

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Matter of J.M.G. and
S.G. (Children in Need of
Services),

C.G. (Father)

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner,

November 27, 2023

Court of Appeals Case No.
23A-JC-1768

Appeal from the Clark Circuit
Court

The Honorable Vicki L.
Carmichael, Judge

The Honorable Joni L. Grayson,
Magistrate

Trial Court Cause Nos.
10C04-2305-JC-63
10C04-2305-JC-64

and

CASA – The Voice of Clark
County’s Children,
Appellee-CASA.

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

- [1] C.G. (“Father”) appeals the trial court’s determination that J.M.G. and S.G. were children in need of services (“CHINS”). We reverse.

Facts and Procedural History

- [2] Father and C.L. (“Mother,” and together with Father, “Parents”) are the parents of J.M.G., who was born in December 2007, and S.G., who was born in July 2009. On May 19, 2023, the Department of Child Services (“DCS”) filed a petition under cause number 10C04-2305-JC-64 (“Cause No. 64”) alleging J.M.G. was a CHINS and a petition under cause number 10C04-2305-JC-63 (“Cause No. 63”) alleging S.G. was a CHINS. DCS alleged that Mother was involved in a motor vehicle accident on May 13, 2023, while S.G. was in the car, and that Mother was intoxicated and charged with operating a vehicle with an alcohol concentration equivalent to .15 or more with a passenger under eighteen years old and leaving the scene of an accident. DCS alleged that S.G.

was not wearing a seatbelt at the time of the accident, Mother's home smelled of marijuana, Mother reported having an ongoing problem with alcohol use, and she admitted that she would drink while being the sole caregiver for the children. It further alleged that Parents had a custody arrangement in cause number 10C01-0902-DR-26, Parents reported that Father had primary physical custody of the children, and Father knew or should have known about Mother's alcohol abuse.

[3] On June 2, 2023, Father signed a Minute Entry which states that he admitted the allegations in the petitions and asserted he had no personal knowledge of the events as the children were with Mother during her court-ordered parenting time. On July 3, 2023, Mother and DCS filed a "Deny and Submit Agreement" which asked the court to examine the Intake Officer's Report of Preliminary Inquiry and Investigation and the CHINS petition and indicated that Mother gave up the right to a fact-finding hearing and DCS gave up the right to present evidence. Appellant's Appendix Volume II at 108 (capitalization omitted). On July 5, 2023, the court entered an "Order on Respondent Father's Admission" adjudicating J.M.G. and S.G. as CHINS. *Id.* at 111 (capitalization omitted).

[4] On July 6, 2023, the court held a dispositional hearing. DCS's counsel stated it was DCS's intention to file a motion to discharge the case, "we would make a motion to dismiss this case prior to Dispo," Father "is doing what he needs to do to ensure the safety of the children," and Mother "will continue to receive services . . . for her other children as well because she has another case and

she's joined Family Recovery court so there would be that level of protection there." Transcript Volume II at 30. Father's counsel also requested that the case be dismissed. Mother stated that she "would rather not" have the case dismissed and "was wanting to do . . . the therapeutic visitations" *Id.* at 31. Court Appointed Special Advocate Danielle Luecke ("CASA Luecke") stated she did not believe the case "should be closed at this point in time." *Id.* at 35.

[5] After some discussion, the court stated:

I'm not going to dismiss these cases right now. Sir that doesn't mean that you have to be put through anything really. I'm not casting (inaudible) on you or whatever else but we've got a situation where particularly the facts as I know it on these cases I think these kids need some help. And they've only got one mom and regardless of what she's done and the things where we see ourselves now I still think they need some help. I think everybody needs so [sic] help. I'm not going to dismiss the cases.

Id. at 40.

[6] After further discussion, Father's counsel stated: "So right now, we can put on the record that his dispositional order is nothing. He stays in contact with DCS and that's it." *Id.* at 41. The court responded: "Remains in contact with Ms. Tonay once a week and if there are any assessments that she thinks needs to be done or whatever else she can file a motion to modify the dispositional." *Id.* at 41-42. CASA Luecke stated: "Also allow CASA access to the home." *Id.* at 42. The court stated: "CASA can have access to the home. I agree." *Id.*

[7] DCS's counsel stated:

I will read what the report has [Father] is [to] contact the FCM, notify of family changes, notify of criminal arrests, allow FCM to see the child in the home, allow the FCM to see the home, keep all appointments, maintain a source of income, protection plan, care for the child and obey the law. And maintain his own and the child's medical needs.

Id. Father's counsel stated: "I understand that that's the order that's going to be entered but we object because we don't agree to the disposition." *Id.* at 42-43. The court stated: "Well then you can appeal it" and "[t]hat's the order of the court." *Id.* at 43.

Discussion

[8] Father argues that the evidence does not support a CHINS finding because State coercion was unnecessary to protect the children from neglect. In reviewing a trial court's determination that a child is in need of services, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re S.D.*, 2 N.E.3d 1283, 1286 (Ind. 2014), *reh'g denied*. Instead, we consider only the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id.* at 1287. As to issues covered by findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment. *Id.* We review the remaining issues under the general judgment standard, under which a judgment will be affirmed if it can be sustained on any legal theory supported by the evidence. *Id.*

[9] The Indiana Supreme Court has held that “[n]ot every endangered child is a child in need of services, permitting the State’s *parens patriae* intrusion into the ordinarily private sphere of the family.” *Id.* Rather, a CHINS adjudication under Ind. Code § 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.” *Id.* Specifically, Ind. Code § 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, 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.*

(Emphasis added). “That final element 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 at 1287 (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[10] At the hearing, DCS’s counsel requested dismissal and asserted that Father “is doing what he needs to do to ensure the safety of the children” and Mother “will continue to receive services . . . for her other children as well because she has another case and she’s joined Family Recovery court so there would be that level of protection there.” Transcript Volume II at 30. The evidence did not support a different result. Under these circumstances, we conclude that the children did not need care, treatment, or rehabilitation that was unlikely to be provided or accepted without the coercive intervention of the court. *See In re S.D.*, 2 N.E.3d at 1290 (“And though the State’s intervention *enabled* some of [mother’s] progress, such as the ability to renovate the house while the children were out of her care, none of the State’s actions *compelled* her accomplishments. Though the evidence shows she had difficulty completing the last step of medical training, we cannot say she was unwilling or unable to do so without the court’s compulsion . . . and so the State’s coercive intervention into the family cannot stand.”) (Citation omitted).

[11] For the foregoing reasons, we reverse.¹

[12] Reversed.

Vaidik, J., and Bradford, J., concur.

¹ Neither party addresses the fact that no written dispositional order was entered. We decline to sua sponte dismiss the appeal on that basis as we prefer to decide cases on their merits whenever possible. *See Mills v. Ind. Dep't of Child Servs.*, 76 N.E.3d 879, 885 n.3 (Ind. Ct. App. 2017), *trans. denied, cert. denied*, 138 S. Ct. 1300 (2018), *reh'g denied*.