

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of S.R.L., Child in  
Need of Services;

N.M. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

March 24, 2022

Court of Appeals Case No.  
21A-JC-2419

Appeal from the Clark Circuit  
Court

The Honorable Joni L. Grayson,  
Magistrate

Trial Court Cause No.  
10C04-2103-JC-23

**Najam, Judge.**

## Statement of the Case

[1] N.M. (“Mother”) appeals the trial court’s adjudication of her minor child, S.R.L. (“Child”), as a child in need of services (“CHINS”). Mother raises two issues for our review, which we reorder and restate as:

1. Whether the trial court violated Mother’s due process rights when it adjudicated Child to be a CHINS.
2. Whether the trial court’s order adjudicating Child to be a CHINS is clearly erroneous.

[2] We affirm.

## Facts and Procedural History

[3] D.L. (“Father”) and B.L. (“Grandmother”) are married, and Mother is Grandmother’s daughter and Father’s step-daughter. Mother has two children by Father: E.L., born on November 24, 2006, and Child, born on June 29, 2011, (collectively, “the Children”). Grandmother adopted E.L. “[w]hen he was born,” but did not adopt Child. Tr. Vol. 2 at 6. Grandmother is Child’s grandmother and step-mother. However, E.L. and Child believe that Mother is their adult sister and that Grandmother is their biological mother.<sup>1</sup>

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<sup>1</sup> Father does not participate in this appeal, as he admitted that Child is a CHINS. Grandmother also does not participate in this appeal, and E.L. is not a party to the appeal. However, because the Children believe that Grandmother is their mother, Grandmother is intimately involved in this matter, and our opinion reflects Grandmother’s involvement.

[4] On March 22, 2021, Mother, Grandmother, fourteen-year-old E.L., and nine-year-old Child were staying in two rooms at a motel in Jeffersonville. Sometime that day, Mother called 9-1-1 and reported that Father had taken E.L. against his will. Officer Jonathan Herring, and several other officers with the Jeffersonville Police Department, responded to the call and saw E.L. and Father walking down the street. Officer Herring observed that E.L. and Father “both seemed visibly upset but not necessarily with each other.” *Id.* at 51. The officers also encountered Grandmother, who was walking down the street from the motel and appeared “very upset about the whole situation.” *Id.* At some point, E.L. told a police officer that Grandmother “had given him some meth[amphetamine] because she knew the police were coming and that he needed to get rid of it.” *Id.* E.L. told the officer that he threw away the drugs when he saw the police officers arrive at the motel. E.L. located the area where he had tossed the drugs, and the officers recovered approximately one gram of a substance later identified as methamphetamine. E.L. also told the officers that Grandmother was using Child for sex trafficking in exchange for drugs.

[5] A police detective obtained a warrant, and officers searched the family’s motel rooms and found a “pipe,” a small amount of marijuana, and discarded food on the floor. *Id.* at 53. The officers also found four dogs living and relieving themselves in the room, which produced a strong odor of urine and feces. Officer Herring testified that the condition of the motel rooms was “pretty poor . . . . It was just pretty bad.” *Id.*

[6] That same day, the Indiana Department of Child Services (“DCS”) received a call to its hotline and a report that the Children were victims of neglect by Mother and Grandmother. The report alleged that E.L. was found with methamphetamine on his person that had been given to him by Grandmother.

[7] Natalie Elder, a family case manager (“FCM”) with DCS, responded to the call and interviewed E.L. FCM Elder noticed that E.L.’s skin and clothing were “dirty” and “his hygiene was not the best[.]” *Id.* at 56. E.L. told FCM Elder that he threw away the methamphetamine that Grandmother had given him and that Mother and Grandmother used methamphetamine daily, used drugs in front of him and Child, and often made him transport drugs. He also told FCM Elder that he believed that Child was a victim of sex-trafficking,<sup>2</sup> that he did not believe that he or Child was safe in the motel rooms or in the care of Mother and Grandmother, and that he had not been to school in a few months because he lost the charger for his laptop and it would cost \$250 to replace it. FCM Elder observed that Child appeared “clean and healthy[.]” and when FCM Elder interviewed Child, Child did not confirm E.L.’s allegations. *Id.* at 57. However, the FCM administered an oral drug screen for E.L., and E.L. tested positive for methamphetamine.

[8] FCM Elder interviewed Mother, Grandmother, and Father (collectively, “the Parents”). Mother and Grandmother denied all of E.L.’s accusations and told

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<sup>2</sup> Although E.L. alleged that Child was a victim of sex trafficking, the allegation was not substantiated, and the trial court’s order adjudicating Child to be a CHINS was not based upon the allegation.

FCM Elder that they believed that Father gave the drugs to E.L. FCM Elder offered both Mother and Grandmother oral drug screens but both refused to submit to a screening. Father told the FCM that he had just been released from jail on March 18, and he denied providing drugs to E.L. Father submitted to an oral drug screen and tested “negative for all substances.” *Id.* at 61.<sup>3</sup> DCS removed the Children from the Parents’ care on an emergency basis. E.L. was placed in a youth shelter, and Child was placed with a foster family.

[9] On March 24, DCS filed a request for permission to file a petition alleging Child to be a CHINS and its verified petition alleging that Child was a CHINS. The petition alleged in relevant part:

3. [Child] is a Child in Need of Services as defined as follows:

**Inability, Refusal or Neglect, I.C. 31-34-1-1:** 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 the child needs care, treatment, or rehabilitation that the child is not receiving;

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<sup>3</sup> DCS was unable to determine how E.L. obtained the methamphetamine. *See* Tr. Vol. 2 at 71.

and is unlikely to be provided or accepted without the coercive intervention of the Court.

4. This petition is based upon, and is supported by, the following alleged material facts:

a. On or about March 22, 2021, [DCS] received a report alleging [Child] is a victim of neglect.

\* \* \*

c. During the investigation it was learned that:

\* \* \*

7. The [C]hildren were residing with [Grandmother] and [Mother] at the Red Roof Inn in Clark County, Indiana.

8. [Child's] sibling E.L. reported the following to Jeffersonville Police:

i. That he had [m]ethamphetamine on his person[] and threw the methamphetamine away when the police arrived;

ii. That he was holding the methamphetamine for [Grandmother];

iii. That [Grandmother] and [Mother] use methamphetamine daily around [the Children];

iv. That [Grandmother] and [Mother] often make[] E.L. hold methamphetamine for them;

v. That [Grandmother] and [Mother] have him get methamphetamine for [them];

9. Jeffersonville Police located the substance that E.L. reported was methamphetamine.

10. Jeffersonville Police obtained a search warrant for [Grandmother's] and [Mother's] rooms.

11. Jeffersonville Police found marijuana and a "pipe" during their search.

12. E.L. reported to DCS that he has not attended school via virtual learning because "he lost his chrome book charger and a new one cost \$250."

13. As of March 22, 2021 [Grandmother] and [Mother] were asked to leave the Red Roof Inn, future living arrangements for [Grandmother] and [Mother] are unknown to DCS at this time.

14. [Mother] denied all allegations of substance use and stated she believes the methamphetamine was "planted" on [E.L.].

15. [Grandmother] denied all allegations of substance use and state[d] she believes [Father] gave the drugs to E.L.

16. [Father] is a noncustodial parent.

17. [Father] reported to DCS that he believes [Grandmother] and [Mother] are using drugs.

18. [Father] was recently released from incarceration and has not secured stable housing or transportation.

19. [Father] submitted to an oral drug screen results of which are pending.

d. For the foregoing reasons, [C]hild is a Child in Need of Services and is unlikely to receive said services without the coercive intervention of the Court.

Appellant's App. Vol. II at 10-12. On March 24, the trial court held an initial/detention hearing on DCS's petition. And the following day, the court granted DCS's request to file the CHINS petition, authorized the detention of Child, and appointed a court appointed special advocate ("CASA") for Child.

[10] The court held a fact-finding hearing on August 5, 2021. During the hearing, DCS FCM James Rush—the permanency worker for the case—testified that, after Child and E.L.'s removal, he met with the Parents to discuss the "steps they needed to take to work towards reunification" with the Children. Tr. Vol. 2 at 69. FCM Rush told the court that he wanted the Parents to participate in supervised visitation, as well as homebased case management, parenting education, and counseling. FCM Rush testified that Father was receptive to participating in certain services, but Mother and Grandmother were not



“receptive to those services[,]” and were “pretty adamant throughout the length of the case that they do not feel they need services.” *Id.* at 70. FCM Rush also testified to his concerns regarding Child’s safety in her home and told the court that “[w]ith drugs being on [E.L.’s] person[,] I think it wouldn’t be too far-fetched to believe he could have had it in the home as well. Just the presence of drugs in the home and having a neglectful environment like that could be potentially dangerous to [Child].” *Id.* at 72. When asked on direct examination if Child was in need of services, FCM Rush testified that “it is . . . clearly concerning that [Child’s] environment could have been a neglectful environment or an environment where she could have access to illicit substances.” *Id.* at 74.

[11] CASA Melissa Borries testified that Child is doing well in her foster care placement and that Child has “consistency and a schedule[.]” *Id.* at 106. The CASA also testified that “[o]ne of [her] main concerns” regarding Child was that Child has missed forty-eight days of school during spring semester 2021. *Id.* at 112. When CASA Borries was asked by Grandmother’s counsel if there was a “danger” to allowing Child to return to Mother’s care, the CASA testified that, based upon Child’s spring semester attendance record, “I think it may be possible that [Child] will not be taken to school every day if she’s returned to her parent[s’] care.” *Id.* at 114. At the conclusion of the fact-finding hearing, the court took the matter under advisement but determined that the Children would remain in their placements.

[12] On August 30, the court entered findings and conclusions and adjudicated Child to be a CHINS. In its order, the court found in relevant part as follows:

[DCS] received a report . . . alleging [Child] to be a victim of neglect. It was reported that [E.L.] was found with methamphetamine on his person and that he reported it was given to him by [Grandmother].

\* \* \*

Jeffersonville police obtained a search warrant and searched the [motel] rooms . . . [and] . . . observed the [m]otel rooms to be in poor condition with strong odors of urine and feces and minimal food in the rooms. During the search, Jeffersonville police found a small amount of marijuana and paraphernalia.

Additionally, [Child] missed 48 days of school during the last school year. . . .

Based on the fact [that E.L.] had methamphetamine on his person, FCM Elder administered an oral drug screen for [E.L.] which subsequently returned positive for [m]ethamphetamine.

\* \* \*

[FCM Rush] has offered services to benefit [Child] and the family. [Grandmother] and [Mother] have not engaged in services offered by DCS and ha[ve] not shown a willingness to cooperate to address the underlying concerns.

Appellant's App. Vol. II at 50. The court concluded:

The conditions of the home environment, the presence of [m]arijuana and paraphernalia in the home, and the fact [Child's] older brother (who lives with her) possessed and consumed methamphetamine either with the knowledge of the parents or due to the parent[s'] failure to properly supervise [him] or send [him] to school regularly[,] coupled with [Grandmother's] and [Mother's] unwillingness to engage in services and cooperate with DCS to address the underlying concerns places [Child's] mental and or physical health in serious danger.

There is a reasonable probability that [Child's] physical or mental condition is seriously impaired or endangered due to the parents['] or custodian['s] inability to provide [Child] with the necessary food, clothing, shelter, medical care, or supervision and the services that [Child] needs are unlikely to [be] provided or accepted without the coercive intervention of the Court.

*Id.* at 50-51.

[13] On September 9, the court held a “Continued Detention Hearing” to determine “whether or not [Child] would go home to either of her parents[.]” Tr. Vol. 2 at 123, 124. At the conclusion of the hearing, the court informed the parties that it was “continuing the detention” of the Children, and the court set the dispositional hearing for September 30. *Id.* at 137.

[14] DCS filed its predispositional report on September 21, along with a verified petition for parental involvement. The court held the dispositional hearing on September 30, and, on October 29, the court entered its dispositional order. This appeal ensued.

## Discussion and Decision

### *Issue One: Due Process Violation*

- [15] Mother argues that her due process rights were violated because, according to Mother, the CHINS adjudication was based upon “accusations of which . . . Mother had [no] notice.” Appellant’s Br. at 17. Mother maintains that the court adjudicated Child to be a CHINS “based upon her school absences and the alleged condition of . . . Mother’s home[,]” but DCS’s petition alleging Child to be a CHINS “contain[ed] no such accusations.” *Id.*
- [16] Indiana Code Section 31-34-9-3(4)(C) notes that a CHINS petition must contain “[a] concise statement of the facts upon which the allegations are based, including the date and location at which the alleged facts occurred.” We have recognized that “the CHINS petition is an integral part of ensuring that the parents have notice of the allegations and an opportunity to contradict [DCS’s] evidence.” *Maybaum v. Putnam Cnty. Off. of Fam. & Child.*, 723 N.E.2d 951, 954 (Ind. Ct. App. 2000). “This is, in part, so because we have long recognized that parental rights have constitutional dimension.” *Id.*
- [17] We have also recognized, however, that Indiana Trial Rule 15 is applicable to CHINS proceedings. *Id.* (citing Indiana Code Section 31-32-1-3, which provides: “the Indiana Rules of Trial Procedure apply in all matters not covered by the juvenile law”). Trial Rule 15(B) provides:

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of

the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

[18] Here, the CHINS petition did not allege that Child missed school or that the condition of the motel rooms was deplorable. At the fact-finding hearing, however, FCM Rush testified that he “believe[d that Child] . . . missed a substantial amount of schooling and at that time [the Children] were supposed to be attending virtually.” Tr. Vol. 2 at 76. The CASA testified that she had “research[ed]” Child’s school records and that “[o]ne of [her] main concerns . . . [was Child’s] educational neglect”—that Child “missed 48 days of school last semester.” *Id.* at 112. The CASA further testified that, “[b]ased on the evidence of the Spring semester[,]” she “[thought it might] be possible that [Child would] not be taken to school every day if [Child was] returned to her parents[’] care.” *Id.* at 114. Regarding the condition of the motel rooms, Officer Herring testified that the state of the rooms was “pretty poor” and “just pretty bad” and that there was “[a lot] of discarded food. There were several dogs like 4 or 5 chihuahuas in the room. There was feces on the floor[, and] [u]rine on the floor from the dogs.” *Id.* at 53.

[19] Mother did not object to the admission of this evidence. And at the end of the fact-finding hearing, Mother’s counsel referenced the school-attendance issue in her closing argument. *See id.* at 117. Given the lack of an objection, we conclude that the issues of Child’s school attendance and the condition of the motel rooms was tried by the parties’ consent, and the trial court did not err by finding that Child’s physical and mental conditions were seriously endangered by the “conditions of the home environment” and “the parents[’] failure to . . . send [Child] to school regularly[.]” Appellant’s App. Vol. II at 50.<sup>4</sup> We hold that the court did not deprive Mother of her due process rights when it adjudicated Child to be a CHINS.<sup>5</sup>

### ***Issue Two: CHINS Adjudication***

[20] Next, Mother contends that the trial court’s order adjudicating Child to be a CHINS is clearly erroneous. Specifically, Mother challenges the sufficiency of the findings and the evidence to support the CHINS determination. When reviewing the sufficiency of evidence, we give due regard to the trial court’s

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<sup>4</sup> *See, e.g., In re V.C.*, 867 N.E.2d 167, 178-79 (Ind. Ct. App. 2007) (holding that the issue was tried by consent under Trial Rule 15(B) and that the trial court did not err by adjudicating the child as a CHINS on grounds different than those set forth in the CHINS petition); *cf. Matter of Bi.B.*, 69 N.E.3d 464, 469 (Ind. 2017) (declining to find “consent, implied or otherwise,” where the father expressly objected in closing arguments to an issue not raised in the termination of parental rights pleading).

<sup>5</sup> We note that Mother’s reliance on *Maybaum v. Putnam Cnty Off. of Fam. and Child.*, 723 N.E.2d 951 (Ind. Ct. App. 2000), is misplaced. In *Maybaum*, the trial court “ultimately based its CHINS adjudication upon a statutory provision *and* set of facts which were not included in the CHINS petition.” *Id.* at 954 (emphasis added). This did not occur in the instant case. And, unlike *Maybaum*, where there was no evidence that the issue in question was tried by consent under T.R. 15(B), here the issues regarding the condition of the motel rooms and Child’s school attendance were tried by consent.

ability to assess the credibility of witnesses. *In re Des.B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). We neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the trial court’s decision. *Id.* Where the trial court issues findings of fact and conclusions thereon, we apply a two-tiered standard of review. *In re R.P.*, 949 N.E.2d 395, 400 (Ind. Ct. App. 2011). We consider first whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will set aside the trial court’s findings and conclusions only if they are clearly erroneous and a review of the record leaves us firmly convinced that a mistake has been made. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *K.B. v. Ind. Dep’t of Child Servs.*, 24 N.E.3d 997, 1001-02 (Ind. Ct. App. 2015) (citation omitted). “A judgment is clearly erroneous if it relies on an incorrect legal standard.” *Id.* at 1002.

[21] In a CHINS proceeding, DCS bears the burden of proving by a preponderance of the evidence that a child meets the statutory definition of a CHINS. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). In the instant case, to meet its burden of establishing CHINS status, the State must prove that the child is under age eighteen:

- (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: . . . 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. Our Supreme Court has interpreted the statute to require “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.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). The statute does not require a court to wait until a tragedy occurs to intervene. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is not to punish the parents, but to protect children. *Id.*

[22] Mother argues that “[t]here are not sufficient findings or sufficient evidence to support the CHINS adjudication.” Appellant’s Br. at 11. Specifically, she contends that the trial court’s order adjudicating Child to be a CHINS was “solely designed to punish . . . Mother for her alleged treatment of E.L.” *Id.* According to Mother, “[a]lmost all of the many allegations in the CHINS fact-finding order related to E.L. and his involvement with methamphetamine[,]” and the “only allegation regarding [Child] specifically was related to her school attendance[,]” but “there is no evidence in the record that these absences were unexcused.” *Id.*



[23] While Mother contends that “[t]here are not sufficient findings to support the CHINS adjudication[,]” she does not specifically challenge any of the trial court’s findings of fact. Thus, they stand as proven. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”). As such, we simply determine whether the unchallenged findings are sufficient to support the judgment.

[24] The unchallenged findings include the following:

- DCS received a report that alleged that Child was a victim of neglect, that Child’s brother, E.L., was found with methamphetamine on his person, and that E.L. claimed that Grandmother gave him the drugs.
- The police searched the motel rooms that the family resided in and found that the rooms were “in poor condition with strong odors of urine and feces,” one of the rooms contained marijuana and a paraphernalia, and there was minimal food in the rooms.
- E.L. submitted to an oral drug screen and tested positive for methamphetamine.
- Child missed forty-eight days of school during the last school year.
- DCS offered services to Grandmother and Mother, but they have not engaged in the services that were offered or shown a willingness to cooperate and address the concerns that led to Child’s removal from their care.

See Appellant’s App. Vol. II at 50-51. While some of the findings include the allegations made by E.L., those findings are inextricably tied to Child’s circumstances and cannot be ignored. And, in addition to the evidence presented that included E.L. and his allegations, DCS presented evidence that the living conditions at the motel where Child resided were deplorable;<sup>6</sup> drugs and paraphernalia were found in one of the motel rooms; Child missed forty-eight days of school; and Mother and Grandmother were not receptive to participating in DCS services and were “pretty adamant” that they do not believe they need services. Tr. Vol. 2 at 70.

[25] The court was able to consider the testimony and evidence and Mother’s and Grandmother’s actions, omissions, and ability to provide for and protect Child. The court ultimately concluded that Child’s mental and physical health was placed in serious danger and that the services that Child needs were unlikely to be provided or accepted without the coercive intervention of the court, not only because of the condition of the motel rooms but also because: drugs and paraphernalia were found in one of the motel rooms; E.L., who lived with

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<sup>6</sup> At the fact-finding hearing, held on August 5, 2021, Grandmother testified that, approximately two months before the hearing took place, she, Mother, and Mother’s twenty-one-year-old son rented a mobile home together. The home contained three bedrooms, and all three adults lived there. FCM Rush testified at a subsequent hearing that he had visited Mother and Grandmother’s mobile home, the “home conditions [were] fine[,]” and the home had “ample space and bedding to accommodate [Child] if she were to return.” Tr. Vol. 2 at 124. We commend Mother and Grandmother for addressing their housing situation by renting the three-bedroom mobile home and acknowledge that a CHINS adjudication “may not be based solely on conditions” that no longer exist.” *Matter of D.T.*, 547 N.E.2d 278, 284 (Ind. Ct. App. 1989), *trans. denied*. However, we further note that the trial court did not base its CHINS adjudication solely on the condition of the motel rooms.

Child, possessed and consumed drugs either without Mother and Grandmother's knowledge or due to their lack of proper supervision; and Mother and Grandmother were unwilling to participate in services.

[26] The unchallenged findings stand as proven and are sufficient to support the CHINS determination. Thus, we find that the trial court did not err when it concluded that these facts establish by a preponderance of the evidence that Child is a CHINS, and the court's order does not punish Mother for her alleged treatment of E.L. We therefore hold that the court's judgment is not clearly erroneous.

### **Conclusion**

[27] The trial court did not violate Mother's due process rights when it adjudicated Child to be a CHINS, and the court's CHINS determination is not clearly erroneous. We therefore affirm the trial court's order.

[28] Affirmed.

Vaidik, J., and Weissmann, J., concur.