

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of: A.L.J. and
A.M.J., Children in Need of
Services:

S.J. (Father),

Appellant-Respondent,

v.

The Indiana Department of
Child Services,

Appellee-Petitioner.

May 11, 2023

Court of Appeals Case No.
22A-JC-2558

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

The Honorable Charles F. Pratt,
Senior Judge

Trial Court Cause Nos.
02D08-2203-JC-149
02D08-2203-JC-150

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] S.J. (“Father”) is the father of A.M.J. and A.L.J. (collectively, “the Children”). The Indiana Department of Child Services (“DCS”) became involved with the family after receiving reports of physical abuse by Father. On March 24, 2022, DCS filed a petition alleging that the Children were children in need of services (“CHINS”). The juvenile court subsequently found the Children to be CHINS. Father appeals this determination. We affirm.

Facts and Procedural History

- [2] Father is the father of the Children.¹ A.M.J. was born on March 24, 2010, and A.L.J. was born on June 20, 2012. On March 18, 2022, A.M.J. “wrote a letter to school personnel stating that he wished [Father] would stop physically abusing him.” Ex. Vol. p. 9. DCS spoke to the Children a few days later, with both reporting that Father had “left marks and bruises on them in the past.” Ex. Vol. p. 9. Based on the safety concerns arising from those reports, DCS removed the Children from Father’s care and placed them with their maternal grandmother (“Maternal Grandmother”).

¹ The Children’s mother is deceased.

[3] On March 24, 2022, DCS filed a petition alleging that the Children were CHINS.² In this petition, DCS alleged that Father has a history of involvement with DCS including “multiple assessments with allegations of physical abuse.” Ex. Vol. p. 9. DCS further alleged that Father

has mental health needs that are not being adequately addressed, as is evidenced by:

- a. On or about February 21, 2022, Father “hog-tied” his oldest son, [S.J., Jr.], and attempted to force [S.J., Jr.] to smoke marijuana.
- b. On or about March 2, 2022, Father exhibited erratic behaviors, uncontrollable fidgeting, and an inability to speak in complete, logical thoughts while communicating with school personnel.
- c. [Maternal Grandmother] and school personnel have agreed upon safety plans regarding the Children due to Father’s behaviors.
- d. On or about March 18, 2022, Father’s significant other expressed concerns for Father’s violent behaviors and the safety of the Children.
- e. Father has multiple criminal convictions for domestic battery.
- f. Father’s behaviors regularly keep the Children awake overnight.

Ex. Vol. p. 8. In addition, DCS alleged that Father

² Although CHINS proceedings were filed with respect to each of the Children under two separate cause numbers, DCS only filed one petition and the cases appear to have been treated as one case throughout the underlying CHINS proceedings.

has substance abuse issues that are not being adequately addressed, as evidenced by:

- a. On or about March 2, 2022, Father arrived at [A.M.J.'s] school visibly intoxicated.
- b. Father has multiple criminal convictions for operating a vehicle while intoxicated and other substance related offenses.
- c. The Children describe consumption and sale of illegal substances by Father.
- d. The Children describe Father's regular alcohol consumption, including driving with the Children in the vehicle.

Ex. Vol. pp. 8–9.

[4] The juvenile court conducted a joint child-hearsay and evidentiary hearing on May 23, 2022. During the hearing, the parties agreed that the Children should be found to be unavailable witnesses and further agreed that the Children's statements to various individuals, including psychologist Dr. Jason Cook and forensic interviewer Adam Blakely, should be admitted in lieu of the Children's live testimony.

[5] Dr. Cook indicated that A.L.J. had identified various traumatic situations that he had experienced while in Father's care, including (1) finding his mother dead from an overdose when he was four years old, (2) Father waving "a gun in [his] face" and firing it near his head, (3) enduring physical abuse perpetrated on him by Father, (4) observing Father "punch" a woman, and (5) his brother slapping him and threatening to kill him. Tr. Vol. II pp. 20, 21. A.L.J. admitted to Dr. Cook that he had previously had suicidal thoughts but indicated that he had not had such thoughts since being placed with Maternal Grandmother. A.L.J.

additionally reported to Dr. Cook that while in Father's care, he had often fallen asleep at school because he had difficulty sleeping at Father's home.

[6] Following his evaluation of A.L.J., Dr. Cook diagnosed A.L.J. as suffering from post-traumatic stress disorder and a potential unspecified mood disorder. Dr. Cook recommended "individual psychotherapy ... using structured trauma treatments," "working on coping skills to help [A.L.J.] tolerate stress and [manage his] emotions more effectively," maintaining "a safe and secure environment" such as Maternal Grandmother's home where A.L.J. had indicated that he felt safe, and a possible psychiatric evaluation to determine whether medication was warranted. Tr. Vol. II p. 21.

[7] As for A.M.J., A.M.J. reported to Dr. Cook that Father had hit him "a lot." Ex. Vol. p. 52. Dr. Cook indicated that A.M.J. had also identified various traumatic situations that he had experienced while in Father's care, including (1) Father "hitting him often and an incident where [Father] broke the back of a chair [A.M.J.] was in and [A.M.J.'s] head [hitting] a counter," (2) remembering the day his mother had died from an overdose, (3) Father driving drunk at a high rate of speed and almost hitting a telephone pole or gas pump, (4) remembering prior removals from his parents' care, and (5) Father "yelling at [him] and telling [him] to do bad things like say cuss words when [Father] was drunk." Tr. pp. 23, 24. On at least one occasion, A.M.J. had reported being "terrified" of Father. Ex. Vol. pp. 45, 53.

- [8] Following his evaluation of A.M.J., Dr. Cook diagnosed A.M.J. with “[o]ther specified trauma and stressor related disorder.” Ex. Vol. p. 58. Dr. Cook recommended individual psychotherapy to help A.M.J. with emotional regulation, coping skills, and trauma processing. Dr. Cook further recommended that A.M.J. be placed in a safe and secure living environment and noted that A.M.J. appeared “to feel comfortable and safe in his current placement” with Maternal Grandmother. Tr. Vol. II p. 25.
- [9] Dr. Cook opined that a continued relationship between Father and the Children required “extreme caution.” Tr. Vol. II p. 25. Specifically, he advised that “there should be professionals involved through the process [and] supervised visitations if those were to be maintained if visitations were even a thing to consider” because the Children “have a lot of fear.” Tr. Vol. II p. 25. Dr. Cook further recommended family therapy.
- [10] During his interview with Blakely, A.L.J. “stated that he felt unsafe around” Father and reported that Father had a gun in the house. Tr. Vol. II p. 37. A.L.J. further reported that he had observed Father “selling drugs.” Tr. Vol. II p. 43. A.L.J. also reported that Father had driven “drunk” with he and A.M.J. in the vehicle and had, on occasion, gotten “in his face” and smacked him. Tr. Vol. II pp. 37, 38. Likewise, A.M.J. indicated to Blakely that “he felt unsafe” around Father and claimed that Father had hit him in the face “for no reason.” Tr. Vol. II pp. 38, 39.

[11] The Children’s Guardian ad Litem, Jennifer Young, also recommended that the Children remain with Maternal Grandmother. Young reiterated the Children’s need for therapy and testified that she believed Father required services before the Children could safely be returned to his care. In addition, the Children’s adult half-brother, J.G., testified that he had frequently observed Father drink and smoke to excess, commit acts of domestic violence, and scream at the Children. J.G. indicated that he had not felt safe in Father’s home due to Father’s aggressive behavior. J.G. further testified that, based on his experiences with Father, he did not think Father was “fit” to parent the Children. Tr. Vol. II p. 56.

[12] Father also testified during the hearing, admitting that he had last used cocaine on the Saturday before the evidentiary hearing and had last used marijuana the day before the hearing. Although Father denied abusing the Children, he admitted to hitting the Children with an open hand on the back of their heads on a daily basis and giving them a “good whooping” about once a month.³ Tr. Vol. II p. 115. Father did not “understand” why Dr. Cook or Blakely would testify that the Children were afraid of him and indicated that he did not believe that the Children required therapy.

[13] On June 13, 2022, the juvenile court adjudicated the Children to be CHINS. The juvenile court specifically found the Children’s statements to Dr. Cook and

³ Father explained that the monthly “good whooping” was “something more serious” than the daily “pop on the head” that he administered to the Children. Tr. Vol. II p. 115.

Blakely to be credible. The juvenile court further found that “the environment experienced by the [C]hildren while in [Father’s] care has seriously endangered the [C]hildren’s physical and emotional well-being.” Appellant’s App. Vol. II p. 55. Thus, the juvenile court concluded that

the [C]hildren’s physical or mental conditions are seriously impaired or seriously endangered as a result of the inability, refusal or neglect of [Father] to supply them with necessary safe shelter, and supervision and that the [C]hildren need care, treatment, and rehabilitation that they are not receiving and [are] unlikely to receive absent the coercive intervention of the court.

Appellant’s App. Vol. II p. 55.

Discussion and Decision

[14] The Indiana Supreme Court has noted that when deciding whether a child is a CHINS,

[j]uvenile court judges are often faced with the challenge of balancing multiple factors and multiple voices.... Judges must uphold the due process rights of parents, apply the proper law, and take into account recommendations and input from the court appointed special advocate (CASA), DCS, parents, step-parents, guardians, grandparents, the child, and often several attorneys. By their very nature, these cases do not fit neatly defined guidelines.

In re K.D., 962 N.E.2d 1249, 1255 (Ind. 2012).

[15] To adjudicate a child to be a CHINS, DCS must prove 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, 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.

Ind. Code § 31-34-1-1.

[16] In challenging the juvenile court's CHINS adjudication, Father contends that the evidence is insufficient to support the juvenile court's determination that coercive court intervention was necessary.

When reviewing a trial court's CHINS determination, we do not reweigh evidence or judge witness credibility. Instead, we consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. When a trial court supplements a CHINS judgment with findings of fact and conclusions law, we apply a two-tiered standard of review. We consider, first, whether the evidence supports the findings and, second, whether the findings support the judgment. We 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. v. Ind. Dep't of Child Servs., 68 N.E.3d 574, 577–78 (Ind. 2017) (cleaned up).

[17] The record reveals that Father has a documented history of domestic-violence issues, including multiple convictions for domestic battery. A.L.J. reported to Dr. Cook that on March 19, 2022, Father had “waved his gun in my face,” “[h]is finger slipped on the trigger,” and “it shot.” Ex. Vol. p. 49. A.L.J. further reported that Father had been approximately five feet from him, and, in his perception, the bullet had missed him “by mere inches.” Ex. Vol. p. 49. The Children also reported to Dr. Cook that Father had frequently abused them. While Father denied physically abusing the Children, he admitted that he hit the Children almost daily, claiming that he did so “only in the sense of corporal punishment as a tool for child rearing, which is a right protected by the First Amendment to the US Constitution incorporated into the States through the Fourteenth Amendment.” Appellant’s Br. p. 10.

[18] Regardless of Father’s view of the nature of the physical contact between himself and the Children, the record clearly establishes that the Children (1) classified Father’s frequent act of hitting them as physical abuse, (2) were scared of Father, and (3) did not feel safe in his home. The juvenile court weighed the conflicting evidence and specifically found “the [C]hildren’s statements to be more credible than [Father’s] explanations.” Appellant’s App. Vol. II p. 55.

On appeal, we will not reweigh the evidence or disturb the juvenile court's determination as to credibility. *See In re D.J.*, 68 N.E.3d at 577–78.

[19] The evidence indicates that the Children had suffered significant trauma while in Father's care and, despite Father's belief to the contrary, required extensive therapy. Father, however, had refused to participate in services prior to being ordered to do so by the juvenile court. The fact that Father did not believe that the Children required therapy and had refused to participate in services prior to the juvenile court issuing an order that he do so supports the juvenile court's determination that coercive court intervention was necessary. As such, we cannot say that the juvenile court erred in finding the Children to be CHINS.⁴

[20] The judgment of the juvenile court is affirmed.

May, J., and Mathias, J., concur.

⁴ To the extent that Father downplays the Children's fears and needs on appeal, asserting instead that Maternal Grandmother may have influenced the Children's testimony, Father's assertion amounts to nothing more than a request for this court to reweigh the evidence, which, again, we will not do. *See id.*