MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

R.F., K.F., A.P., and Z.P. *(Minor Children),*

and

B.P. (*Father)* and A.F. *(Mother),*

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner,

February 3, 2022

Court of Appeals Case No. 21A-JC-1129

Appeal from the Allen Superior Court

The Honorable Charles Pratt, Judge

The Honorable Lori K. Morgan, Magistrate

Trial Court Cause Nos.
02D08-2102-JC-41
02D08-2102-JC-42
02D08-2102-JC-43
02D08-2102-JC-44

Robb, Judge.

Case Summary and Issue

[1] A.F. ("Mother") is the biological mother of R.F., K.F., A.P., and Z.P. ("Children"). B.P. ("Father") is the alleged father of K.F., A.P., and Z.P.[1] Mother and Father (collectively, "Parents") separately appeal the juvenile court's finding that each of the Children is a Child in Need of Services ("CHINS"). On appeal, Parents raise one issue for our review, which we expand and restate as: (1) whether certain findings of fact made by the juvenile court were erroneous; and (2) whether the juvenile court erred in finding the Children were CHINS. Concluding the juvenile court's challenged findings are not erroneous and the juvenile court did not err in finding the Children are CHINS, we affirm.

Facts and Procedural History

[2] In early February 2021, the Department of Child Services of Allen County ("DCS") received a report that domestic violence occurred in Parents' apartment in the presence of the Children and that the Children were physically abused.[2] On February 9, 2021, Family Case Manager ("FCM") Alyssa Shenfeld responded to the report and visited Parents' apartment complex.

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[1] The alleged father of R.F. does not participate in this proceeding.

[2] At the time of the report, all the Children lived with Parents in Father's apartment.

When FCM Shenfeld rang the apartment's buzzer, Mother answered but stated that she "wasn't home at that time" and that Shenfeld could not get in without being buzzed into the building. The Transcript, Volume 2 at 11. Later that day, Mother called FCM Shenfeld and told her she could now visit.

[3] FCM Shenfeld, along with fellow DCS employee Cherie Toland, returned to Parents' apartment. Parents stated that there had been arguing, but no physical violence. Although Parents indicated that the Children had not been physically abused, Father admitted to disciplining the Children by "whooping[]" them with his hand or a belt on top of the Children's clothing. *Id*. at 38. He also stated that he grew up in the system and "knows that he can do so." *Id*. at 38, 73. Father seemed agitated, pacing back and forth and raising his voice every time he answered a question.

[4] FCM Shenfeld and Toland observed that the Children had numerous injuries, marks, scars, and scratches covering their bodies. A.P. exhibited a head injury, bruising below her right eye which Parents attributed to a fall at a restaurant.[3] Parents allowed FCM Shenfeld to interview R.F. and A.P. in a separate room. However, Father would not allow FCM Shenfeld to be alone with the two children in the room for any length of time. Because of A.P.'s injury, FCM Shenfeld placed a referral with Riley Children's Hospital's Child Protection team ("Riley Child Protection Team") in Indianapolis which recommended

[3] Parents offered no evidence or testimony confirming the source of the head injury. DCS attempted to obtain security footage from the restaurant but was unsuccessful.

physicals for all the Children and forensic interviews for R.F. and K.F. *See* The Exhibits, Volume 1 at 19; *see also* Tr., Vol. 2 at 13.

[5] When FCM Shenfeld relayed those recommendations to Parents, Father was adamant that he would not allow R.F. and K.F. to be interviewed without Parents being present. He indicated that he would not let FCM Shenfeld talk to the Children, the family would not cooperate, and the family was done working with DCS. Neither Parent wanted the Children to be seen by doctors and Father forced FCM Shenfeld from the apartment.

[6] Later that day, FCM Shenfeld returned to the apartment and in an attempt to keep the Children in Mother's care, offered a safety plan which entailed keeping Father from the Children at least until the forensic interviews could be conducted. Mother refused the safety plan, stating that "it was [Father's] home and he pays the bills" and that she wasn't going to keep Father away from the Children because he is their dad. Tr., Vol. 2 at 17. Due to Mother's refusal of the safety plan and DCS' inability to guarantee the Children's safety, the Children were removed from the Parents' care and transported to Lutheran Hospital for physical examinations.[4]

[4] During the removal and subsequent physical examinations of the Children, DCS observed that the Children were dirty and not adequately dressed for the winter weather. K.F.'s pants were at least two sizes too small and K.F. was wearing nothing under her pants. None of the Children had matching or clean socks and their shoes were too small. R.F. did not have a coat.

[7] At Lutheran Hospital, Dr. Nicholas Leonowicz examined the Children and photographs were taken of the Children's injuries. The Children's bodies exhibited scarring, bruising, and other similar physical injuries. However, Dr. Leonowicz was unable to determine whether the injuries were due to abuse by Parents or interactions between the Children. No life-threatening injuries were identified.

[8] On February 10, 2021, DCS filed a verified petition alleging the Children to be CHINS under Indiana Code sections 31-34-1-1 and 31-34-1-2. DCS also alleged there was a rebuttable presumption the Children were CHINS under Indiana Code section 31-34-12-4 because they suffered injuries that were not accidental and would not have happened but for Parents' acts. The juvenile court held an initial hearing, found probable cause existed that the Children were CHINS, and ordered Parents into provisional services, including a diagnostic assessment meant to identify Parents' issues and determine the services necessary for reunification. The juvenile court placed the Children in the care of their maternal grandmother, granted Mother supervised visitations, and provided no visitations for Father.[5]

[9] On March 23, 2021, a fact-finding hearing on the CHINS petition was held. At the hearing, DCS presented testimony from multiple DCS employees detailing

[5] On March 15, 2021, the Children were returned to the care of Mother. Father was granted visits with the Children. However, those visits had to be supervised by the Children's maternal grandmother because DCS could not otherwise ensure the Children's safety.

the Children's removal, Parents' failure to complete the diagnostic assessment, and Parents' refusal to cooperate with DCS unless ordered by the court. DCS also provided photographic evidence of the Children's injuries. Parents presented no evidence or testimony on their behalf. However, FCM Stephen Ward did testify that the Children appear to be happy in a home with only Mother and services had yet to be recommended for the Children. In April 2021, the juvenile court issued findings of fact and conclusions of law adjudicating the Children as CHINS.

[10] In May 2021, a dispositional hearing was held, and the juvenile court ordered Parents into reunification services. Parents now appeal the CHINS adjudication.

Discussion and Decision

I. Standard of Review

[11] In reviewing the juvenile court's determination that Children are CHINS, we neither reweigh the evidence nor judge the credibility of witnesses. *In re S.D.*, 2 N.E.3d 1283, 1286 (Ind. 2014). Rather, we consider only the evidence that supports the juvenile court's decision and the reasonable inferences drawn therefrom. *Id*. at 1287.

[12] In adjudicating the Children as CHINS, the juvenile court entered findings of fact and conclusions of law *sua sponte*. Therefore, our review is governed by Indiana Trial Rule 52(A) which applies a two-tiered standard of review. *Matter*

of N.C., 72 N.E.3d 519, 523 (Ind. Ct. App. 2017). First, we consider whether the evidence supports the findings. *Id*. Second, we evaluate whether the findings support the judgment. *Id*. We will not set aside the findings or judgment unless they are clearly erroneous. *Id*. Findings are clearly erroneous when there are no facts in the record to support them; a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id*. Although we give substantial deference to the juvenile court's findings, we do not extend such deference to the court's conclusions. *Id*. Any issues not covered by the findings are reviewed under a general judgment standard and the judgment may be affirmed if it can be sustained on any basis supported by the evidence. *Id*.

II. Findings of Fact

[13] Parents, individually, challenge four of the juvenile court's findings of fact as unsupported by the evidence. Specifically, Parents challenge findings 5, 11, 13, and 32. We accept the remaining unchallenged findings as true. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[14] Finding 5 provides: "On February 9, 2021, [FCM Shenfeld], went to the home to investigate the allegations. Initially she was denied access to the [C]hildren." Appellant/Mother's Appendix, Volume II at 76. Parents argue that Mother did not deny access to the Children. Specifically, Parents argue that Mother was not home and therefore, could not give FCM Shenfeld access to the Children. However, the record shows that when FCM Shenfeld rang the buzzer to Parents' apartment, Mother answered, and stated she was not home and that

FCM Shenfeld could not access the apartment without being buzzed in. *See* Tr., Vol. 2 at 11. Whether Mother was home is not in issue. The juvenile court could readily infer from the evidence that when Mother answered the buzzer and turned FCM Shenfeld away that Mother denied access to the Children. The record supports finding 5.

[15] Finding 11 provides: "The [Children's] injuries were suspicious and indicative of child abuse. On February 9, 2021, [Father] admitted to 'whooping' the [C]hildren with a belt as a means of disciplining the [C]hildren." Appellant/Mother's App., Vol. II at 76. Parents argue that nothing in the record suggests that the injuries were suspicious and indicative of child abuse.[6] Specifically, Parents point to Dr. Leonowicz's testimony that he could not determine whether the Children's injuries were the result of abuse or interactions between the Children. However, Parents' argument is a request to reweigh the evidence. The record shows that the bodies of the Children displayed scars, bruises, and other physical trauma. *See* Tr., Vol. 2 at 19-29, 86. Images of those injuries were admitted into evidence and observed by the juvenile court. *See* Ex., Vol. 1 at 110-28. According to the Riley Child Protection Team, the injuries were "suspicious and indicative of child abuse." *Id*. at 19. As a result, the Riley Child Protection Team advised that each child

[6] In making their argument regarding finding 11, Parents also incorporate language from finding 30 regarding whether Father's actions caused the injuries and the injuries were accidental. However, finding 30 regards the juvenile court's conclusions of law as to whether DCS proved certain elements necessary under Indiana Code section 31-34-12-4. We address section 31-34-12-4 independently below.

receive a head-to-toe physical examination. *See* Tr., Vol. 2 at 13. The record supports finding 11.

[16] Finding 13 provides: "There is a pattern of inappropriate discipline in the home resulting in the marks, scars and bruises on the [C]hildren as evidenced by the photographic evidence submitted." Appellant/Mother's App., Vol. II at 76. Parents contend there was no evidence or testimony that indicates the Children's injuries resulted from inappropriate discipline or that Father's actions were the cause of those injuries. We acknowledge that in Indiana a parent may use reasonable corporal punishment when disciplining a child. *See* Ind. Code § 31-34-1-15(1). However, there is no authority for the proposition that a parent's right to use corporal punishment is absolute or that the right may not be subordinate to a child's interest. *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 378 (Ind. Ct. App. 2007), *trans. denied*. Here, the record shows Father admitted to "whooping[]" the Children, Tr., Vol. 2 at 38, and the Children's bodies were covered by extensive markers of physical trauma, *see* Ex., Vol. 1 at 110-28. Further, the Children's physical trauma was indicative of abuse. *See id*. at 19. The juvenile court weighed the evidence and reasonably inferred that discipline caused the Children's injuries and therefore, the record supports finding 13.

[17] Finding 32 provides: "The [C]hildren have been returned to [M]other's care. However, if these proceedings were concluded there are no orders in effect to preclude [Father's] return to the home and the resumption of excessive physical discipline of the [Ch]ildren." Appellant/Mother's App., Vol. II at 78. Parents

argue that there is nothing to suggest that the discipline of the Children was excessive. Again, the juvenile court was presented with an admission that Father would "whoop[]" the children as a form of discipline, Tr., Vol. 2 at 38, testimony regarding the Children's injuries, photographic evidence of those injuries, and an assessment that those injuries were suggestive of abuse, and reached the conclusion that the Children's injuries were the result of excessive discipline. The record supports finding 32.

[18] Ultimately, Parents ask this court to reweigh evidence, which we will not do. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 149 (Ind. 2005). We conclude there is evidence to support findings 5, 11, 13, and 32.

III. Adjudication as CHINS

[19] A CHINS adjudication is meant to protect children, not punish parents. *Matter of K.Y.*, 145 N.E.3d 854, 860 (Ind. Ct. App. 2020), *trans. denied*. Accordingly, a CHINS adjudication focuses on the child's condition and status, and a separate analysis as to each parent is not required at the CHINS determination stage. *Id.* There are three elements DCS must prove for a juvenile court to adjudicate the Children as CHINS: that the child is under the age of eighteen; one or more of the statutory circumstances outlined in Indiana Code sections 31-34-1-1 through -11 exist; and the care, treatment, or rehabilitation required to address those circumstances is unlikely to be provided or accepted without the coercive intervention of the court. *Id.* DCS was required to prove that each child is a

CHINS by a preponderance of the evidence. *Id.* at 859. Put simply, a preponderance of the evidence is the greater weight of the evidence. *Id.*

[20] In the present case, DCS alleged the Children were CHINS under Indiana Code sections 31-34-1-1 and 31-34-1-2. To meet its burden pursuant to section 31-34-1-1, DCS was required to prove that prior to reaching eighteen 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.

Similarly, under Indiana Code section 31-34-1-2, DCS was required to prove, in relevant part, that prior to reaching eighteen years of age:

> (1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; 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.

[21] However, the juvenile court determined that DCS properly invoked Indiana Code section 31-34-12-4 (the "Presumption Statute") which establishes a rebuttable presumption that a child is a CHINS because of an act or omission of the child's parents or guardians if DCS introduces competent evidence of probative value that:

> (1) the child has been injured;
>
> (2) at the time the child was injured, the parent, guardian, or custodian:
>
> > (A) had the care, custody, or control of the child; or
> >
> > (B) had legal responsibility for the care, custody, or control of the child;
>
> (3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian; and

> (4) there is a reasonable probability that the injury was not accidental.

Once this showing is made, the rebuttable presumption that a child is a CHINS applies to all statutory CHINS elements. *Matter of K.Y.,* 145 N.E.3d at 861. In cases where a child has injuries suggestive of neglect or abuse, the Presumption Statute shifts the burden to the party most likely to have knowledge of the cause of the injuries—the parent or guardian—to produce evidence rebutting the presumption that the child is a CHINS. *In re J.D.*, 77 N.E.3d 801, 807 (Ind. Ct. App. 2017), *trans. denied*. The Presumption Statute effectively places the burden on the parent to prove no abuse or neglect occurred. *Matter of K.Y.,* 145 N.E.3d at 861.

[22] In the present case, Parents challenge the sufficiency of evidence as to the Presumption Statute. However, DCS needed only to produce some relevant and admissible evidence tending to establish the elements of the Presumption Statute in order to shift the burden of production to Parents. *In re J.D.*, 77 N.E.3d at 809. Here, DCS presented evidence that each child exhibited an assortment of injuries including scratches, scars, bruises, and abrasions to their bodies, that Father admitted to "whooping[]" the Children with a belt or his hand as a means of punishment, Tr., Vol. 2 at 38, and that Mother refused to institute a protection plan against Father. Further, the Riley Child Protection Team found the Children's injuries were suspicious or indicative of child abuse. As a result, the juvenile court reasonably inferred the injuries were the result of

Father's mode of disciplining the Children and found that there was a reasonable probability that the injuries were not accidental.

[23] Although both Mother and Father point out that Dr. Leonowicz was unable to determine the exact cause of the injuries, there is no rule that suggests medical evidence is categorically required to invoke the Presumption Statute. *Matter of K.Y.*, 145 N.E.3d at 862. The injuries suggested abuse and Father admitted to striking the Children as a form of discipline. As discussed above, *supra* ¶ 16, although Father is allowed to use reasonable corporal punishment, Father admitted to striking the Children with a hand or belt and the Children's bodies were covered with signs of physical trauma. Medical evidence is not required to make the necessary connection. Therefore, it was upon the Parents to provide evidence that the injuries were not the result of abuse. However, Parents presented no such evidence. As a result, we cannot say that the juvenile court erred in invoking the Presumption Statute and adjudicating the Children as CHINS.

[24] Although the Presumption Statue also establishes the coercive intervention element of a CHINS adjudication, *id.* at 861, Parents argue that an evaluation of the changed circumstances show that coercive intervention is not needed. It is true that FCM Ward testified that services had not yet been recommended for the Children and that they appeared to be happy in a home with only Mother. However, to say that circumstances have changed so that coercive intervention is not necessary ignores that Parents have never accepted the assistance offered by DCS and will not cooperate with DCS unless ordered by a court to do so.

Since the start of DCS' involvement, Father has interfered with DCS' attempts to evaluate the Children. He has stated that he would "whoop[]" the Children and knows that he is allowed to do so. Tr., Vol. 2 at 38, 73. At the time of the fact-finding hearing, Father was only allowed supervised visits because DCS could still not ensure the Children's safety around Father. Meanwhile, Mother refuses to accept a protection plan against Father and indicated she will not keep him from the Children. Further, neither Parent has submitted to a diagnostic assessment designed to identify the best services necessary to reunite the family. Therefore, Parents' argument is unconvincing because the circumstances continue to show that coercive intervention is necessary. *See Matter of Br.B.*, 139 N.E.3d 1066, 1073 (Ind. Ct. App. 2019) (indicating that the father's actions and the mother's failure to protect their children from those actions supports a CHINS adjudication), *trans. denied*.

[25] Father also alleges that DCS failed to show that the Children's physical or mental health was seriously impaired or endangered as a result of Parents' failure to provide the Children with the necessary food, clothing, shelter, medical care, education, or supervision under section 31-34-1-1. *See* Brief of Appellant/Father at 8. As noted above, the Presumption Statute, once properly invoked, applies to all elements of a CHINS adjudication and DCS was therefore not necessarily required to independently prove this element. However, even if the Presumption Statute were to be inapplicable in this situation, at the fact-finding hearing, DCS presented testimony that indicated the Children were dirty and inappropriately clothed for Indiana winter weather.

Parents did nothing to counter this testimony. Father's argument is unpersuasive.

Conclusion

[26] We conclude that the challenged findings of fact are supported by the record. Further, sufficient evidence supported the adjudication of the Children as CHINS. Therefore, we conclude the juvenile court's decision was not clearly erroneous, and we affirm.

[27] Affirmed.

Riley, J., and Molter, J., concur.