MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

DawnMarie White
Indianapolis, Indiana

ATTORNEYS FOR APPELLEES

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Deputy Attorney General
Indianapolis, Indiana

Paul W. Barada, Jr.
Grant M. Reeves
Rushville, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

E.V. (Minor Child),

and

B.V. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services, et al.,

March 17, 2021

Court of Appeals Case No. 20A-JC-867

Appeal from the Rush Circuit Court

The Honorable David E. Northam, Judge

Trial Court Cause No. 70C01-1911-JC-129

Appellees-Petitioners.

Altice, Judge.

Case Summary

[1] B.V. (Mother) appeals from the adjudication of her minor child E.V. (Child) as a CHINS. She contends that the Indiana Department of Child Services (DCS) failed to present sufficient evidence to support the adjudication and that the trial court entered deficient findings.

[2] We affirm.

Facts & Procedural History

[3] Child was born to Mother and G.V. (Father) in June 2016. Father works outside the home, and Mother is a stay-at-home mother to Child and Child's younger brother. On or about July 5, 2019, Child was hospitalized in the pediatric intensive care unit at Peyton Manning Children's Hospital with acute

meningitis[1] and pneumonia which led to multi-organ system failure. He was placed on a ventilator, required hemodialysis for acute kidney failure, and had a bolt in his head to help relieve pressure from the meningitis.

[4] As a result of his kidney failure, Child's fluid intake required close monitoring. Consuming excess liquid, "even small amounts," could cause severe and imminent medical complications for Child, including respiratory distress, heart problems, and death. *Transcript of Factfinding Hearing* at 10. On multiple occasions, Child's pediatric nephrologist Daniel McKenney (Dr. McKenney) spoke with Mother at the hospital about the necessity to control Child's fluid intake and that "if he got too much fluid it could [] affect[] organs such as his lung function and his heart function." *Id.* at 12.

[5] Child was discharged from the hospital into Mother and Father's care on or about October 8, 2019, after some recovery of his kidney function. His medical plan continued to include restricted liquid intake and nutrition administered through a gastrojejunostomy tube, as well as regular follow-up exams and labs. Within a week of his release from the hospital, Child experienced a significant change in his kidney function and missed one follow-up appointment. His worsening kidney failure, which was due to "fluid overload", resulted in readmission to the hospital on October 27, 2019. *Id.* In the hospital, Child

[1] This was Child's second bout with meningitis. The first was in 2017 and also required hospitalization.

continued to experience excess fluid and was transferred to the intensive care unit for emergency hemodialysis.

[6] Dr. McKenney explained that initially "it wasn't really clear why [Child] was getting as much fluid in addition to his feedings, but he definitely had an increase in his weight, he ha[d] worsening amounts of fluid around his lungs." *Id*. at 13. Once in the ICU, medical providers became even more strict about Child's fluid intake, allowing only five hundred milliliters of fluid a day (that is, about sixteen fluid ounces). Dr. McKenney personally informed Mother of these restrictions. With the hemodialysis, they were able to remove the excess fluid that was compromising Child's lung function, and he was discharged back to the pediatric ward around November 5, 2019. Despite controls by the hospital, Child began to gain weight and had an increased respiratory rate.

[7] Nursing staff eventually noted that Mother was breastfeeding Child, and Dr. McKenney counseled her again regarding the need to "maintain a strict amount of fluid intake."[2] *Id*. at 15. Despite this, Dr. McKenney later came into the room and observed Child holding a large cup of water. Mother indicated that Child "wasn't really drinking it; he was just sipping it[;] it was mostly for comfort." *Id*. Dr. McKenney again informed Mother that Child's liquid intake had to be able to be quantified. Mother argued with Dr. McKenney and stated that Child was thirsty and needed comfort. She insisted that "[i]t wasn't natural

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[2] Mother was permitted to express breastmilk to be provided to Child through the feeding tube, but breastfeeding was not allowed because the amount of fluid intake could not be determined.

for a child not to be able to drink when they were thirsty, and that [the medical personnel] were being too restrictive in banning her from nursing." *Id.* at 16. Dr. McKenney had discussions like this with Mother on several occasions, "almost on a daily basis." *Id.* Mother, however, continued to give fluids to Child contrary to Dr. McKenney's repeated instructions. This was dangerous given Child's fragile health, as "even … what is perceived to be a normal amount of fluid, … could cause lung failure and … death" for Child. *Id.* at 31.

[8] On or about November 8, 2019, Mother was restricted from the hospital due to her continued noncompliance with the medical plan and her defiant and confrontational behavior toward staff. In particular, Mother had yelled at doctors and nursing staff and stated that she would continue to breastfeed Child regardless of their advice. In addition to restricting Mother's access, the hospital contacted DCS.

[9] DCS family case manager Roberta Roberts (FCM Roberts) began her assessment by speaking with Father at the hospital, as well as the hospital's social worker and Mother's mother (Grandmother). There were concerns expressed that Mother had been exhibiting erratic behavior and that she suffered from severe mental instability.[3] FCM Roberts then went to the family's home and spoke with Mother. Mother informed FCM Roberts that she had been restricted from the hospital for nursing Child against medical advice and

[3] Father and other family members, without Mother, had recently met with a psychologist to address their concerns with respect to Mother's mental health.

for stating that she would continue to do so. At the time, FCM Roberts felt that Child was safe because he remained in the hospital. At some point thereafter, she was advised in a care conference that Child could be released from the hospital within seven to ten days. FCM Roberts then became concerned because Child, who remained medically fragile with chronic kidney failure, would be returned home to the care and custody of Mother and Father. At the time, Father had legally separated from Mother and was in the process of seeking custody of their children, but Father had been unable to control Mother's compliance with the medical plan when she was with Child.

[10] On November 20, 2019, DCS filed with the trial court a petition for authority to file a CHINS action, which was authorized on December 18, 2020, following an initial hearing. With the CHINS petition, DCS sought to restrict Mother's unsupervised access to Child upon release from the hospital.[4] FCM Roberts believed that Child required protection from Mother because Mother had indicated to medical staff and FCM Roberts that she would defy medical advice and continue to breastfeed Child, which could cause significant harm to Child.

[11] The CHINS factfinding hearing was held on January 29 and February 26, 2020. Dr. McKenney testified on the first day of the hearing regarding Child's kidney disease and hospitalizations, Mother's noncompliance with the medical plan, and the associated dangers of such noncompliance. With respect to Child's

[4] Mother has not provided us with the CHINS petition in her appendix.

current condition, Dr. McKenney explained that he is "more stable" and now has a catheter in his abdomen to receive continuous peritoneal dialysis. *Id*. at 39. Since Mother's restriction from the hospital in November 2019, Dr. McKenney was not aware of any concerns that Child was receiving too many fluids. Child remains in chronic kidney failure and will continue to require dialysis until he receives a kidney transplant.

[12] During her testimony, Mother acknowledged that she had threatened to continue breastfeeding against medical advice, but she claimed to have made the threats out of anger and frustration. Mother testified that she never actually gave Child excess fluids after being told not to do so and that she would comply in the future. Substantial other evidence, however, indicated that Mother continued to breastfeed and give water to Child in the hospital after repeatedly being advised by medical professionals of the dangers it posed to Child.

[13] Father testified that Mother put Child to sleep at the hospital every night by breastfeeding him and that he witnessed her breastfeeding Child even after being told not to by the doctors. This worried Father, and he shared his concerns with medical staff. On more than one occasion, Mother told Father that she knew better than the doctors, which Father believed was consistent with her "completely negative" view of traditional medicine. *Id*. at 128. According to Father, Mother displayed anger and aggressiveness at the hospital on multiple occasions. He was concerned for her mental health based on her explosive anger, paranoia, and self-harm.

[14] Grandmother similarly testified that Mother acted contrary to medical advice during Child's hospitalization in 2019. Mother mistrusted the doctors and told Grandmother that the medicine they were giving to Child was "killing him and making his kidneys fail." *Id*. at 159. Grandmother witnessed Mother argue with doctors and claim that she knew better than them. In Grandmother's opinion, Mother's daily emotional outbursts at the hospital were not reasonable. Further, Grandmother witnessed Mother tell four doctors that she was going to breastfeed Child regardless of their advice.

[15] FCM Roberts testified that Child was currently placed in Father's care and, unlike Mother, DCS did not have concerns that he would refuse to follow medical advice regarding Child's care and treatment. Mother was exercising supervised parenting time with Child and had seen a psychiatrist and been diagnosed – according to Mother – with situational PTSD. Although Mother was currently cooperating with DCS, FCM Roberts remained concerned about the possibility of Mother having unrestricted access to Child given Mother's past behavior of providing excess fluids to Child and statements that she would continue doing so in direct contravention of medical advice and warnings that such could be extremely dangerous to Child's health.

[16] At the conclusion of the factfinding hearing, Father admitted to the allegations in the CHINS petition. Mother, on the other hand, argued that there was no need for the coercive intervention of DCS, claiming that she had followed the medical advice related to ceasing breastfeeding and was simply emotional at the hospital and suffering from PTSD. Father's counsel responded to this

argument in part as follows: "Well Judge, I think in order to reach that conclusion, you've got to ignore a whole lot of evidence." *Id*. at 177. At the conclusion of the evidence, the trial court took the matter under advisement.

[17] On March 13, 2020, the trial court issued its order finding Child to be a CHINS. The trial court made the following findings, among others:

> e) The Child suffers from kidney failure and is only able to consume a certain amount of liquid per day. Consuming excess liquid even in a small amount, could cause severe and immediate medical complications, including death.
>
> f) Mother has put the Child at serious risk of physical harm by breastfeeding the Child against medical advice, because breastfeeding does not allow for the precise computation of the amount of liquid the Child is receiving.
>
> g) Due to Mother's non-compliance with medical advice for the Child, Mother was restricted from the hospital while the Child was admitted.
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> h) Father is unable or unwilling to prevent Mother from continuing this behavior.
>
> i) The coercive intervention of the court is necessary to ensure that the child receives necessary medical care and to receive appropriate nutrition and hydration.

Appellant's Appendix at 14-15.

[18] After several continuances, on July 1, 2020, the trial court held a combined dispositional and review hearing, at which the predispositional report filed by

FCM Roberts was entered into evidence. FCM Roberts also testified and requested that the court order Family Preservation Services, which was a new service to DCS for which Mother and Father had recently completed assessments. At the time, Child remained placed with Father, where Child was "doing well" and "maintaining all medical appointments and participating in dialysis as recommended by his medical team." *Transcript of Dispositional Hearing* at 8. Mother was exercising weekly supervised parenting time. Although they lived apart and had a pending dissolution action, Mother and Father were working toward reconciling and had voluntarily participated in individual counseling.

[19] On July 20, 2020, the trial court issued its dispositional order. Among other things, such as maintaining contact with DCS and keeping appointments with service providers, Mother was specifically ordered to "provide medical treatment necessary to ensure the health of the child and his special needs", "participate in individual counseling for the purpose of understanding and complying with the child's medical needs", and "receive an assessment through Family Preservation." *Appellant's Appendix* at 18. Mother now appeals.

Discussion & Decision

[20] A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). On review, we neither reweigh the evidence nor judge the credibility of the witnesses and will

consider only the evidence and reasonable inferences that support the trial court's decision. *Id*. We will reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id*.

[21] There are three elements DCS must prove for a child to be adjudicated a CHINS.

> DCS must first prove the child is under the age of eighteen; DCS must prove one of [several] different statutory circumstances exist that would make the child a CHINS; and finally, in all cases, DCS must prove the child needs care, treatment, or rehabilitation that he or she is not receiving and that he or she is unlikely to be provided or accepted without the coercive intervention of the court.

Id. (footnote omitted); *see also* Ind. Code § 31-34-1-1 (CHINS statute applied in this case where "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 … to supply the child with necessary food, clothing, shelter, medical care, education, or supervision"). The CHINS statutes do not require a court to wait until a tragedy occurs to intervene; rather, a child is a CHINS when he or she is endangered by parental action or inaction that is unlikely to be remedied without coercive intervention by the court. *See In re C.K.*, 70 N.E.3d 359, 364 (Ind. Ct. App. 2016), *trans. denied*.

[22] It is well established that the purpose of a CHINS adjudication is to protect the child, not punish the parents. *K.D.*, 962 N.E.2d at 1255. The focus of a CHINS proceeding is on "the best interests of the child, rather than guilt or

innocence as in a criminal proceeding." *Id.* (quoting *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010)) (observing that there are circumstances in which a CHINS adjudication may be made where neither parent is at fault or where only one parent is responsible). Thus, when determining CHINS status, particularly the coercive intervention element, which is at issue in this case, courts should consider the family's condition not just when the case was filed, but also when it is heard so as to avoid punishing parents for past mistakes when they have already corrected them. *In re D.J.*, 68 N.E.3d 574, 580-81 (Ind. 2017). This 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.'" *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[23] Here, Mother asserts that prior to the factfinding hearing she had remedied the issues that led to the filing of the CHINS petition and that, therefore, the coercive intervention of the court was not needed. In support, she claims that FCM Roberts testified that "she would not have filed a petition on the day of the fact-finding hearing given all the information she had gathered up until that point." *Appellant's Brief* at 10. This is a mischaracterization of the witness's testimony. FCM Roberts clearly testified that she remained concerned about Child's safety if Mother had unsupervised time with Child due to Mother's willful and dangerous disregard of medical advice and prior statements that she would continue doing so. In other words, while FCM Roberts could not be

certain that Mother would disregard medical advice in the future, she continued to be concerned that might be the case. FCM Roberts acknowledged, however, that Mother had not recently made concerning statements to her in this regard and was cooperating with DCS, which gave her "some degree of comfort going forward". *Transcript of Factfinding Hearing* at 58.

[24] The essence of Mother's argument is a request that we reweigh the evidence and judge witness credibility, which we will not do. Mother testified that she would follow medical advice in the future and not provide Child with excess liquids, but the trial court was not required to believe her. Juxtaposed to her self-serving testimony was other witness testimony, including that of Father and Grandmother, detailing Mother's strong distrust of Child's doctors and strident rejection of medical advice, and Father's admission that Child was a CHINS. Mother's own words and actions in the hospital displayed her ongoing disregard of medical advice. Further, Mother denied ever having breastfed Child after being told not to by doctors, but this testimony was directly contradicted by other evidence indicating that Mother continued to breastfeed Child even after repeatedly being told that such could lead to life-threatening medical complications for Child.

[25] Based on the entirety of the evidence, viewed in the light most favorable to the judgment, we find that DCS established by a preponderance of the evidence that the coercive intervention of the court was needed to ensure Child's health and safety. In other words, DCS sufficiently established that Child needed care,

treatment, or rehabilitation that he was not receiving and that he was unlikely to be provided or accepted without the coercive intervention of the court.

[26] Finally, we address Mother's brief argument that the trial court entered vague findings in its dispositional order that were insufficient to make a CHINS determination and deprived Mother of her procedural due process. In support of her argument, Mother likens this case to that of *In re J.Q.*, 836 N.E.2d 961 (Ind. Ct. App. 2005) in which we remanded because the trial court's vague and limited findings made it "difficult for this court to determine whether or not a mistake has been made in adjudicating J.Q. as a CHINS." *Id.* at 966. We do not find the cases to be similar.

[27] In *J.Q.*, the trial court entered its initial CHINS determination in the dispositional order with the following vague language:

> The Court finds that reasonable efforts have been offered and available to prevent or eliminate the need for removal from the home ... the Court also finds that the services offered and available have either not been effective or been completed that would allow the return home of the child without Court intervention.
>
> The Court finds that it is contrary to the health and welfare of the child to be returned home and that reasonable efforts have been made to finalize a permanency plan for the child.

Id. We concluded that these "limited findings … ma[d]e it difficult for this court to determine whether or not a mistake has been made in adjudicating J.Q. as a CHINS." *Id.* We explained:

> Our review of the record in its entirety yields evidence that could support either outcome, but we are in no position to reweigh such evidence. However, we are also not in the position to read the trial court's mind in regard to its findings of fact. Indiana Code § 31-34-19-10(5) requires that the trial court give reasons for its disposition in a CHINS proceeding. Specifically, we are concerned that procedural irregularities, like an absence of clear findings of fact, in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to a potential subsequent termination of parental rights. Our legislature's enactment of an interlocking statutory scheme governing CHINS and involuntary termination of parental rights compels this court to make sure that each procedure is conducted in accordance with the law. Both statutes aim to protect the rights of parents in the upbringing of their children, as well as give effect to the State's legitimate interest in protecting children from harm. We conclude that in order to properly balance these two interests, the trial court needs to carefully follow the language and logic laid out by our legislature in these separate statutes.
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> In light of the trial court's failure to adequately state reasons for its disposition, along with its procedural error in admitting J.Q.'s statements, we choose to remand the CHINS determination with instructions that the trial court more specifically follow the requirements of I.C. § 31-34-13-3 and I.C. § 31-34-19-10.

Id. at 966-67 (some citations omitted).

[28] Unlike in *J.Q.*, the trial court's reasons for adjudicating Child a CHINS is adequately set out in the March 2020 order issued after the factfinding hearing, and the trial court expressly referenced the allegations contained in Petition for Parental Participation and found them to be true. Additionally, the court

ordered Mother to, among other things, "provide medical treatment necessary to ensure the health of the child and his special needs", "participate in individual counseling for the purpose of understanding and complying with the child's medical needs", and "receive an assessment through Family Preservation." *Appellant's Appendix* at 18. On this record, we do not agree with Mother's assertion that she is unable to determine what is needed or expected from her or that her procedural due process rights have been violated.

[29] Judgment affirmed.

Mathias, J. and Weissmann, J., concur.