

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of J.P., A Child in
Need of Services,

A.P.,

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

October 4, 2023

Court of Appeals Case No.
23A-JC-476

Appeal from the
Hamilton Superior Court

The Honorable
Valorie S. Hahn, Magistrate

Trial Court Cause No.
29D01-2203-JC-408

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] A.P. (“Mother”) appeals the trial court’s order adjudicating her minor child, J.P. (“Child”) a Child in Need of Services (“CHINS”). Mother raises two issues for our review:

- I. Whether the trial court abused its discretion when it admitted into evidence photographs of messages and pictures from Mother’s social media accounts; and
- II. Whether sufficient evidence was presented to support the trial court’s CHINS adjudication.

[2] We affirm.

Facts and Procedural History

[3] On March 19, 2022, at 2:30 a.m., the Indiana Department of Child Services (“DCS”) received a report alleging that Child was a victim of neglect. At the time of the report, Child, who was born on December 27, 2017, resided with Mother and Mother’s girlfriend in Howard County. Family case manager Azalea Settles-Wilkinson (“FCM Settles-Wilkinson”) investigated the report and learned that Mother had been arrested in Hamilton County and that the State charged Mother with possession of paraphernalia, possession of a narcotic drug, and neglect of a dependent.

[4] FCM Settles-Wilkinson spoke with Mother at Riverview Hospital in Noblesville at 9:00 am on March 19, 2022, and observed that Mother could not keep her eyes open and had slurred speech. Mother told the FCM that prior to

her arrest, she, her girlfriend, and Child had gone to the east side of Indianapolis to buy illicit substances. She additionally told FCM Settles-Wilkinson that she had ingested a bag of heroin. Mother elaborated and told the FCM Settles-Wilkinson “that [Mother] had went to Westfield Police Department where they had questioned her further after being transported from Carmel Police Department. . . . [D]uring transport or during the arrest she had put the baggie into her right breast, and when she was at the Westfield Police Department, she ingested the bag.” Tr. Vol. 2 p. 44. Mother ingested the heroin at 4:00 a.m. After Mother was taken to the jail, she asked the nurse at the jail “how long does it take for the bag to expand in your stomach.” *Id.* At that point, she was transported to the hospital. Mother told FCM Settles-Wilkinson that she had also relapsed nine months before her arrest. Based on FCM Settles-Wilkinson’s assessment, DCS had concerns about Mother and her ongoing drug abuse and stable home conditions. Additionally, FCM Settles-Wilkinson was not able to speak with Child’s father during her assessment because he was incarcerated.

[5] During the assessment, DCS determined that Mother had a history with DCS that included a substantiation from 2007 “regarding her two children which she lost custody to[,]” a 2011 substantiation for a third child who was born drug exposed to opiates, and a 2018 “out-of-home CHINS case” in Howard County concerning Child that involved Mother’s substance abuse issues. *Id.* at 49–50. The 2018 CHINS case resulted in Mother reunifying with Child after approximately six months.

[6] On March 21, 2022, DCS filed its petition alleging that Child was a CHINS. A fact-finding hearing was held on the CHINS petition on August 26, 2022, and January 3, 2023. FCM Kathryn Maxey (“FCM Maxey”), who managed the case from the beginning in late March 2022 until she left DCS at the end of August 2022 testified that, when FCM Maxey spoke with Mother about the underlying allegations, Mother stated that she had been “battling her sobriety as well as wanting to do better.” *Id.* at 70. As part of the CHINS case, DCS referred Mother for random drug screens through a service provider, but Mother did not comply with this service. Mother did comply with random drug screens administered by FCM Maxey. The results from those screens,¹ as well as marks observed on Mother’s arms, caused FCM Maxey to have concerns for Mother’s sobriety.

[7] Additionally, during FCM Maxey’s time managing the case, Child had an electronic tablet device that was logged into Mother’s Facebook and iCloud accounts. FCM Maxey observed that the profile information on the Facebook account matched Mother’s identifying information. FCM Maxey took photographs of various messages on the tablet between Mother and several others. FCM Maxey had previously used Facebook Messenger and described that Mother’s comments are on the right of the screen and the person she is communicating with are on the left side. The trial court admitted the pictures

¹ These drug screen results were not offered as evidence by DCS at the fact-finding hearing.

as Petitioner's Exhibit 2 over Mother's objection. Some of the messages referenced rabbit and turtle food and payment for such, but Mother did not have a rabbit or a turtle. There was also a picture from June 7, 2022, which was after the CHINS case was initiated. It depicted a white powdery substance on a digital scale. Ex. Vol. 3 p. 41. Although FCM Maxey did not know the identity of the persons in the photos, she testified that she took a picture of a photo on the tablet because the events "happened during the time that Mom was visiting with her child and there [were] concerns of substance use," and the photos depicted "what was observed to be substance usage and the [aftereffects] of that usage." Tr. Vol. 2 p. 77.

[8] FCM Catherine Miles ("FCM Miles") started managing the case in September 2022. She testified that she had only been able to talk with Mother once during her time on the case because when FCM Miles tried to contact her, Mother's phone was either disconnected, not on, the voicemail was full, or Mother did not answer. DCS had referred Mother for supervised parenting time, random drug screens, and home-based casework to assist Mother with housing, employment, and other services so that she could provide Child with a stable environment. In November 2022, Mother had been evicted from her home, and the trial court took judicial notice of Mother's eviction case, Cause Number 34D03-2210-EV-1551, without objection from Mother. Since FCM Miles took over the case, she testified that DCS had not received any random drug screen results for Mother. Mother had not engaged in home-based casework but had visited Child twice a week for up to three hours each time. FCM Miles testified

that DCS had safety and stability concerns regarding returning Child to Mother's care which were based on Mother's lack of stable housing, possible unemployment, and unknown current substance use.

[9] During the fact-finding hearing, the trial court initially took judicial notice of Mother's criminal case, Cause Number 29D06-2203-F6-1928, and "of everything in there." *Id.* at 47. Mother objected to the trial court taking judicial notice of the probable cause affidavit because it contained hearsay, and the trial court took that part of the decision under advisement. Later in the hearing, when DCS requested the trial court take judicial notice of Father's criminal cases, the trial court stated that after conducting research, it took "judicial notice of the existence of the other cases but not as to substantive evidence as to the probable cause affidavit." *Id.* at 89.

[10] At the time of the fact-finding hearing, Child was five years old and was thriving in his kinship placement with his maternal relatives. Child had previously been placed with the same kinship placement during the 2018 CHINS case.

[11] On January 13, 2023, the trial court issued its written order adjudicating Child a CHINS pursuant to Indiana Code section 31-34-1-1. On February 3, 2023, the trial court held the dispositional hearing. Mother stated that she understood and agreed with DCS's recommendations that she participate in services. The trial court granted a motion to transfer venue to Howard County, where both Mother and Father reside. Mother now appeals.

Discussion and Decision

I. Admission of Evidence

[12] The admission of evidence is entrusted to the sound discretion of the trial court. *In re A.F.*, 69 N.E.3d 932, 941–42 (Ind. Ct. App. 2017) (citing *In re A.J.*, 877 N.E.2d 805, 813 (Ind. Ct. App. 2007), *trans. denied*), *trans. denied*. We will find an abuse of discretion only where the trial court’s decision is against the logic and effect of the facts and circumstances before the court. *Id.* at 942. If a trial court abuses its discretion by admitting challenged evidence, we will reverse for that error only if the error is inconsistent with substantial justice or if a substantial right of the party is affected. *Id.* (citing *In re S.W.*, 920 N.E.2d 783, 788 (Ind. Ct. App. 2010)).

[13] Mother argues that the trial court abused its discretion when it admitted Petitioner’s Exhibit 2 during the fact-finding hearing. This exhibit consisted of pictures that FCM Maxey took of messages and photos found on Child’s tablet that DCS alleged came from Mother’s Facebook Messenger and iCloud accounts. Mother contends that the messages and photos were not properly authenticated as coming from her accounts and originating from her. “To lay a foundation for the admission of evidence, the proponent of the evidence must show that it has been authenticated.” *Hape v. State*, 903 N.E.2d 977, 989 (Ind. Ct. App. 2009), *trans. denied*. Under Indiana Evidence Rule 901(a), “[t]o satisfy the requirement of authentication or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Evidence that satisfies this requirement

includes, but is not limited to, “[t]estimony that an item is what it is claimed to be, by a witness with knowledge” or “[t]he appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.” Ind. Evidence Rule 901(b)(1), (4). Absolute proof of authenticity is not required, and the proponent of the evidence needs only to establish a reasonable probability that the document is what it is claimed to be. *Fry v. State*, 885 N.E.2d 742, 748 (Ind. Ct. App. 2008), *trans. denied*. Once this reasonable probability is shown, any inconclusiveness regarding the exhibit’s connection with the events at issue goes to the exhibit’s weight, not its admissibility. *Wisdom v. State*, 162 N.E.3d 489, 494 (Ind. Ct. App. 2020), *trans. denied*. Authentication of an exhibit can be established by either direct or circumstantial evidence. *Id.*

[14] Here, FCM Maxey testified that Child had an electronic tablet device that was logged into Mother’s Facebook Messenger and iCloud accounts. She further testified that the profile information on the Facebook account matched Mother’s identifying information. FCM Maxey also stated that she had previously used Facebook Messenger and described that Mother’s comments are on the right of the screen and the person she is communicating with are on the left side. Assuming without deciding that FCM Maxey’s testimony was not sufficient to authenticate the messages contained in Petitioner’s Exhibit 2, we conclude that any error in its admission was harmless.

[15] Even if the trial court abused its discretion in admitting evidence, the judgment will be undisturbed if the decision to admit evidence is harmless error.

Richardson v. State, 79 N.E.3d 958, 961–62 (Ind. Ct. App. 2017), *trans. denied*. It is well-established that “errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party.” *In re Des.B.*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014). Mother does not point to any of the trial court’s factual findings that show that the trial court based its CHINS adjudication on the pictures contained in Petitioner’s Exhibit 2. Further, our review of the factual findings does not indicate that the trial court adjudicated Child a CHINS based on Petitioner’s Exhibit 2 and the pictures contained therein. Rather, a significant number of the findings relate to Mother’s ongoing struggles with substance abuse. We, therefore, conclude that any error in admitting the exhibit was harmless because the admission of such evidence did not affect Mother’s substantial rights.

II. CHINS Adjudication

[16] A CHINS adjudication focuses on the needs and condition of the child and not the culpability of the parent. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). 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. 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. *Id.* at 105. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. *Id.*

[17] 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. Ind. Code § 31-34-12-3. The CHINS petition here 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:

(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.

[18] Our Supreme Court has interpreted this 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) (emphasis added). “When determining whether a child is a CHINS under section 31-34-1-1, the juvenile court ‘should consider the family’s condition not just when the case was filed, but also when it is heard.’” *Ad.M. v. Ind. Dep’t of Child Servs.*, 103 N.E.3d 709, 713 (Ind. Ct. App. 2018) (quoting *In re S.D.*, 2 N.E.3d at 1290).

[19] In reviewing a trial court’s determination that a child is a CHINS, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re S.D.*, 2 N.E.3d at 1287 (citations omitted). Instead, “[w]e consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom.” *Id.*

[20] Here, the trial court entered findings and conclusions sua sponte. *See* Ind. Trial Rule 52(A). “As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment.” *Id.* (citing *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). However, we review the remaining issues under the general judgment standard, under which a judgment will be affirmed if it can be sustained on any legal theory supported by the evidence. *Id.* (internal quotation marks omitted).

[21] Mother argues that the evidence presented at the fact-finding hearing was insufficient to support the trial court’s adjudication that Child was a CHINS.

Mother contends that the following findings were not properly supported by evidence presented at the fact-finding hearing:

2) Mother was pulled over with the Child as a passenger by law enforcement officers.

3) Mother was arrested at that time, thereby leaving the [C]hild without a caregiver. Mother was subsequently charged with neglect of a dependent, operating a vehicle while intoxicated[,] and possession of a narcotic drug.

4) At some point after being taken into custody, Mother ingested a bag of heroin and overdosed.

. . . .

6) Mother admitted to [FCM Settles-Wilkinson] that she ingested the heroin, that she is an opiate addict, and that she had relapsed nine months ago.

7) [FCM Settles-Wilkinson] observed Mother to have glassy eyes and slurred speech as well as scabs on her arms.

8) Mother told [FCM Settles-Wilkinson] that she was on her way back from trying to buy drugs on the east side of Indianapolis.

9) Mother has an extensive history with [DCS].

Appellant's App. Vol. 2 pp. 17–18.

[22] Mother argues that Finding 2 and Finding 3 were based on impermissibly imported substantive evidence from Mother's criminal case records, which the

trial court was not allowed to take judicial notice of. *See In re D.P.*, 72 N.E.3d 976, 983 (Ind. Ct. App. 2017) (“Even if court records may be judicially noticed, facts recited within the pleadings and filings that are not capable of ready and accurate determination are not suitable for judicial notice.”). Here, the trial court, after an objection by Mother and doing research into the issue, determined that it could and would take judicial notice of the existence of Mother’s criminal cases but not the substantive evidence therein. Tr. Vol. 2 p. 89. Therefore, contrary to Mother’s assertion, the trial court did not take judicial notice of the facts underlying Mother’s criminal case that were exclusively contained in the records of the criminal case and not testified to at the hearing.

[23] In looking at Findings 2 and 3, the trial court properly took judicial notice of Mother’s criminal charges in Cause Number 29D06-2203-F6-1928, which showed that the State charged Mother with Level 6 felony neglect of a dependent, Level 6 felony operating a vehicle while intoxicated endangering a person less than eighteen years old, and Level 6 felony possession of a narcotic drug. *In re D.P.*, 72 N.E.3d at 984. Additionally, FCM Settles-Wilkinson testified that Mother had been arrested and charged with possession of a narcotic drug and neglect of a dependent. Further, the evidence at the hearing revealed that Mother was arrested in the early morning hours of March 19, 2022, and she told FCM Settles-Wilkinson that before she was arrested, she, her girlfriend, and Child had gone to purchase drugs on the east side of Indianapolis. The evidence also established that Mother lived in Howard

County and was arrested in Hamilton County. Therefore, Mother would have had to drive through Hamilton County in order to get from the east side of Indianapolis to her home in Howard County, and it was reasonable for the trial court to infer that Child was a passenger in the car when Mother was pulled over. Additionally, at the time of Mother's arrest, Father was incarcerated, so it was reasonable for the trial court to infer that Child was left without a caregiver when Mother was arrested. Evidence was presented to support both Findings 2 and 3.

[24] As to the portions of Finding 4, Finding 6, and Finding 7 that state that Mother overdosed, admitted to being an opiate addict, and had glassy eyes in the hospital, DCS concedes that the evidence presented at the fact-finding hearing did not support such statements, and we likewise conclude that those portions of the findings were not supported by the evidence. However, as we discuss below, these portions of the findings are ultimately superfluous and not fatal to Child's CHINS adjudication. *See Lasater v. Lasater*, 809 N.E.2d 380, 397 (Ind. Ct. App. 2004) ("To the extent that the judgment is based on erroneous findings, those findings are superfluous and are not fatal to the judgment if the remaining valid findings and conclusions support the judgment.").

[25] However, as to the remaining portions of Findings 4, 6, and 7 and the other challenged findings we conclude that they were supported by evidence presented at the fact-finding hearing. FCM Settles-Wilkinson testified that, after receiving the report that Child was a victim of neglect, she spoke to Mother at the hospital where Mother told her she had ingested a bag of heroin

while in custody at the police department after secreting the bag in her breast area during arrest. When FCM Settles-Wilkinson spoke with Mother in the hospital, she observed that Mother was unable to keep her eyes open, her speech was slurred, and she had significant markings on her arms. Mother also told FCM Settles-Wilkinson that prior to the arrest, she, her girlfriend, and Child had gone to the east side of Indianapolis to buy drugs and that Mother had relapsed nine months ago. There was also testimony that Mother had a prior history of DCS involvement, including a substantiation in 2007 regarding two children she lost custody of, a substantiation in 2011 where a third child was born drug-exposed to opiates, and a CHINS case from 2018 involving Child that resulted in reunification with Mother after six months. We, therefore, conclude that evidence was presented to support the rest of the findings challenged by Mother.

[26] Mother next argues that the cumulative findings and evidence presented at the fact-finding hearing do not support the trial court's CHINS adjudication.

Under Indiana Code section 31-34-1-1, as synthesized by the Indiana Supreme Court, DCS was required to prove by a preponderance of the evidence that Mother'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 at 1287.

[27] The findings show that Mother's substance abuse issues seriously impaired or endangered Child. Child was previously adjudicated a CHINS in 2018 due in part to Mother's substance abuse issues, and Mother had another previous DCS

substantiation in 2011 where another child was born drug exposed. Although Mother was reunited with Child after the 2018 CHINS, her participation in any of the services from that case did not seem to have had any lasting benefit. Temporary improvements and a lack in the overall progress of conduct can reasonably be found to establish that the problematic issues will not improve. *See In re J.S.*, 906 N.E.2d 226, 234 (Ind. Ct. App. 2009). In fact, Mother told DCS that she had relapsed nine months prior to her March 2022 arrest, that prior to her arrest she had gone to purchase drugs with Child in the car, that she had ingested a bag of heroin after being arrested, and that she had been struggling with her sobriety and wanting to do better. These admissions by Mother coupled with her history with DCS amount to sufficient evidence that Mother's actions had seriously endangered Child and that Child's needs are unmet because Mother had failed to provide Child with a safe and stable home free of substance abuse.

[28] Moreover, the evidence indicated that these issues were not resolved by the provision of services prior to the fact-finding hearing. DCS referred Mother for several services during the pendency of the case, including random drug screens, but the evidence established that Mother did not participate in the random screens and only participated in screens administered by FCM Maxey. FCM Maxey testified that the results of those screens caused her to have concerns for Mother's sobriety, as did marks observed on Mother's arms. Evidence also revealed that Mother had failed to engage in her home-based casework services and that she had been evicted from her home in November

2022, which was two months before the final hearing date. Mother was also facing three Level 6 felony charges that resulted from her arrest in Cause Number 29D06-2203-F6-1928, which led to DCS's involvement and the current CHINS case.

[29] Mother does not provide any argument regarding the coercive intervention element of the CHINS statute and has thus waived any challenge thereto. Failure to provide cogent argument results in waiver of the issues on appeal. *See A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 n.4 (Ind. Ct. App. 2013) (noting that where parent fails to raise specific, cogent argument challenging trial court's conclusions, those challenges are waived on appeal), *trans. denied*; *see also* Ind. Appellate Rule 46(A)(8)(a). Waiver notwithstanding, the evidence established that the court's intervention was needed. "When determining whether coercive intervention is necessary, 'the question is whether the parents must be coerced into providing or accepting necessary treatment for their child.'" *In re N.E.*, 198 N.E.3d 384, 390 (Ind. Ct. App. 2022) (quoting *In re E.K.*, 83 N.E.3d 1256, 1262 (Ind. Ct. App. 2017)). The same evidence used by the court to determine that a parent's acts or omissions injured or endangered a child may also support that coercive intervention is necessary to safeguard the child. *Id.* Therefore, the evidence previously discussed revealed that Mother has substance abuse issues that she had not adequately addressed, she failed to participate in most of the services offered by DCS, and it was unknown whether she had stable housing as she was evicted several weeks before the final hearing

date. We, therefore, conclude that sufficient evidence supported the trial court's adjudication of Child as a CHINS.

Conclusion

[30] Assuming without deciding that the trial court abused its discretion in admitting Petitioner's Exhibit 2, any error was harmless. Additionally, although there were some portions of the findings that were not supported by the evidence, we conclude that other challenged findings were supported by the evidence. The trial court's CHINS adjudication was supported by sufficient evidence and was not clearly erroneous.

[31] Affirmed.

Altice, C.J., and May, J., concur.