

MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

A.Y.,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

February 28, 2023

Court of Appeals Case No.
22A-JC-2025

Appeal from the Tippecanoe
Superior Court

The Honorable Faith A. Graham,
Judge

The Honorable Tricia L.
Thompson, Juvenile Magistrate

Trial Court Cause No.
79D03-2203-JC-25

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

- [1] A.Y. (Father) appeals from the adjudication of his daughter A.L.Y. (Child) as a child in need of services (CHINS). He contends that the Indiana Department of Child Services (DCS) failed to present sufficient evidence to support the adjudication.
- [2] We affirm.

Facts & Procedural History

- [3] Child was born to R.W. (Mother) and Father in May 2010, when Father was nineteen years old. Mother and Father's relationship was plagued by domestic violence, resulting in Father's arrests in 2011 and 2012 and his ultimate conviction, pursuant to a plea agreement, for criminal confinement at the end of 2012. Mother died an untimely death in 2013 when she was struck by a vehicle.
- [4] Father had two children with another woman – a daughter in May 2011 and a son in July 2012. His parental rights were involuntarily terminated with respect to the daughter in August 2012 and the son in January 2013. The termination orders referenced Father's "long-standing history of instability" and his relationships "fraught with domestic violence." *Exhibits Vol. 2* at 62, 71. Through the CHINS proceedings, Father received many services, including to address anger management and domestic violence, but he was discharged for

lack of attendance. Further, in the 2013 termination order, the trial court observed that “Father always makes excuses and often blames others, is not able to control his anger, and he does not demonstrate any motivation to change or any desire to be a full time parent.” *Id.* at 63.

[5] Father’s instability and legal troubles continued after Mother’s death, so he eventually placed Child in the care of D.A. and her husband H.A. These individuals were relatives of Father and had essentially raised him. Child also spent time living with her maternal grandmother (Grandmother) in Chicago in 2015 while Father was incarcerated. Grandmother initiated guardianship proceedings, which proved unsuccessful, and Father returned Child to D.A. and H.A. in Indiana.

[6] Father maintained contact with Child throughout the years and although he had obtained more stability within the last three or four years, he did not seek to reclaim care and custody of Child from D.A. and H.A. Father did, however, have Child stay with him at his two-bedroom apartment from time to time, and he was involved in her schooling and upbringing.

[7] Around July 2020, Grandmother regained contact with Child and bought her needed clothing. With Father’s permission, Grandmother later gave Child a smartphone so that they could stay in touch. Child eventually began indicating that she would prefer to live in Chicago with Grandmother.

[8] Around this same time, D.A. became very ill with cancer. She no longer cooked or cleaned, and she spent much of her time sleeping. Child began

experiencing food insecurity. The five older children in the home were employed and able to fend for themselves, but Child was not. Father did not provide clothes, food, or support for Child at D.A.'s home.

[9] Child had always been a good student, but during sixth grade, which began in 2021, her grades began to slip and she received some discipline at school on more than one occasion. Additionally, during the first semester, Father discovered inappropriate content on Child's phone. The phone was taken away and returned to Grandmother, but Child regained the phone over winter break, when she spent time with Grandmother.

[10] DCS became involved in Child's life after Child ran away from D.A.'s home on January 16, 2022, and was missing for several hours. Detective Daniel Long of the Lafayette Police Department spoke with Child once located, as she sat in handcuffs in the back of a patrol car. Child indicated that she left because of Father's anger about the phone. She reported that Father was "yelling at her and stated that he was gonna dig her grave." *Transcript Vol. 2* at 33. She also indicated that Father had previously battered her and that she was afraid of what he would do. After taking Child to the juvenile intake center on the runaway offense, Detective Long made a report to DCS regarding Child's allegations.

[11] Tanya Gutierrez, a case assessor for DCS, came to D.A.'s home to speak with Child the next day. Gutierrez was unable to complete a full interview because Child "did not feel comfortable with sharing information and didn't feel that it

was safe for her to talk freely in the house that she was residing in.” *Id.* at 51-52. Gutierrez went to Child’s elementary school a few weeks later, on February 9, to check on her. At that time, Child disclosed that she had been physically harmed by Father and that he had been verbally aggressive and threatening. Child also disclosed another incident that had since occurred. Child told Gutierrez that she was “very afraid” of Father because “his behaviors are unpredictable.” *Id.* at 59.

[12] Gutierrez contacted Detective Long, who immediately came to the school. He asked Child if she had been in a recent physical altercation with Father, and Child responded in the affirmative. He also observed a faint mark on Child’s left cheek, which Child indicated was from “being struck in the face” by Father. *Id.* at 36.

[13] Detective Long transported Child directly to the Hartford House Child Advocacy Center for a forensic interview with Ashley Carter. During the nearly hour-long, recorded interview, Child described to Carter instances of physical abuse, intimidation, and child endangerment by Father. Child’s disclosures, as summarized, follow:

The most recent incident described by [Child] occurred on the Tuesday before her interview. [Child] stated that Father banged her head into the wall, pushed her to the floor, kicked her in the stomach, and pulled her hair. [Child] ran out of the house and Father dragged her back to the house and into the car. [Child] made a comment about killing herself and Father threw two (2) or three (3) water bottles at her, hitting her in the stomach. Father opened the car door while the vehicle was moving and

said he would push her out since she wanted to kill herself. [Child] indicated she had a knot on her head from the incident. Most of the incident was witnessed by [D.A. and H.A.], who told Father to stop but did not intervene.

[Child] indicated that Father frequently calls her names and yells out (sic) her. Father has also threatened to kill her and her brother on other occasions. [Child] described incidents of physical abuse starting when she was approximately five (5) years old and Father whipped her with a belt in the face, pushed her on the floor and beat her. [Child] also disclosed witnessing Father physically abuse his girlfriends and his other children.^[1] [Child] expressed fear of Father and she does not want to live with him or visit with him. [Child] believes Father's threats to kill her as he is angry and gets angrier when he is drinking alcohol.

Appendix at 19.

[14] Following Child's interview, Father was arrested for battering Child, although charges were not ultimately filed at the time.² DCS initially placed Child in Grandmother's care but then moved her to foster care on February 11, 2022.³ DCS filed the instant CHINS petition that same day, alleging that Father had

¹ Father has two sons who are younger than Child. At the time of the interview, the boys were about five and six years old and each lived with their respective mother. The youngest son had recently spent several days with Child at Father's home, during which time Father yelled threats and was angry at both of the children. Additionally, Child noted an incident on her tenth birthday when she witnessed Father beat one of his girlfriends, which was not the only time he had done so. The record reveals that Father was arrested in January 2018 for domestic violence and criminal confinement with this same girlfriend as the alleged victim. The charges were dismissed later that year.

² Father was charged criminally in July 2022, after Child was adjudicated a CHINS in this case but before disposition. A no-contact order was entered that same month as a condition of his bail.

³ D.A. and H.A. informed DCS that they were no longer able to care for Child and that they had asked Father to take her into his care.

physically abused and threatened Child on multiple occasions and that he had a history of domestic violence. At some point, Grandmother filed another petition for guardianship over Child.

[15] The CHINS and guardianship fact-finding hearings were consolidated and held on May 23 and June 6 and 13, 2022. By agreement of the parties, the trial court also incorporated the evidence from the earlier child hearsay hearing, which included the testimony of psychologist Dr. Robin Kohli, who evaluated Child on April 21. Dr. Kohli testified that Child’s reports regarding Father continued to be “very consistent” and “clear” and that Child had a real fear that Father was going to kill her. *Transcript Vol. 2* at 18. Dr. Kohli testified that she did not observe any signs of coaching. Ultimately, Dr. Kohli concluded that Child was “a very traumatized girl who would be more traumatized if she was required to testify in front of [Father], the man she believes is going to kill her.” *Id.* at 25. The trial court admitted Child’s forensic interview from the Hartford House into evidence in lieu of her live testimony at the hearing.

[16] Father testified at the CHINS hearing and denied abusing Child. He acknowledged that he had been disciplining her during her sixth-grade year due to her changed behavior at school – fights and cutting class – and her misuse and dishonesty regarding the phone she received from Grandmother. Father blamed Grandmother for “manipulating [Child’s] memory and turning her against [him], telling her that [Father was] responsible for [Mother’s] death.” *Id.* at 230. Father testified that Child lied during the investigation and that he had only “whooped ... her behind” with a belt and yelled. *Id.* at 243. He

denied ever leaving bruises or marks on her or striking her in any other manner. Father also refuted Child's statements that she had witnessed him threaten and abuse others. Finally, Father testified that he was willing to obtain services for himself and Child without the need for court intervention and that he wanted to raise Child in his home.

[17] DCS presented evidence that Father had been difficult to contact at times and had not complied with some of the referred services. Although Father was actively involved in home-based services, Father had not complied with certain other services offered by DCS. He had not taken any random drug screens, and his referral for a clinical interview and assessment was cancelled because the provider could not reach him. Father also informed Emma Doyle, his current DCS family case manager (FCM), that he would not participate in abuse awareness and accountability services unless ordered to do so by the trial court. FCM Doyle testified, based on her interactions with Father, that she did not believe Father would participate in needed services for Child and himself without court intervention.

[18] Father was adamant with DCS that he wanted to have visits. Child was not willing to see him, however, so Father indicated he would wait until she was ready. Accordingly, as of the final date of the hearing, he had not seen Child for about four months.

[19] FCM Doyle acknowledged on the final day of the hearing that Child had recently had an incident with her foster family in which she made false abuse

allegations against her adult foster sister, providing at least four different accounts and ultimately recanting. FCM Doyle testified that based on recent events she now believed “there could be some untruthful statements” by Child relating to Father. *Id.* at 219. The CASA indicated that Child had provided some “twisted truths” and that Child had “outside influence on some things,” based on Child’s age and desire to live with Grandmother. *Id.* at 250; *Transcript Vol. 3* at 5. However, the CASA noted that, unlike the recent incident, Child had “never waived (sic)” and had been “very specific, very consistent” over multiple interviews regarding Father’s behaviors. *Transcript Vol. 3* at 5.

[20] FCM Doyle and the CASA both agreed that it was in Child’s best interests to remain in foster care while Father and Child both receive needed services, some of which they had yet to engage in. Regardless of the accuracy of Child’s allegations against Father, the CASA testified that Child and Father required therapeutic visits and family therapy to repair their relationship before Child could be placed in Father’s home.

[21] In closing, DCS acknowledged that this was “a difficult case” and indicated that “ultimately the decision is with the court ... to determine the credibility of [Child’s] statements.” *Id.* at 18. Father responded that “this is really ... a parent alienation case” created by Grandmother and that DCS should not be involved. *Id.* at 19. The CASA, however, argued that DCS had met the preponderance of the evidence standard needed to establish that Child is a CHINS. The CASA urged that it was not safe for Child – physically or mentally – to be placed in Father’s home without reunification or family

therapy. DCS further noted that Father had not fully engaged in services – most notably abuse accountability and awareness – and that there was no evidence that Father had attempted to arrange any kind of therapy for Child on his own, despite his agreement that she needed individual and family therapy.

[22] The trial court took the matter under advisement and issued its order on July 10, 2022, adjudicating Child a CHINS and denying Grandmother’s requested guardianship. The court found that its coercive intervention was “needed to provide [Child] with a safe home and services to repair the relationship with Father.” *Appendix* at 20.

[23] On July 25, 2022, the trial court held a dispositional hearing, at which Father indicated agreement with the services recommended by DCS. Accordingly, the trial court ordered Father to complete a diagnostic evaluation and participate in domestic violence services/batterer’s services, home-based case management, random drug screens, and supervised visitation (once Father obtained modification of the no-contact order in the criminal case).

[24] Father now appeals. Additional facts will be provided below as needed.

Discussion & Decision

[25] 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). On review, 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. *Id.* We will reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.* Further, 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.*

[26] There are three elements DCS must prove by a preponderance of the evidence for a child to be adjudicated a CHINS:

DCS must first prove the child is under the age of eighteen; DCS must prove one of eleven different statutory circumstances exist that would make the child a CHINS; and finally, in all cases, DCS must prove the child needs care, treatment, or rehabilitation that he or she is not receiving and that he or she is unlikely to be provided or accepted without the coercive intervention of the court.

Id. (footnote omitted); *see also* Ind. Code § 31-34-1-1. The CHINS statutes do not require a court to wait until a tragedy occurs to intervene; rather, a child is a CHINS when he or she is endangered by parental action or inaction that is unlikely to be remedied without coercive intervention by the court. *See In re C.K.*, 70 N.E.3d 359, 364 (Ind. Ct. App. 2016), *trans. denied.*

[27] 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. The focus of a CHINS proceeding is on “the best interests of the child, rather than guilt or innocence as in a criminal proceeding.” *Id.* (quoting *In re N.E.*, 919 N.E.2d 102,

106 (Ind. 2010)). Further, when determining CHINS status, particularly the coercive intervention element, courts should consider the family's condition not just when the case was filed, but also when it is heard so as to avoid punishing parents for past mistakes when they have already corrected them. *In re D.J.*, 68 N.E.3d 574, 580-81 (Ind. 2017). This 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 1283, 1287 (Ind. 2014) (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[28] Father initially challenges, on sufficiency grounds, the trial court’s conclusion that Child is in need of services. In this regard, he points to Child’s untruthful allegations against the foster family, his own testimony denying the physical abuse allegations and indicating that he used only legal corporal punishment⁴ to address Child’s recent behavioral issues, his belief that Child was lying due to manipulation by Grandmother, and the CASA’s testimony that Child had been providing some twisted truths with a desire to live with Grandmother. In sum, Father argues that “[a] fair amount of evidence exists to cast doubt on [Child’s] statements regarding Father’s alleged abusive acts” and that the “actions Father truly committed constitute legal discipline.” *Appellant’s Brief* at 19.

⁴ I.C. § 31-34-1-15(1) permits a parent to “use reasonable corporal punishment when disciplining [a] child.”

[29] We reject Father’s invitation to reweigh the evidence and judge witness credibility. All of these arguments were made below, and it was entirely within the trial court’s discretion to consider the totality of the evidence and determine whether Child’s allegations against Father and her resulting fear of him were genuine. The trial court’s determination that Child is in need of services is supported by, among other things, the following evidence: Father’s history of domestic violence with multiple individuals, some of which was witnessed by Child; Child’s consistency, across multiple interviews, in describing her fear of Father due to his uncontrolled anger, physical abuse of her, and threats; Child’s act of running away to avoid being harmed by Father; and Child’s undisputed need for trauma therapy.

[30] In the alternative, Father argues that even if he committed the acts alleged by Child, the coercive intervention of the court is not necessary to ensure Child receives the needed services. Father contends that he is “ready and willing to cooperate to make sure that [she] gets any help she needs.” *Appellant’s Brief* at 13. In addition to being employed and having adequate housing, Father notes that he had actively participated in home-based services and that he is willing to complete a clinical assessment, to ensure that Child receive therapy, to participate in domestic violence services, and to participate in any other services that would be beneficial to Child and/or him.

[31] The trial court was not required to take Father at his word. Rather, Father’s demonstrated behavior during this CHINS proceeding, like prior CHINS and termination cases involving two other of Father’s children, indicated that he

was not likely to fully embrace needed services. Specifically, he had informed FCM Doyle that he would not engage in abuse awareness and accountability services for which he had been referred unless ordered to do so by the trial court. Further, his engagement with other services was also lacking at times, and DCS and services providers experienced some difficulty reaching him, which resulted in at least one referral being closed unsuccessfully. FCM Doyle testified that she did not believe Father would participate in needed services for Child and himself without court intervention.

[32] We commend Father for the progress he has made with home-based services and his apparent commitment to helping Child through her trauma. Father must also devote time to addressing his own issues with anger, trauma, and domestic violence so that he can safely and appropriately parent Child. In time, Father and Child might be able to be reunited, but we cannot conclude that the trial court erred by adjudicating Child a CHINS.

[33] Judgment affirmed.

Riley, J. and Pyle, J., concur.