

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Matter of A.P.
(Minor Child), a Child in Need
of Services;

S.P. (Mother)

Appellant-Respondent

v.

Indiana Department of Child
Services,

Appellee-Petitioner,

And

Kids' Voice of Indiana,

September 9, 2022

Court of Appeals Case No.
21A-JC-2518

Appeal from the Marion Superior
Court

The Honorable Ryan Gardner,
Judge

Trial Court Cause No.
49D10-2107-JC-6150

Appellee-Guardian Ad Litem,

Pyle, Judge.

Statement of the Case

[1] S.P. (“Mother”) appeals the trial court’s order adjudicating her daughter, A.P. (“A.P.”), to be a Child in Need of Services (“CHINS”). She argues that there is insufficient evidence to support the adjudication. Concluding that there is sufficient evidence to support the adjudication, we affirm the trial court’s judgment.¹

[2] We affirm.

Issue

Whether there is sufficient evidence to support the CHINS adjudication.

¹ A.P.’s father (“Father”) is not participating in this appeal.

Facts

- [3] The evidence most favorable to the CHINS adjudication reveals that Mother is the parent of A.P., who was born in June 2009. In March 2021, Mother admitted that she had hit eleven-year-old A.P. with a belt ten times because A.P. had gone outside after dark. Mother also admitted that the belt lashing had left bruises on A.P. Mother specifically told Department of Child Services (“DCS”) Assessment Case Manager Danielle Cohen (“ACM Cohen”) that she had given A.P. “ten licks” and that A.P. had marks on her back because “she was flaying and screaming and did not accept her punishment.” (Tr. Vol. 2 at 63). Mother further told ACM Cohen that A.P. “trigger[ed]” Mother by doing things that Mother had told her not to do. (Tr. Vol. 2 at 58). In addition, Mother told ACM Cohen that Mother had been diagnosed with bi-polar disorder but had not been taking medication. DCS removed A.P. from Mother’s home and placed her with maternal grandmother (“Maternal Grandmother”).
- [4] On March 12, 2021, DCS filed a petition alleging that A.P. was a CHINS. The petition was filed under Cause Number 49D10-2103-JC-1822 (“Cause 1822”). The trial court scheduled the CHINS fact-finding hearing for July 7, 2021, which complied with the statutory time requirements for holding a CHINS fact-finding hearing. *See* IND. CODE § 31-34-11-1 (requiring the completion of a CHINS fact-finding hearing not more than 120 days after the filing of the CHINS petition).

- [5] Following A.P.'s removal from Mother, DCS referred A.P. to school-based therapist Angelica Ronke ("Therapist Ronke"). A.P. told Therapist Ronke that she was scared of Mother because Mother was verbally and physically abusive. Specifically, eleven-year-old A.P. told Therapist Ronke that Mother had called her a bitch, a whore, and a slut. In addition, A.P. attempted to show Therapist Ronke scars on her arm and leg, which A.P. claimed had resulted from Mother hitting her with a belt. A.P. also told Therapist Ronke that Mother had pulled A.P.'s hair out of her head to punish her.
- [6] Therapist Ronke unsuccessfully attempted to engage Mother in A.P.'s therapy. One day when Therapist Ronke saw Mother at the school, Therapist Ronke approached Mother to introduce herself and speak with Mother. However, Mother told Therapist Ronke that she did not want to be involved in any therapy with A.P. and walked out of the school. On another occasion, when A.P. had left Maternal Grandmother's house without Maternal Grandmother's permission, Therapist Ronke located A.P. and took her to DCS' office. Mother was at the office and told A.P. that she was not Mother's child and would learn what it would be like to be a motherless child because Mother was not going to fight for her. A.P. "balled up in a fetal position and she cried for hours." (Tr. Vol. 2 at 226). Therapist Ronke had "concerns that [Mother] ha[d] her own mental health challenges that [were] being untreated at th[at] time and it [was] affecting [A.P.] and [Mother]'s interactions with [A.P.]" (Tr. Vol. 2 at 229). In addition, during team meetings at DCS' office, Therapist Ronke noticed that

Mother would go from being calm to shouting, yelling, refusing services, and denying that there were any concerns about A.P.

- [7] During this time, Mother repeatedly told DCS Family Case Manager Sara Brown (“FCM Brown”) that she was not going to deal with the process any longer and that she wanted information “so that she could sign over her rights to [A.P.]” (Tr. Vol. 2 at 81). Mother was also verbally aggressive with FCM Brown.
- [8] In April 2021, therapist Anita Adams (“Therapist Adams”) began supervising therapeutic visits between A.P. and Mother. According to therapist Adams, the visits were tense. During one visit, Mother became upset that A.P. had taken out her braids. During another visit at a restaurant, eleven-year-old A.P. told Mother that she was bi-sexual. Mother slammed her hands on the table and became enraged. Mother and A.P. were both upset when they left the visit. After three visits, Mother notified Therapist Adams that she would not be attending any further visits. DCS closed the referral for supervised therapeutic visitation at the end of May 2021.
- [9] In June 2021, DCS removed A.P. from Maternal Grandmother and placed her in emergency shelter care because Maternal Grandmother reported that she was no longer able to handle A.P., who had become disrespectful. A.P.’s school also reported that A.P.’s school behavior had gotten progressively worse since she had been placed with Maternal Grandmother.

- [10] Two weeks later, DCS placed A.P. in foster care. However, A.P. refused to follow the foster family's rules and eventually threatened to kill the foster parents. In early July 2021, DCS removed A.P. from foster care and placed her in a Community Hospital inpatient treatment program.
- [11] On July 7, 2021, the trial court was unable to hold the previously scheduled CHINS fact-finding hearing because the court's calendar was double-booked, and another judicial officer was not available. The trial court, therefore, on its own motion, ordered the CHINS fact-finding hearing to be continued for good cause and rescheduled the hearing for July 21, 2021. Mother filed an objection to the continuance. She specifically argued that only a party could request a good cause continuance and that a trial court could not order one on its own motion.
- [12] Although DCS disagreed with Mother's objection, on July 21, 2021, DCS filed a motion to dismiss, without prejudice, the CHINS petition in Cause 1822. *See* I.C. § 31-34-11-1(d) (explaining that if the CHINS fact-finding hearing is not held within the required time period, upon motion with the court, the court shall dismiss the case without prejudice). DCS filed its motion to dismiss at 12:41 p.m. In its motion, DCS explained that it intended to file another petition alleging that A.P. was a CHINS.
- [13] When the parties assembled for the previously scheduled July 21, 2021, fact-finding hearing, the trial court noted that DCS had filed a motion to dismiss. Mother argued that in light of the motion to dismiss, A.P., who had been

placed in an emergency shelter following her discharge from the inpatient treatment program, should be returned to Mother's care. After hearing the parties' arguments, the trial court granted DCS' motion to dismiss, without prejudice, the CHINS petition in Cause 1822 but denied Mother's request to return A.P. to her care. The trial court's order dismissing Cause 1822 was entered on July 21, 2021, at 2:46 p.m. Mother did not appeal the trial court's dismissal of Cause 1822 or the trial court's denial of her request to return A.P. to her care.

[14] Also on July 21, 2021, DCS Assessment Case Manager Kirstin Bryant ("ACM Bryant"), who investigates reports of child abuse and neglect, was assigned to investigate A.P.'s case before a second CHINS petition was filed. ACM Bryant was told that the case had been dismissed, without prejudice, and that there were ongoing concerns regarding A.P.'s mental health issues and her safety in Mother's home. ACM Bryant contacted Mother, who was "aggressive and confrontational." (Tr. Vol. 2 at 178). Mother denied that A.P. needed mental health treatment and told ACM Bryant that A.P. was simply disrespectful. Mother further told ACM Bryant that she was not going to allow A.P. to be disrespectful to her and that she was going to discipline A.P. "as she saw fit." (Tr. Vol. 2 at 185). After speaking with Mother, ACM Bryant recommended the filing of a CHINS petition because of Mother's and A.P.'s untreated mental health issues and because of safety concerns for A.P.

[15] On July 23, 2021, under Cause Number 49D10-2107-JC-6150 ("Cause 6150"), DCS filed a request for authorization to file a petition alleging that A.P. was a

CHINS and for continued custody of A.P. In this request, pursuant to INDIANA CODE § 31-34-5-1, DCS asked the trial court to hold an initial/detention hearing on July 23, 2021, which was within forty-eight hours of the date that A.P. had been detained.

[16] Also on July 23, 2021, DCS filed a petition alleging that A.P. was a CHINS. The Petition alleged thirty-four material facts, including incidents that had occurred after the March 2021 filing of the CHINS petition in Cause 1822. Specifically, the petition alleged, in relevant part, that:

- i. From DCS's initial involvement with the family in March 2021 to present, [Mother] has consistently exhibited aggressive behavior towards DCS, service providers, and [A.P.]
- j. [Mother]'s anger is easily triggered, and she stated that [A.P.] intentionally triggers her anger, giving [A.P.]'s singing in the car as one example of how [A.P.] does so.
- k. [A.P.] indicated that [Mother] frequently berates her, oftentimes calling her "bitch," "slut," and "whore."
- l. [A.P.] also stated that [Mother] often tells [A.P.] that she wishes that [A.P.] was never born.
- m. On multiple occasions, [Mother] has indicated a desire to relinquish her parental rights to [A.P.]
- n. [A.P.] has continuously disclosed feeling unsafe in [Mother]'s care.
- o. [Mother] has refused services targeted at developing parenting skills, indicating that they are pointless and that she will continue to raise [A.P.] as she sees fit, including through the use of physical discipline with a belt[.]

* * * * *

- q. On July 5, 2021, a note was found in [A.P.'s] room indicating that she wanted to kill her then foster parents.

- r. On July 8, 2021, [A.P.], in an angry state, pulled out a knife and started stabbing objects in her then foster parents' kitchen.
- s. [A.P.] was subsequently taken to the Community North Crisis Center for inpatient treatment to ensure her safety.
- t. [Mother] disagreed with [A.P.]'s need for treatment at that time[.]

* * * * *

- x. [Mother] minimizes [A.P.]'s ongoing mental health and behavioral issues, and she refuses to ensure that [A.P.] receives the treatment that mental health professionals recommend to protect the child's safety and well-being.
- y. On July 21, 2021, [Mother] also stated that when [A.P.] returns to her care she will continue to discipline [A.P.] in any way that she sees fit, which [Mother] has shown to include verbally berating [A.P.] and physically abusing her.

* * * * *

- ff. The foregoing allegations demonstrate ongoing issues that present a current threat to [A.P.]'s behavioral, emotional, mental, and physical safety and well-being.
- gg. The family is in need of services that it is currently not receiving and is unlikely to receive without assistance from [DCS].
- hh. For the foregoing reasons, the coercive intervention of the Court is necessary to protect [A.P.]'s safety and well-being.

(App. Vol. 2 at 23-24).

[17] The July 23, 2021, initial/detention hearing on the CHINS petition in Cause 6150 was scheduled to begin at 1:30 p.m.; however, it appears from the record that the hearing began at 2:30 p.m. At the hearing, the trial court stated that it

was “quite concerned about the many, many of the allegations made in the verified petition[.]” (Ex. Vol. at 17). The trial court further stated that “based on a multitude of concerning allegations, many of them from just [that] month, . . . detention [was] necessary for protection of [A.P.][.]” (Ex. Vol. at 17).

[18] Also at the hearing, Mother argued that the detention hearing was not being timely held. Specifically, Mother argued that pursuant to INDIANA CODE § 31-34-5-1, the detention hearing had to be held within forty-eight hours of A.P.’s detention. According to Mother, A.P. had been detained when DCS filed its motion to dismiss the CHINS petition in Cause 1822, and, therefore, the forty-eight-hour time period had begun to run at 12:41 p.m. on July 21. Mother claimed that since it was then past 12:41 on July 23, the detention hearing in progress at that time was not timely. DCS responded that the forty-eight-hour time period had not begun to run until the trial court had granted the motion to dismiss at 2:46 p.m. and that the detention hearing in progress at that time was timely. In its order on the July 23, 2021, initial/detention hearing, the trial court concluded that the detention hearing had been timely held because the trial court’s order granting the motion to dismiss the CHINS petition had been entered on July 21 at 2:46 p.m. The trial court further authorized A.P.’s placement in emergency shelter care.

[19] While A.P. was in emergency shelter care from July until August 2021, A.P. met with therapist Shelbi Gabbard (“Therapist Gabbard”). A.P.’s treatment plan focused on exploring A.P.’s past trauma and A.P. learning to appropriately express her feelings. Therapist Gabbard spoke with Mother on

the telephone one time and recommended that Mother participate in a diagnostic evaluation to address her past trauma. Mother denied having past trauma. Therapist Gabbard also recommended that Mother engage in parenting education to gain a better understanding of A.P.'s development and how trauma has impacted A.P.

[20] In August 2021, mental health therapist Sherry Butler ("Therapist Butler") assessed A.P. During the assessment, A.P. did not want to talk about past trauma and abuse. Therapist diagnosed A.P. with post-traumatic stress disorder, major depressive disorder, anxiety disorder, and intermittent explosive disorder. Therapist Bulter recommended that A.P. participate in a psychological evaluation, intensive home-based therapy to address her trauma, depression, and anxiety, and a medication assessment. Therapist Butler was concerned that if A.P. did not receive the recommended trauma evaluation and treatment, A.P.'s behavior would escalate. Also in August 2021, DCS placed A.P. in a residential treatment facility.

[21] At the September 2021 fact-finding hearing, the trial court heard the facts as set forth above. In addition, DCS Family Case Manager Mason Love ("FCM Love"), who had been assigned to A.P.'s case in August 2021, testified that DCS had recommended home-based case work with a focus on parenting education for Mother to assist her in understanding that physical punishment that would leave a mark on A.P.'s body was not appropriate. FCM Love further testified that DCS had recommended supervised therapeutic visitation, which Mother had previously refused to attend, and home-based therapy to

address current and past trauma. According to FCM Love, Mother did not believe that she needed help.

[22] At the end of DCS' case-in-chief, Mother moved for judgment on the evidence. After the trial court denied Mother's motion, Mother testified that she had participated in services.

[23] At the end of the hearing, the trial court concluded that, based on the evidence, DCS had met its burden to prove that A.P. was a CHINS. The trial court also ordered A.P.'s release from the residential treatment facility and return to Mother's home. Mother now appeals the CHINS adjudication.

Decision

[24] At the outset, we note that Mother raises several arguments challenging the trial court's dismissal of Cause 1822 and the trial court's denial of Mother's request, in Cause 1822, to have A.P. returned to her care. However, Mother did not appeal the trial court's order in Cause 1822, and we will not address her arguments regarding that cause in this appeal.

[25] We further note that, in some of her arguments, Mother appears to believe that Cause 6150 was a continuation of Cause 1822 and that the CHINS statutory time periods related back to the filing of the CHINS petition in Cause 1822. However, Cause 6150 was not a continuation of Cause 1822. Specifically, Cause 1822 was dismissed without prejudice. "A dismissal without prejudice is not a determination of the merits of a complaint and does not bar a later trial of the issues." *Fox v. Nichter Construction Company, Inc.*, 978 N.E.2d 1171, 1182

(Ind. Ct. App. 2012), *trans. denied*, (quotation marks and citation omitted).

Further, the refiling of an action following a dismissal without prejudice should be treated as a new filing. *Long v. State*, 679 N.E.2d 981, 983 (Ind. Ct. App. 1997). Accordingly, all CHINS statutory time periods relevant to this appeal began to run on July 23, 2021, when DCS filed the CHINS petition in Cause 6150.

[26] We now turn to Mother’s substantive issue in Cause 6150. Mother specifically contends that there is insufficient evidence to support the CHINS adjudication. We disagree.

[27] When determining whether there is sufficient evidence to support a CHINS adjudication, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). This Court will not reweigh the evidence or reassess the credibility of the witnesses. *Id.* at 1286.

[28] Where, as here, the trial court does not issue findings of fact and conclusions thereon, the general judgment standard controls. *Id.* Under the general judgment standard, a judgment “will be affirmed if it can be sustained on any legal theory supported by the evidence.” *Id.* (quotation marks and citation omitted).

[29] We further note that, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). “This deference recognizes a trial court’s unique

ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court's only being able to review a cold transcript of the record." *Id.*

[30] A CHINS proceeding is a civil action. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). Therefore, DCS must prove by a preponderance of the evidence that the child is a CHINS as defined by the juvenile code. *Id.* INDIANA CODE § 31-34-1-1 provides that a child is a CHINS 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.

[31] A CHINS adjudication focuses on the child's condition rather than the parent's culpability. *In re N.E.*, 919 N.E.2d at 105. The purpose of a CHINS adjudication is to provide proper services for the benefit of the child, not to

punish the parent. *Id.* at 106. A CHINS adjudication in no way challenges the general competency of parents to continue relationships with their children. *Id.* at 105.

[32] Here, Mother specifically argues that there is insufficient evidence that the coercive intervention of the trial court was necessary. When determining whether coercive intervention is necessary, “the question is whether the parent[] must be coerced into providing or accepting necessary medical treatment for [her] child.” *Matter of E.K.*, 83 N.E.3d 1256, 1262 (Ind. Ct. App. 2017), *trans. denied*.

[33] Our review of the evidence reveals that throughout the pendency of the CHINS proceeding, Mother told both therapists and DCS case managers that she did not want to participate in therapy or supervised therapeutic visits with A.P. Mother was also aggressive and confrontational with DCS case managers and stated that she would continue to discipline A.P. as she saw fit. In addition, Mother did not believe that either she or A.P. needed mental health treatment. Mother’s refusal to engage in services and her stated belief that A.P. did not need to engage in services provide sufficient evidence that the coercive intervention of the court was necessary. There is sufficient evidence to support the CHINS adjudication. Accordingly, we affirm the trial court’s judgment.²

²² Mother also argues that *In re R.L.*, 144 N.E.3d 686 (Ind. 2020) and *In re Eq. W.*, 124 N.E.2d 1201 (Ind. 2019) are “relevant to the [sufficiency] inquiry[.]” (Mother’s Br. 41). However, our review of these cases reveals that they are both distinguishable from the facts in the case before us. Specifically, the trial courts in

[34] Affirmed.

Robb, J., and Weissmann, J., concur.

both *In re R.L. and In re Eq. W.* held fact-finding hearings on the initial CHINS petitions. In *R.L.*, the trial court determined following the fact-finding hearing that R.L. was not a CHINS, and in *Eq. W.*, the trial court dismissed the CHINS petition without prejudice following the fact-finding hearing. DCS then filed second petitions in both cases. However, as acknowledged by Mother, the trial court in this case did not hold a fact-finding hearing on the petition in Cause 1822. (See Mother's Br. 22).

Mother further argues that A.P.'s detention hearing was not timely held. INDIANA CODE § 31-34-5-1(a) provides, in relevant part, that "[i]f a child taken into custody under IC 31-34-2 is not released, a detention hearing shall be held not later than forty-eight (48) hours . . . after the child is taken into custody. If the detention hearing is not held, the child shall be released." Mother contends that A.P.'s detention hearing was not timely held because A.P. was taken into custody at 12:41 p.m. on July 21 when DCS filed its motion to dismiss the CHINS petition in Cause 1822, and the detention hearing was held later than 12:41 p.m. on July 23. On the other hand, DCS argues, and the trial court found, that A.P. was not taken into custody until the trial court granted DCS' motion to dismiss at 2:46 p.m. We agree with DCS and the trial court. A.P. was detained in Cause 1822 until the trial court signed the order dismissing Cause 1822 at 2:46 p.m. on July 21. At that time, because A.P. was not released from custody, INDIANA CODE § 31-34-5-1 required that a detention hearing be held within forty-eight hours. The detention hearing was held on July 23 at 2:30 p.m., which was within the required forty-eight-hour statutory time period. We find no error.

Lastly, Mother argues that she was denied due process. However, as DCS points out, Mother's brief conclusory argument that the trial court "deprived Mother of the due process required by Indiana and federal law[]" results in waiver of the issue on appeal. (Mother's Br. 36). See *Tate v. State* 161 N.E.3d 1225, 1230-35 (Ind. 2021) (explaining that inadequately developed arguments are waived). Waiver notwithstanding, we find no due process violation. Due process requires "the opportunity to be heard at a meaningful time and in a meaningful manner." *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976)). Although due process "is not dependent on the underlying facts of a particular case, it is nevertheless flexible and calls for such procedural protections as the particular situation demands." *Matter of E.T.*, 152 N.E.3d 634, 640 (Ind. Ct. App. 2020), *trans. denied.* (quotation marks and citation omitted). Here, at the September 2021 fact-finding hearing, which was timely held pursuant to INDIANA CODE § 31-34-11-1, Mother's counsel objected to the testimony of DCS' witnesses and vigorously advocated for her client. Mother's counsel also moved for judgment on the evidence at the close of DCS' case. Mother has not shown how the fact-finding hearing was unfair or how she was denied the opportunity to be heard at a meaningful time. Mother has, therefore, failed to demonstrate how her due process rights were violated.