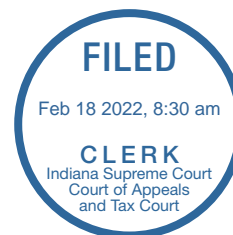


## MEMORANDUM DECISION

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.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of:

Ma.M. and Mi.M. (Minor  
Children),

*Children in Need of Services,*

and

M.M. (Mother),

*Appellant-Respondent*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner,*

February 18, 2022

Court of Appeals Case No.  
21A-JC-1767

Appeal from the Marion Superior  
Court

The Honorable Mark Jones, Judge

Trial Court Cause Nos.  
49D15-2008-JC-1955  
49D15-2008-JC-1956

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and

Kids' Voice of Indiana,

*Appellee-Guardian ad Litem.*

**May, Judge.**

- [1] M.M. (“Mother”) appeals the adjudication of her children, Ma.M. and Mi.M. (collectively, “Children”) as Children in Needs of Services (“CHINS”). Mother challenges multiple findings and argues the trial court’s findings do not support its conclusion that Children are CHINS. We affirm.

## Facts and Procedural History

- [2] Mother gave birth to Ma.M.<sup>1</sup> and Mi.M.,<sup>2</sup> on February 7, 2015, and August 19, 2020, respectively. At the time of her birth, Mi.M.’s cord blood tested positive for fentanyl, benzodiazepines, alprazolam, opiates, and morphine, and she exhibited symptoms of drug withdrawal. Based on Mi.M.’s condition and Mother’s history with the Department of Child Services (“DCS”), which

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<sup>1</sup> Ma.M.’s father is unknown.

<sup>2</sup> Mi.M.’s father, J.R., admitted Mi.M. was a CHINS and does not participate in this appeal.

included several unsubstantiated reports of drug abuse and neglect, DCS filed a petition alleging Children were CHINS on August 31, 2020. DCS placed Ma.M. with his maternal uncle, and Mi.M. joined him when she was released from the hospital. Both children have remained with maternal uncle throughout these proceedings.

[3] On August 31, 2020, the trial court held its initial hearing on DCS’s CHINS petition. Mother did not attend. At an undisclosed time in the months thereafter, Mi.M.’s father, J.R., admitted Mi.M. was a CHINS. From August 2020 to April 2021, DCS attempted to offer Mother services to aid in reunification with Children, but she would not engage in services “[u]ntil the court ordered her to do them” (Tr. Vol. II at 59), because “she didn’t think they were necessary even if that was what she was told that she needed to do to get her children back[.]” (*Id.* at 70.) Mother did not submit random drug screens as requested by the DCS caseworker, and it was unclear if she was sober. Mother did participate in supervised visitation, though she missed seven of twenty-two scheduled visits, asked that the visits be reduced to less than six hours, arrived late and left early from some visits, and would spend large amounts of time during the visits either in her car or in the bathroom.

[4] On April 26, 2021, the trial court held its fact-finding hearing. At that hearing, Mother, two DCS caseworkers, and the Guardian ad litem testified. DCS presented evidence that Mother’s housing situation seemed unstable, she was allegedly employed by a friend who she helped with shipping as needed, and certain interactions indicated she was not sober, which DCS could not

definitively say because Mother would not participate in drug screens. On July 22, 2021, the trial court entered its order adjudicating Children as CHINS based on Mother’s “inability to provide [Children] with necessary supervision, a safe and stable home, and a home free from substance abuse. . . . as well as Mother’s inability or unwillingness to parent [Children] appropriately.” (App. Vol. II at 142.) The trial court held its dispositional hearing on August 12, 2021, and entered its dispositional order on August 14, 2021.

## Discussion and Decision

[5] A CHINS proceeding is civil in nature, so DCS must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). The CHINS petition was filed pursuant to Indiana Code section 31-34-1-1, which states:

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; 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.

The State must prove “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.” Ind. Code § 31-34-1-2.

[6] A CHINS adjudication focuses on the needs and condition of the child and not on the culpability of the parent. *In re N.E.*, 919 N.E.2d at 105. The purpose of a CHINS adjudication is not to punish the parent, but to provide proper services for the benefit of the child. *Id.* at 106. “[T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* at 105. “A CHINS adjudication can also come about through no wrongdoing on the part of either parent[.]” *Id.*

While we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that - a determination that a child is in need of services. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. Only when the State moves to terminate a particular parent’s rights does an allegation of fault attach. We have previously made it clear that CHINS proceedings are “distinct from” involuntary termination proceedings. The termination of the parent-child relationship is not merely a continuing stage of the CHINS proceeding. In fact, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child.

*Id.* (internal citations omitted).

## Challenged Findings

- [7] When a juvenile court enters findings of fact and conclusions of law in a CHINS decision, we apply a two-tiered standard of review. *In re Des. B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). We first consider whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We may not set aside the findings or judgment unless they are clearly erroneous. *Id.* Findings are clearly erroneous when the record contains no facts to support them either directly or by inference, and a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.* We give due regard to the juvenile court’s ability to assess witness credibility and do not reweigh the evidence; we instead consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.* We defer substantially to findings of fact, but not to conclusions of law. *Id.* Mother challenges a number of findings, arguing they are not supported by the evidence.

### *Finding 5*

- [8] Finding 5 of the trial court’s order adjudicating Children as CHINS states: “Mother admitted that [Mi.M.] was born drug positive but would not say what drug she ([Mother]) had used.” (App. Vol. II at 139.) Mother contends she did not refuse to say what drug she used that caused Mi.M.’s cord blood to test positive for multiple substances. However, during the fact-finding hearing, Rayna Coe, a home-based caseworker and visit facilitator who worked with the family, testified she spoke to Mother regarding the “concern that [Mi.M.] was

born with substance in her system” and Mother told Coe that “she had only used once.” (Tr. Vol. II at 20.) Coe indicated Mother did not tell her what substance she used once. Thus, the evidence supports the trial court’s finding that Mother refused to reveal the substance she used when asked.

### ***Finding 6***

- [9] Finding 6 of the trial court’s order adjudicating Children as CHINS states: “Mother lives with her parents, most of the time, though she lives with friends occasionally.” (App. Vol. II at 139.) Mother argues the finding does not accurately reflect the evidence presented, as she lived with her parents the majority of the time and only stayed with a friend briefly in 2020. She further asserts this erroneous finding is “especially egregious because what is based upon one comment then morphs in later Findings to ‘unstable housing.’” (Br. of Mother at 26.)
- [10] During the fact-finding hearing, Mother testified she lived on “south Emerson avenue [sic]” with her “mother and [her] father[.]” (Tr. Vol. II at 8.) Mother also testified she lived at that address throughout the CHINS case. Coe testified Mother told Coe that Mother was “staying with her friend . . . before the end of twenty-twenty.” (*Id.* at 30.) Shannon Taylor, the Guardian ad litem, testified she had “housing concerns” because “at any given time she could be without housing depending on you know situations that could occur or their relationship, if there is tension there.” (*Id.* at 52-3.) Taylor also referenced Coe’s report that Mother left her parents’ house at some point to live with a friend and indicated there were “a lot of unanswered questions and

uncertainty” regarding that situation. (*Id.* at 53.) The testimony presented at the fact-finding hearing, at the very least, puts the stability of Mother’s housing situation into question, and thus Mother’s argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court does not reweigh evidence or judge the credibility of witnesses).

### ***Finding 9***

[11] Finding 9 of the trial court’s order adjudicating Children as CHINS states:

“Mother said her parents don’t support her, but she did not say how she could support herself and [Children].” (App. Vol. II at 139.) Mother argues the trial court discounted her efforts to earn income and contends there is no evidence that her “gig-economy” work arrangement is not sufficient to support Mother and Children. (Br. of Mother at 27.)

[12] During the fact-finding hearing, Mother testified she was “self-employed[,]” specifically “helping a friend with shipping . . . whenever [she] can” or “whenever she wants” for “about fifteen [dollars] an hour.” (Tr. Vol. II at 8, 12.) When asked for the frequency of her work, Mother testified, “[i]t really just depends, especially since COVID, I’d say at least three times a week . . . I am not sure on the hours really.” (*Id.* at 9.) Mother also testified her parents do not support her and she is able to pay her bills. She said she worked “flexible hours” so she can “spend the time off with [her] kids so [she] work[s] when [she] feel[s] it is necessary.” (*Id.* at 14.) Mother did not provide any proof of her working arrangement.



[13] Coe also testified Mother “would talk about financial struggles” when she met with Coe prior to visits with Children and Mother asked “if she had to work in order to get the kids back.” (*Id.* at 21.) Coe further testified that, when she told Mother she would need to obtain employment as part of the case plan,

it just sounded like she just didn’t want to work. Because the question was – well she said that she was staying with a friend and that she was just asking if she had to work. Although she has mentioned that she cleans for somebody so this is – you know it is not a W-2 job, but she said that she does that periodically.

(*Id.* at 29.) Regarding financial struggles, Coe testified Mother mentioned at one point that the balance on her phone bill was “over two hundred dollars and she was wondering how that was going to be covered[.]” (*Id.*) The testimony presented at the fact-finding hearing, at the very least, puts Mother’s employment situation and ability to support Children into question, and thus Mother’s argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court does not reweigh evidence or judge the credibility of witnesses).

### ***Finding 18***

[14] Finding 18 of the trial court’s order adjudicating Children as CHINS states: “The [Family Case Manager] was unaware that Mother had any employment, and she is concerned about [Mother’s] ability to maintain a home for [Children] given her low income, her refusal to explore further opportunities, and her unstable housing.” (App. Vol. II at 141.) Mother argues this finding is not supported by the evidence because the family case manager, Vivian Todd-Scott,

did not follow up with Mother to obtain information regarding Mother's employment status before opining that it may be difficult for Mother to maintain a household for Children.

[15] Todd-Scott testified that, when she first met Mother, Mother did not have employment that Todd-Scott "was aware of[.]" (Tr. Vol. II at 60.) Todd-Scott then indicated that, after hearing Coe's testimony regarding Mother's employment efforts, she was concerned Mother would be unable to maintain a household "on that amount of income with adding what that possibly would amount to." (*Id.* at 61.) Further, Coe testified Mother refused to participate in employment services, despite being asked. Finally, as we have noted above, there is evidence to call into question the stability of Mother's housing situation. Whether Todd-Scott was able to follow up on her initial meeting with Mother is of no consequence, as there was sufficient evidence to support Todd-Scott's evaluation of Mother's situation. Mother's argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court does not reweigh evidence or judge the credibility of witnesses).

### ***Finding 19***

[16] Finding 19 of the trial court's order adjudicating Children as CHINS states: "Though child and family team meetings ("CFTM") have been arranged, Mother refused to attend them. Ms. [Shannon] Taylor, the [Guardian ad litem], has thus never had the opportunity to speak with Mother, as Mother has made no other attempts to do [sic] talk with her." (App. Vol. II at 141.)

Mother argues this finding misconstrues Mother’s intentions, as Mother never testified that she “refused” to attend the CFTM, but only that “she had not attended CFTM meetings[.]” (Br. of Mother at 30.) Further, she contends “[t]here is no evidence in the record that Mother knew she could contact Taylor or was given any information to contact Taylor.” (*Id.*)

[17] During the fact-finding hearing, Mother testified she did not attend the CFTMs because she “didn’t find them necessary.” (Tr. Vol. II at 11.) Taylor testified she attended both CFTMs but Mother did not, so she had not had a chance to make contact with Mother. While it is true that Taylor was not able to give Mother her contact information, Mother also did not avail herself of those opportunities to obtain that information. Mother’s argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court does not reweigh evidence or judge the credibility of witnesses).

### ***Finding 21***

[18] Finding 21 of the trial court’s order adjudicating Children as CHINS states: “No provider recommends unsupervised visits, let alone placement with Mother, given Mother’s lack of verified employment, her refusal to take part in any services other than parenting time – which she limits, her unstable housing, and her inability to handle two children at the same time.” (App. Vol. II at 141.) Mother contends this finding is not supported by the evidence.

[19] However, as we noted above, Mother was unable to verify her employment, and the stability of her housing was questionable. Coe testified multiple times that Mother would not engage in services. Mother admitted she did not think services were necessary despite being told by Todd-Smith her participation in services was required for reunification with Children. Coe also testified Mother was routinely late to scheduled supervised visitation and would leave early. Finally, Coe testified she “noticed as time has gone on as [Mi.M.] becomes more aware and more mobile, that [Mother] struggles to provide [Ma.M.] with the time that he needs with her to engage just the two of them.” (Tr. Vol. II at 25.) Mother’s argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court does not reweigh evidence or judge the credibility of witnesses).

### ***Finding 22***

[20] Finding 22 of the trial court’s order adjudicating Children as CHINS states: “There are safety concerns for [Children] given all of the foregoing, and [DCS’s] reasons for concern have not been alleviated.” (App. Vol. II at 141.) Mother asserts the trial court “leapt from the erroneous foregoing Findings to an unsupported Finding that the safety of [Children] was at stake.” (Br. of Mother at 35.) We have concluded, however, that the challenged findings are supported by the evidence. Moreover, the unchallenged findings, which we quote below, support the trial court’s finding that DCS has safety concerns regarding Children’s well-being in Mother’s care. Mother’s argument is an

invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court does not reweigh evidence or judge the credibility of witnesses).

### *Finding 23*

- [21] Finding 23 of the trial court’s order adjudicating Children as CHINS states: “Mother is not seeking, and will not seek, services for herself or [Children].” (App. Vol. II at 141.) Mother takes exception to the trial court’s assumption that, because she has thus far refused to participate in services, she will not participate in services when ordered to do so by the trial court. However, Mother mischaracterizes the trial court’s finding. That finding does not indicate Mother will not participate in services ordered by the court; it indicates she will not voluntarily participate in services to perhaps prevent the issuance of a court order for services. That actual finding has more than ample support in the record.
- [22] Coe testified Mother did not follow up on a referral made for home-based case work. Other evidence indicated Mother refused to take part in drug screens, did not attend CFTM meetings, and refused to engage in employment services. Mother even told DCS that she would not engage in services “[u]ntil the court ordered her to do them[.]” (Tr. Vol. II at 59.) The trial court did not err when it inferred from that evidence that Mother would not voluntarily seek services for herself or Children.

## II. Children’s Adjudication As CHINS

[23] We have concluded the findings challenged by Mother were supported by the evidence. Further, unchallenged findings “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1991). The trial court made the following unchallenged findings:

3. At the time MCDCS filed its Petition, [Ma.M.] resided with Mother at 635 South Emerson Avenue, and [Mi.M.] was in the hospital’s NICU because she was born with her cord being positive for drugs. She remained in the NICU for two to three weeks, due to withdrawal symptoms.

\* \* \* \* \*

7. Mother works about three times a week, “whenever” she finds it necessary, to help a friend with shipping, making \$15.00 an hour.

8. Sometimes during visits with [Children], Mother talks about her financial instability, and at one point she agreed to the assistance of the home-based case manager for housing and employment, though she later declined. In Court, she said she didn’t need any assistance.

\* \* \* \* \*

10. The visits with [Children] were originally six hours, but Mother stated that was too long and asked to shorten them; several times during the visits, Mother asked to end them early.

11. Mother frequently left the [sic] during visits to go out to her car for fifteen to twenty minutes at a time, or she go [sic] to the restroom and stay there for long periods of time. Her hands would normally tremble, sometimes more than others. At one point, Mother said she had to put some meds on her nose because of redness, but no such redness was observed.

12. Mother usually arrived at the visits at least fifteen minutes late, with numerous cancellations and no-shows: at one point, she cancelled or did not appear for seven out of 22 opportunities to visit with [Children]. Her excuses varied and included transportation issues, though she refused the assistance of transportation services which were readily available through a provider.

13. Mother and [Ma.M.'s] placement thought that [Ma.M.] need [sic] some "alone time" with Mother, so separate visits for [Ma.M.] were scheduled. Mother then refused to participate in the separate visits.

14. The visitation facilitator had to frequently intervene during visits because of Mother's inability to re-direct [Ma.M.'s] behavior.

15. A parenting assessment was recommended to help her with parenting abilities, but Mother declined.

16. MCDCS and its providers advised Mother that she needed to take advantage of services provided through MCDCS, such as home-based case management to stabilize her housing and employment situation, but Mother refused the offers.

17. Considering [Mi.M.] being [sic] born drug-positive, and Mother's admission to using drugs (albeit admitting just to one

time), MCDCS advised Mother to take advantage of random screens to show her sobriety, but she refused.

\* \* \* \* \*

20. As of the fact-finding hearing, Mother had not attempted to talk with [Family Case Manager] Todd-Scott about [Children] for more than two months.

(App. Vol. II at 139-41.)

[24] Mi.M. was born with drugs in her cord blood, indicating Mother ingested drugs during her pregnancy. Mother's employment and housing situations were unclear and unstable. Mother refused all services offered by DCS and regularly was late, cancelled, or left early from visitation with Children. Mother did not heed recommendations for an improved relationship with Ma.M. from Coe and relative placement. The trial court's findings support its conclusion that Children are CHINS. *See K.B. v. Ind. Dept. of Child Servs.*, 24 N.E.3d 997, 1004 (Ind. Ct. App. 2015) (affirming CHINS adjudication based on father and girlfriend's substance abuse and unwillingness to participate in services).

## Conclusion

[25] The evidence before the trial court supported the findings Mother challenges. Further, the trial court's conclusion that Children were CHINS was supported by its findings. Accordingly, we affirm the Children's adjudication as CHINS.

[26] Affirmed.



Brown, J., and Pyle, J., concur.