

## MEMORANDUM DECISION

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### ATTORNEY FOR APPELLANTS

Jennifer A. Joas  
Madison, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
  
Katherine A. Cornelius  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the L.S. and  
N.S. Children Alleged to be in  
Need of Services,

E.C. (Mother) and  
J.C. (Stepfather),

*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

December 7, 2023

Court of Appeals Case No.  
23A-JC-1318

Appeal from the  
Switzerland Circuit Court

The Honorable  
W. Gregory Coy, Judge

Trial Court Cause Nos.  
78C01-2301-JC-1,  
78C01-2301-JC-2

**Memorandum Decision by Judge Vaidik**  
Judges Bradford and Brown concur.

**Vaidik, Judge.**

## Case Summary

- [1] E.C. and J.C. appeal the trial court’s finding that their children are in need of services. We affirm.

## Facts and Procedural History

- [2] E.C. (“Mother”) and J.C. (“Stepfather”) are the mother and stepfather of twins N.S. and L.S., who were born in August 2011. In December 2022, they were all living together in Indiana, along with Mother and Stepfather’s other children. The twins’ father, T.S. (“Father”), lived about an hour away in Kentucky.
- [3] Around December 18, Stepfather paddled N.S.’s backside using a wooden paddle or “sword” he had constructed to discipline the children. Tr. pp. 118-19. A few days later, when Father picked up the children to begin winter break, N.S. had significant bruising on his buttocks and upper thighs. When the children returned to school on January 3, N.S. reported the paddling and the bruising to the school counselor. The counselor then notified the Department of Child Services (DCS). DCS contacted Mother and Stepfather, but they declined to be interviewed.
- [4] Two weeks later, N.S. went to his school counselor again and was “very upset, shaking, scared.” *Id.* at 125. DCS spoke to Father and learned that Stepfather had shot a kitten in front of N.S. That day, DCS removed the children from

Mother and Stepfather, placed them with Father, and filed a petition alleging that they are children in need of services (CHINS).

- [5] The factfinding hearing was held in April 2023. N.S. testified briefly about the nature and history of Stepfather's discipline, stating that Stepfather had spanked him with "different things" over the years and "it just kept on getting worse." *Id.* at 18. Pictures of his bruises from December 2022 were admitted into evidence. *See* Ex. B. Eventually, N.S. became emotional and was unable to continue testifying. A video of an interview he had done at the Child Advocacy Center was admitted into evidence.
- [6] L.S. also testified. She started crying when describing Stepfather's physical discipline of N.S. but was able to continue testifying. She said N.S. was disciplined more than the other children in Mother and Stepfather's home and that she worried about him "[a] lot." Tr. pp. 36, 49. L.S. said Stepfather once spanked her with a "hard plastic rod," *id.* at 36, and that she is afraid of him and doesn't feel safe in his home.
- [7] The children's guardian ad litem, their school counselor, and the DCS family case manager testified about their concerns for the children. The guardian ad litem said the children live in fear and need counseling. The school counselor said N.S. cries when asked about Mother and that he is scared when he reports things to her because he thinks he might get in even more trouble. The family case manager said the children showed "a real sense of just relief" when they were placed with Father. *Id.* at 126. When asked what concerns she has about

the children being returned to Mother and Stepfather, she answered, “I would be concerned for their physical wellbeing, their mental health, the trauma that they have sustained, and honestly, enduring more trauma in the home would be a concern of mine.” *Id.* at 128.

[8] Stepfather and Mother denied any wrongdoing and said the other witnesses were either lying or had been lied to. Stepfather testified that he has the right to physically discipline his children, that his discipline doesn’t rise to the level of abuse, and that he won’t stop. Mother testified she doesn’t think Stepfather caused the bruising on N.S. and that in any event she supports Stepfather’s discipline of the children.

[9] After the hearing, the trial court issued a detailed order finding the children to be CHINS. The court addressed both the paddling and its concerns for the children’s mental health:

[N.S.] presented with bruising from a paddling given to him by [Stepfather]. He sought out the school counselor for help; the DCS has approached [Mother and Stepfather] who have so far been mostly uncooperative with the DCS’ efforts to obtain services for [the children]. While the court notes that parents have the right to impose discipline as they see fit under Indiana Law, and further, that the presence of bruises alone does not necessarily merit removal of children, here, the children are both suffering from emotional distress caused in whole or in part by the discipline imposed, the fear the children have for their stepfather, the rep[e]rcussions they face if they complain, and the general lack of support they receive from their mother when in [Mother and Stepfather’s] residence.

[The children] are both in need of care, treatment, or rehabilitation that they are not receiving, and are unlikely to be provided or accepted without the coercive intervention of the court. This conclusion is not only based on the physical discipline received by the children, especially [N.S.], but the emotional trauma the children are experiencing. [N.S.] broke down and cried in the hearing when asked to describe what happened to him at [Mother and Stepfather's] residence; he had given a statement in a secure environment at the [Child Advocacy Center] two months prior, about a month after he had been removed from [Mother and Stepfather's] residence, and became emotional while discussing it. [L.S.] cried during the hearing but was able to continue with her testimony. However it is clear that she has suffered trauma while at [Mother and Stepfather's] residence and has no desire to return there at this time. The children's mental health is endangered here; [N.S.] believes that his mother does not care what happens to him. [Mother] appeared to the court to not have any concern when her children were so upset on the witness stand. She only believes they (and every other witness) are lying.

Appellants' App. Vol. II pp. 81-82. The next month, the court held a dispositional hearing and issued a dispositional order requiring Mother and Stepfather to complete a parenting assessment and follow all recommendations, attend all scheduled visitations, and refrain from physical discipline.

[10] Mother and Stepfather now appeal.

## Discussion and Decision

[11] Mother and Stepfather contend the trial court erred by finding the children to be CHINS. DCS must prove by a preponderance of the evidence that a child is a

CHINS. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). We reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.* We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* We consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom. *Id.*

[12] Mother and Stepfather’s argument focuses entirely on the physical-discipline aspect of this case. They assert that Stepfather’s paddling did not cause N.S.’s bruising; that, even if it did, the bruising “was an accident and not intended as part of any punishment”; and that in any event “parents have a right to use reasonable discipline including corporal punishment.” Appellants’ Br. p. 13. They cite Indiana Code section 31-34-1-15(1), which provides that the CHINS statutes do not “[l]imit the right of a parent, guardian, or custodian of a child to use reasonable corporal punishment when disciplining the child.”

[13] But as set forth in the trial court’s order, this case was about more than just N.S.’s bruising and Stepfather’s use of physical discipline. There is evidence that the children are suffering emotional distress from not only the discipline imposed but also their fear of Stepfather, the repercussions they face if they complain, and the lack of support from Mother. The trial court found that the children became emotional when discussing the paddling, that Mother showed no concern when the children were upset while testifying, and that for both reasons the children’s mental health is endangered. Given the trial court’s ability to see and hear the witnesses while testifying, we afford great deference to its determination in this regard. *See E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind.

2018). And despite this evidence of emotional distress being critical to the trial court's decision, Mother and Stepfather do not address any of it in their argument. Therefore, they have not shown that the trial court's CHINS finding was clearly erroneous.

[14] Affirmed.

Bradford, J., and Brown, J., concur.