on any legal theory supported

by the evidence.” *Id.* We will reverse a CHINS determination only if it is clearly erroneous. *D.J.*, 68 N.E.3d at 578.

[13] DCS must prove three elements for a juvenile court to adjudicate a child a CHINS: (1) the child is under the age of eighteen; (2) that one of eleven different statutory circumstances exist that would make the child a CHINS; and (3) the child needs care, treatment, or rehabilitation that he or she is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012).

[14] Here, the trial court found F.B. was a CHINS under the general category of neglect as defined in Indiana Code Section 31-34-1-1, which provides:

A child is a child in need of services 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.

[15] “[T]he purpose of a CHINS adjudication is to protect children, not [to] punish parents.” *N.E.*, 919 N.E.2d at 106. A CHINS adjudication is not a determination of parental fault but rather is a determination that a child is in need of services and is unlikely to receive those services without intervention of the court. *Id.* at 105. “A CHINS adjudication focuses on the condition of the child [T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* (citations omitted). “A CHINS finding should consider the family’s condition not just when the case was filed, but also when it is heard.” *S.D.*, 2 N.E.3d at 1290.

[16] Parents argue that F.B.’s needs were being met because F.B. was properly fed, had no health problems, had housing with working utilities, had clothing, and was performing well in school. Parents also argue that the unsanitary conditions at the trailer were rectified prior to the fact-finding hearing. Parents seem to be challenging the trial court’s conclusion that F.B. is seriously endangered and that F.B.’s needs are unmet.¹

[17] DCS, however, presented evidence that Parents were allowing nine-year-old F.B. to live alone with her pet dog and chicken in a filthy trailer with minimal

¹ Parents make no argument concerning the need for the coercive intervention of the court.

supervision. At the time of DCS's intervention, Mother was arrested for an outstanding warrant and tested positive for methamphetamine. Father refused drug testing but was groggy and slurring his words. After F.B.'s removal, Parents were uncooperative with DCS. Although Mother claimed that she had cleaned the trailer "for the most" part, DCS employees and the CASA had been unable to view the property due to Parents' lack of cooperation. Tr. Vol. I p. 233. Mother also had unauthorized communication with F.B. through F.B.'s school laptop. Although Mother testified that she had cameras in the trailer to communicate with F.B. and that she spent a significant amount of time in the trailer with F.B., the trial court did not find Mother's testimony credible and found that F.B. had been coached.

[18] Parents' argument is merely a request for us to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. DCS has demonstrated by a preponderance of the evidence that F.B. was seriously endangered and that her needs were unmet. Accordingly, the trial court's conclusion that F.B. is a CHINS is not clearly erroneous.

Conclusion

[19] DCS presented sufficient evidence to demonstrate that F.B. is a CHINS. Accordingly, we affirm.

[20] Affirmed.

Riley, J., and May, J., concur.