

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of R.D. (Minor
Child), Child in Need of Services
J.D. (Father)

and

S.S. (Mother),
Appellants-Respondents,

v.

Indiana Department of
Child Services,
Appellee-Petitioner

September 26, 2023

Court of Appeals Case No.
22A-JC-2746

Appeal from the Floyd Circuit
Court

The Honorable J. Terrence Cody,
Judge

Trial Court Cause No.
22C01-2207-JC-319

Memorandum Decision by Judge Weissmann

Judge Bradford concurs.

Judge Riley concurs in result without a separate opinion.

Weissmann, Judge.

- [1] J.D. (Father) and S.S. (Mother) argue that the trial court erred in determining their child, R.D. (Child), is a child in need of services (CHINS). The Indiana Department of Child Services (DCS) removed Child from the care of Mother and Father (Parents) after Mother overdosed on heroin and Father was arrested for failing to appear in a case in which he was charged with possession of methamphetamine. At the CHINS fact-finding hearing, DCS presented evidence that there were no sober caregivers at Parents' home and that Child was not meeting developmental milestones prior to her removal from Parents' care. Despite Mother's involvement in two CHINS cases, she also repeatedly tested positive for methamphetamine after Child's removal. We affirm the trial court's CHINS determination.

Facts

- [2] DCS first became involved with Mother in July 2020, when it removed Child's half-sibling (Sibling) from Mother's care and filed a petition alleging Sibling was a CHINS. The record does not disclose the reasons for Sibling's removal, but the trial court eventually adjudicated Sibling a CHINS, placed him in foster care, and ordered Mother to participate in unspecified reunification services. The court also ordered Mother to submit to random drug screens.

- [3] Child was born in March 2022, two years after Sibling’s CHINS adjudication. When Child was nearly four months old, DCS received a report that Mother had overdosed on heroin but survived with medical intervention. Over the next three days, the DCS Family Case Manager (FCM) assigned to Sibling’s CHINS case—Kimberly Criswell—contacted Mother four or five times, attempting to assess Child’s well-being. Each time, Mother gave FCM Criswell “the runaround” by stating Child was with Father and Mother did not know Father’s whereabouts or contact information. Tr. Vol. II, p. 67.
- [4] Late on the third day, another FCM—Jacqueline Melvin—personally visited the Parents’ home and located Child there in Parents’ care. According to FCM Melvin, Child was wearing a “dirty onesie,” had a “really saturated diaper” and produced “a rattle when she breathed.” *Id.* at 72. FCM Melvin spoke with Mother, who substantiated the report of her heroin overdose but stated methamphetamine was her “drug of choice.” *Id.* Meanwhile, the police officers who accompanied FCM Melvin on her visit arrested Father on an outstanding warrant for failing to appear in a criminal case that morning.
- [5] Given Father’s arrest, Mother’s drug use, and DCS’s difficulty locating Child, FCM Melvin detained Child on an emergency basis. Two days later, DCS filed a petition alleging Child is a CHINS. Parents denied the CHINS allegation at an initial hearing that same day. The trial court also found probable cause for Child’s emergency detention, after which DCS placed Child in foster care with Sibling.

[6] At a pretrial conference a few months later, Mother maintained her denial of the CHINS allegation and asked the trial court to schedule a fact-finding hearing. Father’s counsel advised the trial court that Father wished to “enter an admission.” *Id.* at 30. But given Mother’s denial of the CHINS allegation, the court was “not comfortable taking an admission” at that time. *Id.* at 31. The court therefore told Father he could admit to the allegation at the fact-finding hearing, if he desired.

[7] Parents appeared at the fact-finding hearing by their respective counsel, but unexpectedly, they did not appear in person.¹ Over the objection of Mother’s counsel, the trial court granted DCS’s request to proceed with the hearing despite Mother’s absence. Meanwhile, Father’s counsel asked to be excused after the trial court “reminded” him that Father had admitted Child was a CHINS. *Id.* at 36. According to the court, it had taken Father’s admission under advisement “pending the outcome of the factfinding hearing with respect to Mother.” *Id.* at 34. The court therefore excused Father’s counsel.

[8] At the fact-finding hearing, FCM Criswell testified that Child was not meeting developmental milestones before her removal from Parents’ care. When FCM Criswell conducted weekly visits to Parents’ home as part of Sibling’s CHINS case, Mother and Child did not interact. Father typically cared for Child during

¹ An hour before the hearing, FCM Criswell received a text message from Child’s grandmother stating Parents had been in a car accident the week prior and did not have transportation. Neither Mother nor Father contacted FCM Criswell directly, and their attorneys were not aware of any transportation issues.

these visits, and according to Mother, he was caring for Child when Mother overdosed on heroin. But DCS was “not able to determine” if Child was in Parents’ home when the overdose occurred. *Id.* at 61.

[9] FCM Criswell also testified that, to her knowledge, Child did not have “sober or stable caregivers” at home. *Id.* at 46. Father was charged with possession of methamphetamine in the case for which he was arrested on the night of Child’s removal. And Mother had not submitted a negative drug screen in Sibling’s CHINS case since Child’s birth. Mother even tested positive for methamphetamine on her drug screens after Child’s removal, including the one DCS administered the day before the pretrial conference in Child’s CHINS case.²

[10] At the end of the fact-finding hearing, the trial court stated: “I’ll at this time accept the admission of [Father] that [Child] is in need of services.” *Id.* at 84. The court then entered a fact-finding order that stated, in pertinent part:

Based on the Father’s admission and, by the greater weight of the evidence as to Mother, the Court now adjudicates [Child] a Child in Need of Services as defined by 31-34-1-1.

In support for the conclusion of law, the following findings of fact are found:

² At the fact-finding hearing, DCS offered as an exhibit an unidentified number of positive drug screens from the period between July 14 and September 12, 2022. The trial court initially admitted this exhibit into evidence. But at the end of the hearing, the court struck it from the record, without objection, stating: “[A]ll that is information after detention occurred and after . . . the initial hearing was held.” Tr. Vol. II, p. 83. Only FCM Criswell’s testimony about the positive drug screens remains.

1. On or about June 26, 2022, Mother overdosed (sic) on controlled substances while caring for Child.
2. From June 27, 2022 through June 29, 2022, Mother claimed that she did not know where Child was and that Child was not in Mother's custody.
3. During this time, Mother told DCS that she would inform DCS if she discovered Child's location.
4. On or about June 29, 2022, DCS discovered Child in the care of Mother.
5. Mother never informed DCS that Child was in her care.
6. Mother is under a dispositional order [in Sibling's CHINS case].
7. Mother is not complying with the dispositional order [in Sibling's CHINS case].
8. Mother is the primary sole caregiver for Child.

Mother's App. Vol. II, pp. 34-35.

[11] After a dispositional hearing, the trial court continued Child's placement in foster care and ordered, among other things, that Parents participate in reunification services. In this consolidated appeal, Parents challenge only the trial court's determination that Child is a CHINS.

Discussion and Decision

[12] When reviewing a CHINS determination, "[w]e neither reweigh the evidence nor judge the credibility of the witnesses." *In re K.D.*, 962 N.E.2d 1249, 1253

(Ind. 2012). We will reverse the trial court’s decision “only upon a showing that the decision . . . was clearly erroneous.” *Id.*

I. Father Did Not Admit Child Is a CHINS

[13] As an initial matter, DCS claims Father cannot challenge the trial court’s CHINS determination because Father admitted Child is a CHINS. We find no such admission in the record.

[14] Subject to certain exceptions not applicable here, Indiana Code § 31-34-10-6 provides: “[T]he juvenile court shall determine whether the parent, guardian, or custodian admits or denies the allegations of the [CHINS] petition.” Both Parents denied that Child is a CHINS at the initial hearing. Then, at the pretrial conference, the following exchange took place between the trial court and Parents’ respective counsel:

[MOTHER’S COUNSEL]: Your Honor, at this time, my client is maintaining her denial and would like to schedule a fact-finding hearing. We’ve had the opportunity to talk with the case worker and the DCS attorney. It sounds like she’s got some voluntary engagement in services. The hope would be that possibly between now and the fact-finding hearing[,] we might be able to see the issue resolved. But as of right now we’re not there yet.

THE COURT: [Father’s counsel]?

[FATHER’S COUNSEL]: My client at this time, given the mother’s request for a fact-finding hearing, he’s prepared today to admit that he was incarcerated at the time of the removal, but pending conflicting judgments, he’s going to, I think, be asking for either a continuance or a fact-finding or suspend the

admission, and pending the outcome of the adjudication, Your Honor. Sorry, that was a mouthful, but I wasn't aware that, you know, the mother --

THE COURT: I'm just going to schedule a fact-finding hearing.

[FATHER'S COUNSEL]: There you go.

THE COURT: . . . Okay. So we'll schedule a fact-finding for September the 29th of 2022, at 2:30 p.m.

[FATHER'S COUNSEL]: Your Honor?

THE COURT: Yes.

[FATHER'S COUNSEL]: My client would like to enter an admission.

THE COURT: I'm sorry?

[FATHER'S COUNSEL]: My client would like to enter an admission instead of the fact-finding now --

THE COURT: Well, I've still got to schedule a fact-finding --

[FATHER'S COUNSEL]: Well, yeah. I'm sorry.

THE COURT: -- so. So [Father], if I heard [Mother's counsel] correctly, there's still some matters that are being explored. Is that correct?

[MOTHER'S COUNSEL]: That is correct, Judge. And I think in light of that before he can make his admission, we would move that even with his admission, for the Court to withhold adjudication until the fact-finding.

THE COURT: Yeah. So I'd just as soon not take anything until the fact-finding date on him.

[FATHER'S COUNSEL]: That's okay with us. We want to make sure things are streamlined.

THE COURT: Yeah. So I'm understanding that [Father] wishes to admit. I don't -- I am not comfortable taking an admission, and even if I take it under advisement or not, when there is a possibility that there's going to be a resolution of the case, or if not, we have a fact-finding hearing. And he wishes to admit that day, then fine. I'll take that. Okay. So, and we'll have his fact-finding on September 29th at 2:30 p.m., and we'll see where we are at that point as to what happens.

Tr. Vol. II, pp. 29-31.

[15] “A parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000)). “Although the termination of parental rights is not an inevitable result of a CHINS proceeding, there is no question that many petitions to terminate the parent-child relationship grow out of a CHINS action.” *In re G.P.*, 4 N.E.3d 1158, 1165 (Ind. 2014) (cleaned up). For this reason, trial courts should use “an abundance of caution” in determining whether a child is a CHINS. *Id.* (quoting *In re K.D.*, 962 N.E.2d at 1259). Given Father’s fundamental interests, this record fails to convince us that a proper admission occurred.

[16] Father never spoke at the pretrial conference, and he did not otherwise admit that Child is a CHINS at that time. His counsel merely indicated that Father wished to enter an admission, which the trial court declined to take. Instead,

the court told Father he could admit to the allegation at the fact-finding hearing, if he desired. Father did not appear at the fact-finding hearing and, thus, never admitted Child is a CHINS. *See* Ind. Code § 31-34-10-6 (“A failure to respond constitutes a denial.”). Yet the trial court purported to “accept” Father’s admission at the end of the hearing. Tr. Vol. II, p. 84. And ultimately, the court based its CHINS determination, in part, on that erroneous acceptance.

[17] Because the trial court erred in finding that Father admitted Child is a CHINS, Father may appeal the court’s CHINS determination.

II. Parents Fail to Meet their Burden on Appeal

[18] Parents claim the trial court’s CHINS determination is clearly erroneous. Where, as here, a trial court issues a general judgment with sua sponte findings of fact, we will affirm the judgment “if it can be sustained on any legal theory supported by the evidence.” *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). The findings, however, control the matters they cover and will only be set aside if the record contains no facts to support them. *Id.*

A. Challenged Findings

[19] Mother alone challenges the trial court’s findings that she was “caring for Child” at the time of her heroin overdose and “did not know where Child was” for three days afterward. Mother’s App. Vol. II, p. 35.

[20] The record does not support the trial court’s finding that Mother was caring for Child when she overdosed on heroin. Though Mother overdosed at Parents’

home, she told FCM Criswell that Child was in Father's care when the overdose occurred. And DCS was "not able to determine" if Child was in the home or not. Tr. Vol. II, p. 61. The trial court's finding that Child was in Mother's care at the time is therefore clearly erroneous.

[21] In contrast, the record supports the trial court's finding that Mother did not know Child's whereabouts for three days after her overdose. During that three-day period, Mother repeatedly told FCM Criswell that Child was with Father and Mother did not know where Father was. From this, it is only logical to conclude that Mother did not know where Child was either. The trial court's finding is therefore not clearly erroneous.

B. Challenged Conclusion

[22] Setting aside the erroneous finding, we turn to the trial court's general judgment. In a CHINS proceeding, "the State must 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). DCS alleged Child was a CHINS under Indiana Code § 31-34-1-1, which provides:

A child is a child in need of services 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.

Ind. Code § 31-34-1-1.

[23] Our Supreme Court has interpreted this CHINS 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). Notably, “the acts or omissions of one parent can cause a condition that creates the need for court intervention.” *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010).

[24] Parents claim DCS failed to prove Child is seriously endangered. Specifically, they contend the evidence does not establish that Mother used drugs in Child’s presence or cared for Child while under the influence of drugs. Thus, according to Parents, Child’s endangerment was purely speculative.

[25] Although a trial court may not base its CHINS determination on speculative concerns for the future, the court may rely on reasonable inferences drawn from

the facts of the case. *A.R. v. Ind. Dep't of Child Servs.*, 121 N.E.3d 598, 605 (Ind. Ct. App. 2019). And when reviewing a CHINS determination, we consider only those facts and inferences that are favorable to the trial court's judgment. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). Here, the evidence supports a reasonable inference that Parents are not able to provide Child with the sober care and supervision Child needs.

[26] FCM Criswell testified that Child did not have "sober or stable caregivers" at home. Tr. Vol. II, p. 46. Mother's drug of choice is methamphetamine. She was ordered to submit to random drug screens in Sibling's CHINS case, and in the first four months of Child's life, Mother did not provide a single negative screen. Meanwhile, Mother was not interacting with Child, Father was facing a charge of possession of methamphetamine, and Child was not meeting developmental milestones.

[27] Mother then overdosed on heroin, and for the next three days, gave DCS the runaround when they tried to assess Child's wellbeing. When Child was finally located, she was wearing a "dirty onesie," had a "really saturated diaper," and produced "a rattle when she breathed." *Id.* at 72. Police also arrested Father for failing to appear in his criminal case that morning.

[28] DCS removed Child from Parents' care, filed a petition alleging Child is a CHINS, and thereby initiated the second CHINS case involving Mother. But even with further DCS involvement, Mother continued using methamphetamine. In fact, Mother tested positive on every drug screen she

provided after Child's removal, including the one DCS administered the day before the pretrial conference in Child's CHINS case.

[29] As sober care and supervision are undoubtedly important needs for any infant, the preponderance of the evidence shows that Child is seriously endangered. Given Father's arrest at the time of Child's removal and Mother's continued use of methamphetamine after Child's removal, the evidence also demonstrates that Child is unlikely to receive the care and supervision she needs without the coercive intervention of the court.

[30] A trial court need not "wait until a tragedy occurs to intervene" in the parent-child relationship. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). We therefore affirm the trial court's determination that Child is a CHINS.

Bradford, J., concurs.

Riley, J., concurs in result without a separate opinion.