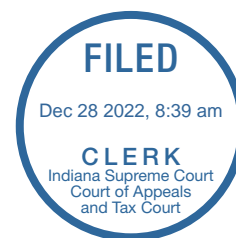


MEMORANDUM DECISION

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 K.J.

Steven J. Halbert
Indianapolis, Indiana

ATTORNEY FOR APPELLANT J.K.

Danielle L. Gregory
Indianapolis, 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 Re the Termination of the
Parent-Child Relationship of:

M.K. (Minor Child)

And

J.K. (Mother) and K.J. (Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

December 28, 2022

Court of Appeals Case No.
22A-JC-1365

Appeal from the Marion Superior
Court

The Honorable Alicia A. Gooden,
Judge

The Honorable Jennifer J. Hubartt,
Magistrate

Trial Court Cause No.
49D14-2106-JC-5283

Mathias, Judge.

[1] J.K. (“Mother”) and K.J. (“Father”) appeal the Marion Superior Court’s order adjudicating their child, M.K., a Child in Need of Services (“CHINS”). In this consolidated appeal, both parents challenge the sufficiency of the evidence supporting the CHINS order and the court-ordered services imposed in the dispositional order. Mother also argues that several factual findings are not supported by the preponderance of the evidence.

[2] We affirm.

Facts and Procedural History

[3] M.K. was born on June 14, 2021. At birth, she tested positive for a controlled substance. Mother also tested positive for a controlled substance. M.K. required care in the neonatal intensive care unit for several days before she was released from the hospital in the care of the Department of Child Services (“DCS”), and DCS filed a petition alleging that one-week-old M.K. was a CHINS. Father’s whereabouts were unknown when M.K. was born.

[4] DCS arranged for Mother to participate in in-patient drug treatment at the Volunteers of America, Fresh Start Recovery Program in Evansville, Indiana. Maternal grandmother also lived in Evansville, where M.K. was initially placed. Mother participated in treatment, and M.K. was returned to her care while she resided at the VOA.

[5] Mother committed multiple violations of the VOA’s program rules, and in September 2021, she was unsuccessfully discharged. DCS removed M.K. from Mother’s care when she was discharged. The same day that Mother left the

VOA she was arrested and charged with battery and intimidation. As a result of those charges, Mother was incarcerated for approximately five months. Mother pleaded guilty to those offenses in February 2022.

- [6] Mother has a significant history with DCS, and her three older children are no longer in her care. In 2018, the Marion Superior Court issued an order terminating Mother's parental rights to her children born in 2009 and 2011. Mother's parental rights were terminated because she continued to abuse alcohol and illegal substances, failed to participate in substance abuse treatment, failed to maintain a safe and appropriate home, and committed criminal offenses. Mother's third child, who was born in 2017, was adjudicated a CHINS due to Mother's arrest for neglect of a dependent, public intoxication, and intimidation. The CHINS petition was eventually dismissed because the biological father obtained custody of the child.
- [7] Mother has been diagnosed with anxiety, depression, Borderline Personality Disorder, and bi-polar disorder. Mother was not participating in mental health treatment. Mother has a history of volatile behavior. The family case manager witnessed Mother's volatile behavior in April 2022.
- [8] Father's whereabouts were initially unknown to DCS. After DCS located Father in January 2022, he declined to participate in services until his paternity was established. Father's paternity was not established until March 2022, near the date of Mother's release from incarceration.

- [9] After Mother was released from incarceration, she reunited with Father and relocated to the Indianapolis area. Father's home-based case manager met with Parents after Father's paternity was established. The home-based case manager learned that Parents were homeless and helped them find housing at a hotel.
- [10] Mother is not employed but plans to apply to reinstate her social security disability benefits, which were terminated when she was incarcerated. Father has been employed through a temporary employment agency for three years. He earns approximately \$1600 a month. He also pays child support for an older child in the amount of \$75 per week. Father performs odd jobs to supplement his income when he can find other work.
- [11] M.K. has severe eczema, she is allergic to soy, eggs, and certain animals. She also wears a helmet to correct her head shape and participates in occupational therapy. Mother understands M.K.'s medical conditions, but Father only understands that she is "sickly." Tr. p. 17. Father admitted that he is unable to care for M.K. on his own.
- [12] The trial court held a fact-finding hearing on DCS's CHINS petition on April 6, 2022. The court issued its order adjudicating M.K. a CHINS on April 26. The court held the dispositional hearing on May 25 and issued its dispositional decree and parental participation order thereafter. Both parents were ordered to participate in home-based therapy and case management and submit to random drug screens. Mother was also ordered to undergo a substance abuse assessment and parenting assessment.

[13] Father and Mother each filed notices of appeal and their appeals were consolidated by order of this court on August 1, 2022.

Standard of Review

[14] A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). A CHINS adjudication under [Indiana Code section 31-34-1-1](#) requires 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.¹ Specifically, [section 31-34-1-1](#) 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 ... to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:

(A) when the parent ... is financially able to do so; or

(B) due to the failure, refusal, or inability of the parent ... to seek financial or other reasonable means to do so; and

¹ DCS alleged that M.K. was a CHINS under two additional sections of chapter 31-34-1 because M.K. tested positive for illegal substances at birth. *See* Appellant's App. Vol. 2, pp. 31-32; [Ind. Code §§ 31-34-1-10, -11](#). In its order adjudicating M.K. a CHINS, the trial court's conclusions of law only reference the factors listed in [Indiana Code section 31-34-1-1](#). Appellant's App. Vol. 2, p. 228.

(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] When we review a CHINS adjudication, we neither reweigh the evidence nor judge the credibility of the witnesses and will consider only the evidence and reasonable inferences that support the trial court’s decision. *K.D.*, 962 N.E.2d at 1253. We will reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.* When, as here, a trial court issues findings of fact and conclusions law, we apply a two-tiered standard of review. First, we consider whether the evidence supports the findings and, second, whether the findings support the judgment. Our court will reverse a CHINS determination only if it was clearly erroneous. “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.” *In re D.J.*, 68 N.E.3d 574, 577-78 (Ind. 2017). Importantly, in family law matters, we generally grant latitude and deference to trial courts in recognition of the trial court’s unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied*.

[16] It is well established that the purpose of a CHINS adjudication is to protect the children, not punish the parents. *K.D.*, 962 N.E.2d at 1255. Therefore, the focus of a CHINS proceeding is on “the best interests of the child, rather than guilt or innocence as in a criminal proceeding.” *In re N.E.*, 919 N.E.2d 102, 105 (Ind.

2010). For this reason, the acts or omissions of one parent can cause a condition that creates the need for court intervention. *Id.*

- [17] Finally, courts should consider the family’s condition not just when the case was filed, but also when it is heard to avoid punishing parents for past mistakes when they have already corrected them. *D.J.*, 68 N.E.3d at 580-81. This “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 where they ‘encounter difficulty in meeting a child’s needs.’” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

Challenged Findings of Fact

- [18] First, we address Mother’s claim that twenty-one of the trial court’s fifty-two findings of fact are not supported by a preponderance of the evidence.
- [19] In finding number 6, the trial court found that Mother admitted to using cocaine during her pregnancy and that M.K. tested positive for cocaine at birth. We agree that DCS did not prove that Mother used cocaine during her pregnancy or that M.K. tested positive for cocaine at birth. However, Mother did admit to using “illicit substances during her pregnancy” and that M.K. was “born positive for illicit substances.” Appellant’s App. Vol. 2 p. 219; Tr. p. 48 (admitting to substance use in March 2021).
- [20] In finding number 15, Mother objects to the trial court’s finding that “Father has not obtained permanent employment for more than three years.”

Appellant's App. Vol. 2 p. 226. Father was employed through a temp agency for the past three years but did not have a job with a permanent employer. Although Father's employment was stable, it was not with a permanent employer.

[21] In finding 16, the trial court found that parents cannot financially maintain housing at the Quality Inn. This finding is not clearly erroneous. The hotel room costs \$93 per night, for a total of over \$2700 per month. Father earns approximately \$1600 per month and pays \$300 per month in child support (or \$75 per week). Even if Father and/or Mother earned extra income doing odd jobs, their income was not sufficient to maintain housing at the Quality Inn for an extended time period.

[22] In finding 17, the trial court found that Parents had not obtained housing. This finding is not clearly erroneous. With DCS's assistance, Parents obtained safe and suitable temporary housing. But DCS presented evidence that Parents could not afford that housing long term. Parents presented evidence that they had begun the process of applying for permanent housing but they had not submitted all the necessary documents for that application.

[23] Mother challenges the trial court's finding 18 wherein the court found that Father admitted that he is not currently able to care for M.K. on his own. Father testified that if M.K. was placed in his care he would "do [his] best" to care for her. Tr. p. 37. He admitted he did not have a crib or bottles for M.K. but stated he would obtain them if she was returned to his care. *Id.* at 38. The

family case manager testified that she spoke to Father a few days before the fact-finding hearing and Father admitted to her that “he knows that he can’t care for [M.K.] right now but he’s working towards it.” *Id.* at 81. This testimony supports the trial court’s finding.

[24] In finding 19, the trial court found that Father is not able to care for M.K.’s medical needs. Father told his case manager that M.K. was “sickly.” *Id.* at 17. Father’s case manager expressed concern that Father would be unable to adequately care for M.K. because of her “health concerns.” *Id.* at 18. And Father admitted to a case manager that he is unable to currently care for M.K. *Id.* at 81. This evidence supports the trial court’s finding.

[25] Mother argues that contrary to the trial court’s finding 23, Father did not request financial assistance from DCS for housing and necessities for M.K. Father testified that he would like assistance to pay a month’s rent. *Id.* at 41 (“I just need a little bit of a jump start to help”). This portion of the finding is supported by the evidence. There is no evidence to support the court’s finding that Father asked for help to pay for M.K.’s necessities.

[26] Mother argues that in finding 24, the trial court erred by finding that Mother did not engage in services until one week before the fact-finding hearing. This finding is supported by the evidence. DCS did not refer services to Mother while she was incarcerated in the months leading up to the fact-finding hearing after she left the VOA. Mother was released from incarceration shortly before the fact-finding hearing.

- [27] Mother argues that there is no evidence to support the trial court's finding 26 that states that she was upset because DCS would not pay for her housing. This finding mischaracterizes the testimony elicited from the case manager at the hearing. During the case manager's second in-person meeting with Mother, Mother "was a little upset" with Father because Father indicated that he did not want to get married, and Father told Mother that "she has to have a stable income in order for DCS to help her with housing" *Id.* at 24-25. Mother was upset that Father told her she could not rely on his income. *Id.* at 25.
- [28] Mother argues that finding 27, that she is not currently employed, is not supported by the evidence. This finding is supported by the evidence. Mother intended to apply to reinstate her disability benefits and occasionally donated plasma. Mother did not have a job.
- [29] Concerning finding 28, Mother argues that the trial court erred when it found that Parents had no plan for childcare and had not arranged for free or reduced childcare. This finding is partially supported by the evidence. There is no evidence in the record that Parents had arranged for free or reduced childcare. Because Mother was unemployed, she intended to care for M.K. if she was returned to Mother's care. Mother also testified that she could arrange for childcare at her church if she obtained a job.
- [30] Mother claims that in finding 29 the trial court erred when it found that Mother intends to apply for disability income but does not currently receive it. This finding is supported by the evidence. Mother was attempting to reinstate her

disability income on the date of the fact-finding hearing but had no current income.

[31] Mother argues that finding 30, that the case manager did not recommend placement of M.K. with Parents due to the lack of stable income, housing, and childcare, is not supported by the evidence. The case manager testified that she could not recommend placing M.K. with Mother for those reasons but that, if those issues were remedied, she would not have any other safety concerns for returning M.K. to Mother's care. *Id.* at 31-32. The case manager stated that she could not testify with regard to Father because he was not her client. *Id.* at 31. Therefore, the finding accurately reflects the testimony at the hearing to the extent it refers to Mother.

[32] In finding 36, the trial court found that Parents are not "completely familiar" with M.K.'s medical needs or how to meet those needs "due to their lack of consistent parenting time and involvement during her life." Appellant's App. Vol. 2 p. 227. Mother argues that she is aware of and understands M.K.'s medical needs. The only evidence concerning Father's awareness of M.K.'s medical issues was his testimony that she is sickly. Tr. p. 17. And neither parent participated in significant parenting time with M.K. However, Mother testified that concerning M.K.'s medical conditions, that M.K. had an epi pen, was wearing a helmet to correct her head shape, and explained how to treat M.K.'s eczema. *Id.* at 64-65. DCS did not present any evidence from which we could conclude that Mother is not aware of M.K.'s medical conditions or how to treat them.

[33] Regarding finding 42, Mother claims there is no evidence to support the court's finding that she told the family case manager that she did not know how they would pay for the hotel room day-to-day. But the family case manager testified that Mother made this statement. *Id.* at 80, 82.

[34] Mother argues there is no evidence to support the court's finding 45 that she was volatile and aggressive with Father. DCS presented testimony from the family case manager that supports this finding. *Id.* at 78.

[35] Mother challenges the trial court's finding 46 concerning Parents' credibility. The trial court found that they "offered conflicting statements during their testimony" Appellant's App. Vol. 2 p. 228. The trial court did not provide examples of conflicting statements and DCS admits that "it is difficult to determine if it is inaccurate." Appellee's Br. at 18. However, it was within the province of the trial court to determine Parents' credibility and we will not second guess this determination on appeal.

[36] Mother argues that finding 47 concerning Parents' lack of stable housing and income is not supported by the evidence. It is true that Father's income has been consistent for three years, but his income was not sufficient to sustain their housing at the Quality Inn. And Mother had no current income. Father also indicated that he would like assistance to pay rent. This finding is supported by the evidence.

[37] Concerning finding 48, Mother argues that no evidence supports the trial court's finding that Parents lack basic necessities for M.K. Parents lacked items

needed if M.K. is returned to their care such as a crib or Pack ‘n Play, clothing, and formula. Parents testified that they could obtain those items and that the hotel rented a Pack ‘n Play for \$10 per week. The trial court’s finding is supported by the Parents’ lack of necessities on the date of the fact-finding hearing.

[38] In finding 49, the trial court found that Mother’s untreated mental health and substance abuse issues have resulted in abuse and neglect of her children for a long period of time. Mother’s criminal history, her history with DCS and the termination of her parental rights to her older children supports this finding. And Mother admitted to mental health diagnoses and that she was not in treatment on the date of the fact-finding hearing.

[39] Mother argues that the trial court erred in finding 51 when it found that Parents failed to participate in services for months. Mother failed to complete her program at the VOA and did not participate in services due to her incarceration. Father refused to participate in services until his paternity of M.K. was established, which occurred just weeks before the fact-finding hearing. This evidence supports the court’s finding.

[40] And finally, in finding 52, the trial court found that Parents were not familiar enough with M.K.’s medical issues to care for her independently or together. Mother’s testimony established that she had knowledge of and knew how to treat M.K.’s medical conditions. To the extent the trial court’s finding indicates

otherwise, it is not supported by the evidence. However, there is no evidence that Father understood or had the ability to care for M.K.'s medical conditions.

[41] Most of Mother's challenges to the findings of fact simply request that we reweigh the evidence or the credibility of the witnesses, which we will not do. *K.D.*, 962 N.E.2d at 1253. Where Mother established a lack of evidence to support a particular finding, our court will not consider that finding in our resolution of the remaining issues presented in this appeal.

Sufficient Evidence

[42] Both Parents argue that DCS did not present sufficient evidence to establish that M.K. was a CHINS on the date of the fact-finding hearing. First, we observe that Parents were compliant with and were participating in services on the date of the CHINS fact-finding hearing. And if Parents continue to benefit from those services, we presume that M.K. will be returned to their care.

[43] Turning now to the evidence that supports the CHINS adjudication, we observe that Mother's history of substance abuse is well-documented and led to the termination of her parental rights of her two oldest children and the adoption of her third child. Mother and M.K. tested positive for an illicit substance at M.K.'s birth leading to DCS's involvement in this case. DCS returned M.K. to Mother's care while she was participating in in-patient treatment at the VOA. But Mother violated VOA policies and was dismissed from the program. The date she left the VOA, she committed criminal offenses that resulted in a five-

month incarceration. And because Mother was incarcerated, she lost her social security disability benefits.

[44] On the date of the hearing, Mother was unemployed and did not have any income. Her relationship with Father was volatile and unstable. She told her case manager that she was ending her relationship with Father just days before the fact-finding hearing but later changed her mind. Tr. p. 77. Mother admitted that she relied on Father's income for support.

[45] To her credit, Mother did not test positive for any substances in the months leading up to the hearing, but she also failed to complete substance abuse treatment and was incarcerated for five of the nine months between M.K.'s birth and the date of the fact-finding hearing. Mother was homeless after she was released from her incarceration until the case manager assisted Parents with obtaining housing at the Quality Inn.

[46] Parents' housing at the Quality Inn was suitable and clean. However, Father's income was not sufficient to sustain housing at the hotel over an extended time period. Father was attempting to obtain an apartment but had not secured affordable, stable housing on the date of the fact-finding hearing.

[47] Father does not understand M.K.'s medical conditions or how to treat them. Until his paternity was established a few weeks before the fact-finding hearing, Father did not participate in services or visitation with M.K. Importantly, Father admitted that he was currently unable to provide the care M.K. needs.

[48] For all of these reasons, DCS established that Parents, independently and collectively, are unable to provide M.K. with basic care and necessities. M.K. needs a safe and stable home environment, basic care and necessities, and special medical care that she is unlikely to receive without the coercive intervention of the Court. We therefore affirm the trial court’s adjudication of M.K. as a CHINS.

Dispositional Order

[49] After adjudicating M.K. a CHINS, the trial court held a dispositional hearing and entered a dispositional decree as required by [Indiana Code section 31-34-11-2](#). The dispositional decree must be “consistent with ... the best interest of the child,” and, among other things, be “in the least restrictive (most family like) and most appropriate setting available” and provide a reasonable opportunity for participation by the parent. [I.C. § 31-34-19-6](#).

[50] “Although the juvenile court has broad discretion in determining what programs and services in which a parent is required to participate, the requirements must relate to some behavior or circumstance that was revealed by the evidence.” [A.C. v. Marion Cnty. Dep’t of Child Servs.](#), 905 N.E.2d 456, 464 (Ind. Ct. App. 2009). Moreover, our court has observed that

forcing unnecessary requirements upon parents whose children have been adjudicated as CHINS could set them up for failure with the end result being not only a failure to achieve the goal of reunification, but potentially, the termination of parental rights. See [I.C. § 31-34-16-4](#) (stating that the juvenile court “shall advise the parent that failure to participate ... can lead to the termination

of the parent-child relationship”). These possible ramifications are inconsistent with the general requirement that “the [DCS] shall make reasonable efforts to preserve and reunify families,” [I.C. § 31-34-21-5.5](#), and unduly interfere with the parent-child relationship.

Id. at 464-65.²

[51] Father argues that the trial court erred when it ordered him to undergo drug testing and participate in home-based therapy. We agree with Father that there is no evidence in the record that he has a substance abuse issue or that he uses illegal substances. And DCS drug-screened Father before the fact-finding hearing and the screen was negative for illegal substances. For these reasons, the trial court erred when it ordered Father to undergo drug testing.

[52] However, DCS presented evidence that Father can benefit from home-based therapy. Father admitted to the DCS case manager that he was unable to care for M.K. Father also did not indicate that he understood M.K.’s special medical needs or how to provide care for them. This evidence supports the trial court’s decision to order Father to participate in home-based counseling.

[53] Mother argues that the trial court erred when it ordered her to participate in a substance abuse assessment, random drug screens, and a parenting assessment. Mother’s history of substance abuse is well-documented and resulted, at least in

² [Indiana Code section 31-34-16-4](#) was repealed in July 2022. However, the trial court is still statutorily obligated to advise parents that failure to participate as required under the dispositional decree can lead to termination of the parent-child relationship. *See* [I.C. 31-34-20-3](#).

part, in the removal of all four of her children from her care. Mother admitted to using illegal substances. To her credit, Mother's most recent drug screens have returned negative results for illegal substances. However, given Mother's history, it was reasonable for the trial court to conclude that Mother and M.K. could benefit from Mother's participation in a substance abuse assessment and random drug screens.

[54] Mother has a significant history with DCS. Her parental rights were terminated to two children and her third child was adopted. M.K. was returned to Mother's care while Mother was in in-patient treatment at the VOA. But after Mother was removed from the program for violating its policies, M.K. was removed from Mother again. Mother was then incarcerated for five months. Mother correctly observes that there were no safety concerns for M.K. while she was in Mother's care at the VOA or during visitation. However, Mother has historically made poor decisions and has struggled to parent her children. Mother continued to make poor decisions during these CHINS proceedings. For these reasons, we conclude that the trial court acted within its discretion when it ordered Mother to complete a parenting assessment.

[55] Finally, we observe that Father objects to M.K.'s placement in Mishawaka, Indiana given Parents' residence in Indianapolis. M.K. was placed in foster care with her half-sibling. We understand DCS's decision to place M.K. with her sibling. However, Father's concern about Parents' ability to attend visitation with M.K. given her placement is well-founded. We encourage the trial court and DCS to consider a placement closer to Parents' residence.

Conclusion

[56] We affirm the trial court's adjudication of M.K. as a CHINS and the dispositional order, except that there is no evidence to support the trial court's decision to order Father to undergo drug testing. We therefore remand this case to the trial court with instructions to vacate that portion of the dispositional order. We also ask that placement of M.K. closer to Parents' residence be considered by the trial court.

[57] Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

Robb, J., and Foley, J., concur.