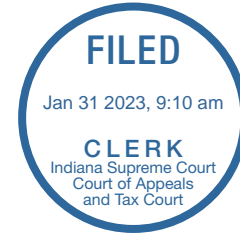


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of M.M. (A Child  
In Need of Services);

E.D. (Mother),

*Appellant-Respondent,*

v.

The Indiana Department of  
Child Services,

*Appellee-Petitioner.*

January 31, 2023

Court of Appeals Case No.  
22A-JC-678

Appeal from the Hamilton  
Superior Court

The Honorable Todd Ruetz,  
Magistrate

Trial Court Cause No.  
29D01-2107-JC-1026

**Pyle, Judge.**

## Statement of the Case

- [1] E.D. (“Mother”) appeals the trial court’s order adjudicating her daughter, M.M. (“M.M.”), to be a Child in Need of Services (“CHINS”). Mother specifically argues that there is insufficient evidence to support the adjudication. Concluding that the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the CHINS adjudication, we affirm the trial court’s judgment.<sup>1</sup>
- [2] We affirm.

## Issue

Whether there is sufficient evidence to support the CHINS adjudication.

## Facts

- [1] The evidence most favorable to the CHINS adjudication reveals that Mother is the parent of M.M., who was born in April 2009. In April 2017, DCS received a report that Mother and M.M. had been sleeping in a motel parking lot. The report had not been substantiated because DCS had been unable to locate Mother and M.M. to further investigate the report.
- [2] In July 2021, DCS received a report that Mother had been homeless for the previous three months and that she and twelve-year-old M.M. had been

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<sup>1</sup> M.M.’s father (“Father”) admitted that M.M. was a CHINS and is not participating in this appeal.

residing in a storage unit while M.M. was in Mother's care. The report further alleged that when M.M. was not in Mother's care, M.M. had been residing with a family friend ("the family friend"). DCS family case manager Azalea Settles-Wilkinson ("FCM Settles-Wilkinson") investigated the report. During the course of the investigation, FCM Settles-Wilkinson learned that Mother did not have stable housing. Specifically, although Mother claimed that she and M.M. had stayed in hotels in June and July 2021, the hotel receipts did not "provide a timeline that showed Mother consistently had housing" for M.M. (Tr. Vol. 2 at 17). In addition, Mother told FCM Settles-Wilkinson that she had been "begging for assistance from the community[]" and that "no shelter would take her[.]" (Tr. Vol. 2 at 16). Mother also asked another DCS family case manager to give her \$2,500.

[3] Also, during the course of the investigation, both M.M. and the family friend told FCM Settles-Wilkinson that Mother and M.M. had been staying in a storage facility that had no electricity. FCM Settles-Wilkinson also learned that Mother had a history of homelessness in 2017 and 2018 as well as a history of four evictions from 2014 through 2017. In addition, M.M., the family friend, Father, and other family members had expressed concerns to FCM Settles-Wilkinson about Mother's mental health issues.

[4] In July 2021, DCS filed a petition alleging that M.M. was a CHINS and placed her in kinship care. In addition, DCS assigned family case manager Catherine Miles ("FCM Miles") to the case. FCM Miles contacted Mother, who stated that she did not understand why M.M. had been removed from her care. FCM

Miles recommended that Mother complete a parenting assessment and individual therapy “to better connect” with M.M. (Tr. Vol. 2 at 29). However, Mother told FCM Miles that she would not complete any services and not to contact her again. FCM Miles also recommended that Mother attend visits with M.M., but Mother did not visit M.M during the seven-month pendency of the CHINS proceeding.

[5] Also in July 2021, the trial court appointed guardian ad litem Amy Condle (“GAL Condle”) to the case. Although GAL Condle had planned to visit Mother’s residence, Mother had been unwilling to give GAL Condle her address. Instead, Mother had requested that GAL Condle meet her at a location in Fishers and follow Mother to her home. However, GAL Condle was uncomfortable with this request because she would not know the end address, and she declined Mother’s request. GAL Condle described Mother as having an “explosive personality” and noticed that the nature of Mother’s conversation was “accusatory toward everyone else.” (Tr. Vol. 2 at 39).

[6] The trial court heard the facts as set forth above at the February 2022 CHINS factfinding hearing. Also at the hearing, Father testified that Mother had been “unable to consistently maintain a place to live and hold employment.” (Tr. Vol. 2 at 9). Father further testified that Mother had been homeless during 2021. According to Father, Mother had indicated to him that she blamed M.M. for the entire CHINS situation and that she had no desire to see or speak with M.M. In addition, Father testified that he was concerned about Mother’s mental health. Father specifically explained that Mother was “emotionally

unstable” and displayed “odd, erratic behavior . . . all the time. That’s how she interacts with the world.” (Tr. Vol. 2 at 12, 13). According to Father, Mother was “erratic[,] illogical[,] irrational[,] [and] impulsive.” (Tr. Vol. 2 at 13).

[7] FCM Settles-Wilkinson also testified at the hearing. During direct examination, DCS asked FCM Settles-Wilkinson if she would have concerns about M.M.’s safety and stability in Mother’s care if Mother were to show her that she had leased an apartment. FCM Settles-Wilkinson responded that even if Mother could provide M.M. with stable housing, Mother would still need to address her mental health issues. During Mother’s cross-examination of FCM Settles-Wilkinson, the trial court admitted into evidence a copy of a Noblesville apartment lease that named Mother as the tenant and covered the period from August 31, 2021, through August 30, 2022.

[8] Also at the hearing, FCM Miles testified that she had first seen Mother’s lease the day before the hearing. According to FCM Miles, Mother had never provided her with a home address. In addition, GAL Condle testified that her last contact with Mother had been in November 2021 when Mother had shown no interest in further communication with GAL Condle.

[9] Mother did not testify. However, she called Tracie Bowman (“Bowman”), a U-Haul supervisor, to testify on her behalf. Bowman testified that Mother had rented a U-Haul unit in the summer of 2021. Bowman further testified that she had never observed Mother to be irrational or illogical. Rather, according to Bowman, Mother had always been nice, polite, and courteous. When asked if

there was any possible way that Mother and M.M. could have been living in the storage unit, Bowman responded, “No. I run a tight ship. No. We e-scan the rooms. We have an electric scanner with bar codes on the room and it requires us to walk every day and scan every single room.” (Tr. Vol. 2 at 46). Bowman further testified that she worked at the U-Haul facility from 6:30 a.m. until 7:00 p.m.

[10] During cross-examination, Bowman further clarified that the e-scan of the rooms took place during the day. She further testified that she was not at the facility from 7:00 p.m. until 6:30 a.m. and that customers had access to the storage units until 10:00 p.m.

[11] At the conclusion of the hearing, the trial court stated as follows:

The Court is finding by a preponderance of the evidence that on or about July 14, 2021 the child was living out of a U-Haul rental. It was reported by the child, who was then I believe 11 years of age. She is now 12 years of age. The Court finds no reason to disbelieve or discredit the report of the child. It would appear from the testimony of the U-Haul supervisor that there was opportunity for the child to reside at that U-Haul facility and gain access to it between 7 and 10 p.m. And then leave before the supervisor of that facility would arrive at 6:30 in the morning. It also appears in or about that same time that the child was living with Mother and living with a family friend. It appears that Mother’s living situation was tenuous. She has a history of homelessness as well as evictions. Mother reported to be struggling financially. No shelter would take her. Requested money from the DCS case worker. Had been requesting or begging for assistance.

Mother blames the child for the CHINS intervention, has expressed she does not want to talk to and see the child, and has made good upon that representation. She has been unwilling to engage in DCS to the extent she has not seen her daughter in seven months, would not even FaceTime with her daughter.

The mother refused to share her address with the guardian ad litem, although an offer was made to follow Mother to an address. Quite frankly, it would appear that there was good reason for the guardian ad litem not to do so, ask just for a definite location where she could meet Mother and Mother was unwilling to do so. Following the mother to a residence, Mother could have easily lost Ms. Condle on the way, leaving it to Ms. Condle to blame for not following her closely enough. A definite location was certainly more reasonable.

Mother is reported to have an explosive personality, emotionally charged, accusatory. Also erratic, irrational, not logical, and impulsive. The fact that she's not spoken with her daughter for the past seven months and was willing to have the child stay at a U-Haul facility draws into question her ability to properly parent the child and exercise good judgment.

The Court is finding that services of the Court are necessary to address the situation. The Court also finds as well that the mother, Mother's refusal, inability or neglect of providing appropriate shelter and supervision of the child is due to her failure, refusal, or inability to seek reasonable means to do so. And that the child needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the Court.

(Tr. Vol. 2 at 52-53).

[12] A week later, the trial court issued a written order that includes the factual findings set forth in the trial court's oral statement and provides, in relevant part, as follows:

The Court now adjudicates, [M.M.], a Child in Need Of Services, as defined by I.C. 31-34-1-1.

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

- 1) On or about July 14, 2021, [M.M.], then eleven (11) years old, reported she was living out of a U-Haul rental storage unit in Noblesville, Indiana.
- 2) The court finds the greater weight of the evidence is that [M.M.] was living in the storage unit with Mother accessing the unit between 7:00 pm. and 10:00 pm. and leaving the unit before the facility's supervisor came back at 6:30 a.m. every morning.
- 4) From April 2021 to July 2021, [M.M.] was living back and forth between Mother and a family friend.
- 5) Mother's ability to provide appropriate shelter for [M.M.] from the events described appears tenuous. Mother has a history of homelessness and evictions.
- 6) Mother reported to the Department that she was struggling financially, she needed shelter as no shelter would take her, requested money from the DCS family case manager, and was requesting assistance in the community.
- 7) Mother blames [M.M.] for the CHINS intervention.
- 8) Mother has expressed that she does not want to see or speak with [M.M.].
- 9) Mother has been unwilling to engage with DCS to see [M.M.] in the past seven (7) months.
- 10) Mother refused to share her address with the Guardian Ad Litem.



- 11) Mother has an explosive personality, is emotionally charged, is accusatory, and is known to be erratic, irrational, illogical and impulsive. The fact that Mother has not spoken to her daughter in the past 7 months, blames her for Mother's own failure, and was willing to house her daughter in a U-Haul storage unit seriously draws into question Mother's ability to parent and to exercise good judgment. Mother's refusal, inability or neglect to provide [M.M.] with appropriate shelter and supervision is due to her failure, refusal or inability to seek reasonable means to do so.
- 12) The Child needs care, treatment, and rehabilitation she is not likely to receive absent the coercive intervention of the Court.

(App. Vol. 2 at 23).

[13] Mother now appeals.

## **Decision**

[14] Mother argues that there is insufficient evidence to support the CHINS adjudication. A CHINS proceeding is a civil action. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). Therefore, DCS had to prove by a preponderance of the evidence that M.M. was a CHINS as defined by the juvenile code. *See 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 the 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.

[15] The Indiana Supreme Court has synthesized this statutory language, explaining that a CHINS adjudication requires proof of “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). 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.

[16] When determining whether there is sufficient evidence to support a CHINS determination, we consider only the evidence most favorable to

the judgment and the reasonable inferences to be drawn therefrom. *S.D.*, 2 N.E.3d at 1287. This Court will not reweigh the evidence or reassess the credibility of the witnesses. *Id.* at 1286.

[17] 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.*

[18] Where, as here, a trial court’s order contains specific findings of fact and conclusions of law, we engage in a two-tiered review. *In re A.G.*, 6 N.E.3d 952, 957 (Ind. Ct. App. 2014). First, we determine whether the evidence supports the findings, and then, we determine whether the findings support the judgment. *Id.* We will not set aside the findings or judgment unless they are clearly erroneous. *Matter of R.G.*, 130 N.E.3d at 1171, 1178 (Ind. Ct. App. 2019), *trans. denied*. Findings are clearly erroneous when the record contains no facts to support them either directly or by inference. *Id.* at 1178-79. 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. *A.G.*, 6 N.E.3d at 957.

[19] As a preliminary matter, we note that Mother challenges several of the court’s findings. Mother specifically argues that there is no evidence to support the

trial court's findings that: (1) she lived in a storage unit with M.M. (Finding 2); (2) she has a history of homelessness and her ability to provide shelter for M.M. appears tenuous (Finding 5); (3) Mother blames M.M. for the CHINS intervention (Finding 7); (4) Mother has expressed that she does not want to see or speak with M.M. (Finding 8); and (5) Mother is known to be erratic, irrational, illogical, and impulsive (Finding 11). However, Mother ignores the evidence set forth above that is favorable to the trial court's findings and cites the testimony of her witness. Mother's challenges to the findings are simply requests that we reweigh the evidence and reassess the credibility of the witnesses, which we will not do. *See S.D.*, 2 N.E.3d at 1286. The trial court observed the witnesses' demeanor and their testimony firsthand and was in the best position to weigh credibility and any conflicting evidence. *See D.P.*, 72 N.E.3d at 980. We find ample evidence to support the trial court's findings.

[20] We now turn to Mother's argument that the trial court's factual findings do not support the trial court's legal conclusion that M.M. was a CHINS. Mother specifically contends that M.M. was not endangered, that she did not need care, treatment, or rehabilitation that she was not receiving, and that the coercive intervention of the court was not necessary. We disagree.

[21] First, the trial court's findings regarding Mother living with M.M. in a storage unit, blaming M.M. for the CHINS case, and having untreated mental health issues as exemplified by her explosive personality and erratic and irrational behavior amply support a finding that M.M. was endangered and was not receiving adequate care. Second, the trial court's findings regarding Mother

refusing to see or speak with M.M. for the seven-month pendency of the CHINS proceedings, being unwilling to engage with FCM Miles, and refusing to give her address to or engage with GAL Condle all support the trial court's conclusion that the coercive intervention of the court was necessary. We reiterate that we will not reweigh the evidence or reassess the credibility of the witnesses. *See S.D.*, 2 N.E.3d at 1286. We agree with the State that “[t]he trial court reasonably concluded from the evidence that Mother’s actions and inaction ha[d] seriously endangered [M.M.], [M.M.]’s needs ha[d] not been met, and those needs [were] unlikely to be met unless the State intervene[d].” (DCS’ Br. 21). There is sufficient evidence to support the CHINS adjudication.

[22] Affirmed.

Bradford, J., and Kenworthy, J., concur.