



ATTORNEY FOR APPELLANT

Lisa Diane Manning
Danville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

David E. Corey
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

In the matter of D.C., Ma.C. and
Mo.C., Children Alleged to be in
Need of Services

K.S. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

March 15, 2021

Court of Appeals Case No.
20A-JC-2000

Appeal from the
Putnam Circuit Court

The Honorable
Melinda Jackman-Hanlin,
Magistrate

Trial Court Cause Nos.
67C01-2007-JC-80
67C01-2007-JC-81
67C01-2007-JC-82

Vaidik, Judge.

Case Summary

- [1] K.S. (“Mother”) appeals the trial court’s finding two of her children are children in need of services (CHINS). Specifically, Mother argues her children aren’t CHINS because they are in the care of her mother (“maternal grandmother”). Aside from the CHINS case, there is no evidence in the record maternal grandmother has any legal authority to care for the children or act on their behalf. Accordingly, the CHINS case should continue until she has such authority. We therefore affirm the trial court.

Facts and Procedural History

- [2] Mother and D.C. (“Father”) have three children, D.C. II, born in November 2013, and twins Mo.C. and Ma.C. (“the twins”), born in April 2017 (collectively, “the children”). Because Father does not appeal and Mother only challenges the trial court’s finding the twins are CHINS, we focus on the facts concerning Mother and the twins.
- [3] Mother and Father lived with the children in 2019. Right before school started, Mother moved out, leaving Father and the children in the home. In October 2019, maternal grandmother became concerned the twins, then two years old, “weren’t being bathed properly” and Father wasn’t “watch[ing] them very [well],” so she moved the twins in with her. Tr. pp. 25-26. D.C. II, who was in kindergarten, remained with Father. After moving out, Mother didn’t

financially support the children, and she visited the twins at maternal grandmother's house "a couple times a month." *Id.* at 28.

[4] On July 7, 2020, the Department of Child Services filed a petition alleging the children were CHINS because Mother and Father had neglected the children and there was "domestic violence between" them. Appellant's App. Vol. II p. 189. DCS did not remove the children at that time. But on August 31, DCS removed D.C. II, who was still living with Father, because Father had been arrested and DCS couldn't locate Mother. D.C. II was placed with maternal grandmother (but has since been placed with an aunt and uncle).

[5] A fact-finding hearing was held on September 8. Mother did not appear, and Father appeared telephonically from jail. The family case manager testified communication with Mother had been "difficult." Tr. p. 21. He explained he had made "multiple attempts" to contact Mother at home, twice by himself and three times with law enforcement, and that he had tried to contact her via phone and email but received "little to no response." *Id.* Maternal grandmother testified she didn't know why Mother wasn't at the hearing and that she had offered Mother a chance to visit the children the week before but Mother didn't respond.

[6] The trial court found the children to be CHINS. Following a dispositional hearing, the court ordered Mother and Father to complete a variety of services, including a parenting assessment, a mental-health assessment, a substance-abuse assessment, and family-based counseling.

- [7] A review hearing was held in January 2021. Mother (again) did not appear, and Father was still in jail. *See* Order on Periodic Case Review, No. 67C01-2007-JC-80/81/82 (Jan. 26, 2021). According to the order, neither Mother nor Father has complied with the case plan or enhanced their parenting ability.
- [8] Mother appeals.

Discussion and Decision

- [9] The trial court found the twins are CHINS under Indiana Code section 31-34-1-1, which provides a child is a CHINS if that child is under eighteen and:

(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 the child:

(A) is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

In sum, a CHINS adjudication “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.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014), *reh’g denied*. DCS must prove by a preponderance of the evidence the child is a CHINS. Ind. Code § 31-34-12-3.

[10] Mother first argues “DCS failed to prove that [her] actions or inactions have seriously endangered” the twins. Appellant’s Br. p. 10. She notes DCS presented no evidence at the hearing she abused alcohol or drugs. While this may be true, the trial court found Mother “abandoned” the twins and didn’t provide “for the[ir] daily and financial needs.” Appellant’s App. Vol. III pp. 51, 53. Indeed, the evidence shows Mother left Father with the children right before school started in 2019. When maternal grandmother didn’t think Father was doing a good job taking care of the twins, she moved them in with her in October 2019. According to maternal grandmother, Mother saw the twins only a couple times a month. In addition, the family case manager testified about the difficulty he had contacting Mother, and the court found Mother’s failure to attend the fact-finding hearing was “consistent with her demonstrated lack of interest in the [twins’] everyday life and care.” *Id.* at 52. There is no doubt Mother’s abandonment of the twins has seriously endangered them.

[11] Mother next argues “DCS failed to prove that [the twins’] needs were unmet . . . [and that their] needs are unlikely to be met without State intervention” because they are being cared for by maternal grandmother. Appellant’s Br. pp. 10-11. We first point out Mother cites no case law supporting her argument the twins aren’t CHINS because they are in the care of maternal grandmother. Moreover, aside from the CHINS case, there is no evidence in the record maternal grandmother has any legal authority to care for the twins or act on their behalf. For example, there is no guardianship, and maternal grandmother does not have custody or a power of attorney. *See, e.g., In re Guardianship of Xitumul*, 137 N.E.3d 945 (Ind. Ct. App. 2019) (discussing guardianship and power of attorney for minor); *A.J.L. v. D.A.L.*, 912 N.E.2d 866 (Ind. Ct. App. 2009) (discussing custody of minor by de facto custodian). In the absence of the CHINS case, maternal grandmother could not seek medical care for the twins, enroll them in school, or keep them if Mother decided to take them. Accordingly, the CHINS case should continue until maternal grandmother has legal authority. In the meantime, the coercive intervention of the court is needed to provide legal authority to maternal grandmother and ensure the twins’ needs are being met. We therefore affirm the trial court’s finding the twins are CHINS.

[12] Affirmed.

Brown, J., and Pyle, J., concur.