

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Danielle L. Flora
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

David E. Corey
Supervising Deputy Attorney
General

Robert J. Henke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of K.S.L. (Minor
Child), Child in Need of
Services,

and

L.D.M. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

April 22, 2021

Court of Appeals Case No.
20A-JC-1836

Appeal from the Allen Superior
Court

The Honorable Charles Pratt,
Judge

The Honorable Sherry Hartzler,
Magistrate

Trial Court Cause No.
02D08-2002-JC-100

Crone, Judge.

Case Summary

- [1] L.D.M. (Mother) appeals the trial court’s finding that her daughter K.S.L. (Child) is a child in need of services (CHINS). We affirm.

Facts and Procedural History

- [2] Mother gave birth to Child on August 7, 2003.¹ On March 5, 2020, the Indiana Department of Child Services (DCS) filed a petition alleging that Child is a CHINS that reads as follows:²

3. On or about February 4, 2020, Child ran away from home because Mother and Child were involved in a fight which left marks and bruises on Child.

4. On or about February 13, 2020, when Child was set to be released from ACJC [Allen County Juvenile Center] to home detention, Mother called DCS and stated she did not want Child in her home and would not pick Child up from ACJC.

5. Mother is unwilling to provide Child with food, clothing, medical care, education, supervision, and housing.

6. Mother and Child would benefit from the intervention of the

¹ Child’s father is not involved in her life or this appeal.

² Here and elsewhere, we have replaced references to the parties’ names/designations with “Mother,” “Child,” and “DCS.”

Court in order to receive support and service they would not otherwise receive without the coercive intervention of this Court.

Appellant's App. Vol. 2 at 25-26.

[3] On July 13, 2020, the trial court held a factfinding hearing on the petition and took the matter under advisement. On August 18, 2020, the court issued an order with the following findings of fact:

A. The Court find that at the time of these proceedings, Child had been a runaway since June 2020.

B. On or about February 4, 2020, Child ran away from Mother's home. The Court finds that on February 13, 2020, Mother was contacted by juvenile authorities for the release of Child after she refused to pick up Child.

C. The Court finds that Child had been involved in multiple delinquency proceedings concerning her running away and had been placed on formal juvenile probation prior to this trial.

D. Although Child was later placed back into Mother's care, she had run away on at least two occasions, and was a runaway at the time of these proceedings for a matter of weeks.

E. The Court finds that after the child ran away in June 2020, she was located in a hotel in Fort Wayne and Mother again refused to retrieve her when suggested by DCS. The Court finds through the testimony of DCS, that Mother contended that she could not pick up Child and comply with a safety plan not to leave bruises.

F. The Court finds that the services were ordered in the juvenile delinquency matters that included counseling; however, those services did not occur and the juvenile court closed the

delinquency matter prior to services being completed due to “COVID”; however, those services were ordered as early as January 2020.

G. At the time of these proceedings Child was a runaway and not under the supervision of Mother. Mother had at least two occasions to accept Child into her care and supervision, but refused. The Court finds through the DCS case manager, that Mother contends that she has done her job and parenting this child is no longer up to her.

H. Mother claims that the only service Child needs is “job corp”; however, she admits that Child runs away, skips school, doesn’t listen to authority, and does what she wants to do. Although Mother claims Child was in school every day, the Court finds that Child will leave school and she is getting all flunking grades, for which Mother contends Child needs tutoring services as well.

I. The Court finds that these proceedings involve more than a willful teenager who will not respect her Mother. Mother’s demeanor during these proceedings was flippant and unconcerned with the wellbeing of Child as evidenced by the multiple times she refused Child.

J. According to the Guardian Ad Litem [GAL], Mother has been combative and defensive and will not accept services to assist her and Child, despite the fact that Mother has requested DCS to provide her financial assistance. The Guardian Ad Litem is fearful that Child’s whereabouts are unknown and that she is exposed to potential exploitation while she is unsupervised.

K. The Court further finds that Child requires therapy and tutoring. Mother and Child require family therapy. Further, Mother requires parenting instruction to assist her with providing appropriate supervision for Child. The Court finds that DCS has made referrals for these services; however, Mother did not participate and the services were closed out in June 2020.

L. As a result, the Court concludes that the coercive intervention of the Court is required to provide services and support to Mother and Child.

CHINS Order at 2. Accordingly, the court found Child to be a CHINS.

[4] On September 3, 2020, the trial court held a dispositional hearing, at which the court learned that Child had run away once again and had not yet been found. That same day, the court issued a dispositional order directing Mother to enroll in family counseling once Child is found, “attend all sessions, and successfully complete the counseling program”; ensure that Child attends “school daily in a timely manner”; attend all school conferences and help Child with daily homework and any recommended tutoring services; and continue to work with DCS to locate Child. Dispositional Order at 3. The order also directed Child to participate in home-based services and individual and family counseling; attend school daily and complete all assessments; and participate in a diagnostic assessment and follow all recommendations. Finally, the order directed that Child be placed in temporary shelter care at the county youth services center upon apprehension to address placement.³ Mother now appeals.

³ Both DCS and the GAL recommended placement in licensed foster care.

Discussion and Decision

[5] Mother challenges the sufficiency of the evidence supporting the trial court's finding that Child is a CHINS. A CHINS proceeding focuses on the best interests of the child, not the guilt or innocence of the parent. *In re De.B.*, 144 N.E.3d 763, 771 (Ind. Ct. App. 2020). "The purposes of a CHINS case are to help families in crisis and to protect children, not to punish parents." *Id.* A CHINS proceeding is civil in nature, so DCS must prove by a preponderance of the evidence that the child is a CHINS as defined by the juvenile code. *Id.*; Ind. Code § 31-34-12-3. Indiana Code Section 31-34-1-1 provides that a child is a CHINS if, before the child becomes 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.

[6] 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). “That final 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.’” *Id.* (quoting *Lake Cnty. Div. of Fam. & Child. Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)). “The CHINS statute, however, does not require that a court wait until a tragedy occurs to intervene.” *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009).

[7] “When determining whether there is sufficient evidence to support a CHINS determination, we neither reweigh the evidence nor judge the credibility of the witnesses.” *De.B.*, 144 N.E.3d at 772. “Rather, we consider only the evidence that supports the trial court’s determination and reasonable inferences drawn therefrom.” *Id.* Where, as here, “the trial court enters findings and conclusions sua sponte, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment for the issues covered by the findings.” *Id.* “Findings are clearly erroneous when there are no facts or inferences drawn therefrom that support them.” *Id.* “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the resulting judgment.” *Id.* “Special findings, even if erroneous, do not warrant reversal if they amount to mere surplusage

and add nothing to the trial court’s decision.” *Wagner v. Spurlock*, 803 N.E.2d 1174, 1179 (Ind. Ct. App. 2004).⁴ We review “issues not covered by the findings under the general judgment standard, meaning we will affirm a judgment if it can be sustained on any legal theory supported by the evidence.” *In re E.K.*, 83 N.E.3d 1256, 1260 (Ind. Ct. App. 2017), *trans. denied* (2018). “Also, as a general rule appellate courts grant latitude and deference to trial courts in family law matters.” *Id.* “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.*

- [8] Mother argues that she supplied Child with “all required elements” of Indiana Code Section 31-34-1-1, i.e., “food, clothing, shelter, medical care, education and supervision[,]” that Child “refuses to avail herself of those things which Mother supplied[,]” and that “there are no services which Mother cannot provide for [Child] or which would necessitate the coercive intervention of the Court.” Appellant’s Br. at 7. Mother’s argument ignores that Child’s repeated runaways conclusively establish that Mother is unable to supervise Child, and that this lack of supervision has exposed Child to possible exploitation and

⁴ Mother asserts, and DCS acknowledges, that “it was probation—not DCS—which referred services that were closed out in June 2020[,]” contrary to finding K of the CHINS order. Appellee’s Br. at 27. This minor error is inconsequential.

resulted in chronic truancy and failing grades.⁵ It cannot be seriously disputed that Mother's lack of supervision has seriously impaired or seriously endangered Child's physical or mental condition. DCS presented ample evidence that Child needs care, treatment, or rehabilitation in the form of individual and family counseling and tutoring that Child is not receiving, and that such is unlikely to be provided or accepted without coercive court intervention.⁶ Mother has demonstrated a pattern of denial and deflection, has acknowledged a willingness to engage in physical abuse, and has essentially abandoned her parental obligations. *See* Tr. Vol. 2 at 65 (testimony of DCS family case manager that Mother feels it is DCS's "responsibility to find placement" for Child and that "she has parented this child for 17 years and she continues to see behaviors and she has done her part as the parent."). We cannot condone Mother's attempt to run out the clock until Child reaches eighteen years of age, and we cannot conclude that the trial court clearly erred in finding Child to be a CHINS. Accordingly, we affirm.

[9] Affirmed.

Riley, J., and Mathias, J., concur.

⁵ Mother mentions her testimony that she would take Child "to the bus stop and watch [her] get on the school bus." Appellant's Br. at 12. The trial court was not required to believe this testimony, and Mother obviously failed to ensure that Child actually entered and remained at school.

⁶ Mother asserts that "she could obtain parenting classes without the Court's intervention, as well as family therapy." Appellant's Br. at 12. The trial court was not required to believe these promises, which are meaningless if Mother is unable to prevent Child from running away from home.