

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of: K.S., J.S., I.S.,
F.S., Jo.S., and V.H. (Minor
Children),

B.H. (Mother),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

December 12, 2022

Court of Appeals Case No.
22A-JC-1208

Appeal from the Owen Circuit
Court

The Honorable Kelsey B. Hanlon,
Judge

Trial Court Cause Nos.

60C02-2201-JC-8

60C02-2201-JC-9

60C02-2201-JC-10

60C02-2201-JC-11

60C02-2201-JC-12

60C02-2201-JC-13

Weissmann, Judge.

[1] B.H. (Mother) has a history of domestic relationships with violent men including D.S. (Father). Despite the issuance of protective orders, Mother and her six children (Children) continued to live with Father. After Father kidnapped Mother from their home at gunpoint as some of their children watched, the juvenile court determined that Children were children in need of services (CHINS). Mother appeals that ruling, disputing the trial court's finding that Children were seriously endangered by the domestic violence within their home. She also challenges the court's finding that Children needed care and supervision that they otherwise likely would not receive without court intervention. Finding the evidence supports the trial court's judgment, we affirm.

Facts

- [2] Mother and Father have five children, K.S., J.S., I.S., F.S., and Jo.S, ranging in age from infancy to 13 years old. Mother's sixth child, 1-year-old V.H., was fathered by V.C., who was in prison facing murder charges during the CHINS proceedings.
- [3] Mother obtained a protective order against Father in early 2020 after he broke into the home Mother was sharing with V.C. Tr. Vol. II, p. 35. Yet, by late 2021, with the protective order still in effect, Mother and Children lived with Father in his home.
- [4] One night, after arguing with Mother about her alleged infidelity, Father removed Mother from the home at gunpoint while at least two of their children

watched and the others slept. Father drove Mother to a nearby town in search of her alleged lover and threatened to kill both Mother and the other man. Their daughter, I.S., observed the kidnapping and called 911. Police responded and then contacted the Indiana Department of Child Services (DCS).

[5] Mother, who believed Father recently had been using drugs, ultimately persuaded Father to return her home unharmed. Father was charged with kidnapping, intimidation, pointing a firearm, and domestic battery. Within a week after the kidnapping, Mother sought and obtained a dismissal of the existing protective order. However, the criminal court in which Father was charged issued no contact orders barring Father's contact with Mother and I.S. Mother also tried to set aside those orders.¹

[6] DCS petitioned to find Children to be CHINS. After a hearing, the trial court determined that Children were CHINS, largely due to the history of domestic violence between Mother and Father. The trial court later conducted a dispositional hearing and ordered that Children remain in Mother's home under DCS supervision. The court also ordered, among other things, that:

- Father abstain from alcohol.
- Mother and Father abstain from illegal substances.

¹ The CHINS court took judicial notice of the chronological case summary and charging information in Father's criminal case (case number 60C01-2112-F3-725). Tr. Vol. II, p. 29; *see* Ind. Evidence Rule 201. We do the same and note that Father has since pleaded guilty to kidnapping in exchange for dismissal of the remaining offenses. To date, Father has not been sentenced for his felony conviction.

- Father and Mother adhere to any no contact or protective orders in effect.
- Father engage in a batterer’s intervention program or similar services.
- Mother engage in services aimed at “domestic violence victimization—and its impacts on parenting and decision-making.”
- V.C. notify DCS when he is released from jail, and the court afterward would entertain motions to modify the dispositional decree as to V.H., the son of V.C. and Mother.

Appellant’s App. Vol. II, pp. 80-83; Appellee’s App. Vol. II, p. 9. Only

Mother appealed.²

Discussion and Decision

[7] Mother contends the evidence does not support the trial court's determination that Children are CHINS. DCS bore the burden of proving by a preponderance

² The trial court entered two CHINS orders on the same date: one for the five children of Mother and Father and one for V.H., the son of Mother and V.C. Mother filed one notice of appeal listing all six case numbers but not otherwise indicating that Mother was appealing the separate judgment as to V.H.

Mother attached to the notice of appeal only the factfinding and dispositional orders relating to Mother’s five children with Father. Mother omitted the orders relating to V.H., although Indiana Appellate Rule 9(F)(8)(a) requires that the appellant attach the challenged orders and judgment to the notice of appeal. When designating the orders or judgments she was appealing, Mother also failed to specify the dispositional order in V.H.’s case. *See In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017) (noting that the dispositional order in a CHINS case is the final judgment from which a direct appeal of a CHINS finding arises). Mother also failed to include in her appendix the CHINS and dispositional order from V.H.’s case.

DCS did not allege any procedural defect in Mother’s appeal of the trial court’s judgment as to V.H. Instead, DCS simply included in its appendix the materials relating to V.H. that Mother omitted from hers. As the trial court found all six children to be CHINS based on domestic violence in their home and the parties' arguments are the same for each child, we address the CHINS determinations as to all six children in light of our preference for deciding cases on the merits. *See id.* at 580. But we note that Mother’s omissions related to V.H. have unnecessarily complicated appellate review.

of the evidence that Children were CHINS under Indiana Code § 31-34-1-1. *In re M.W.*, 869 N.E.2d 1267, 1270 (Ind. Ct. App. 2007). That statute specifies:

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.

Ind. Code § 31-34-1-1.

[8] When analyzing Mother's claim of insufficient evidence, we consider only the evidence, and any reasonable inferences drawn from it, in favor of the trial court's judgment. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). We do not reweigh evidence or assess witness credibility. *Id.*

[9] As to the issues covered by the trial court's sua sponte findings, we determine first whether the evidence supports the findings and second whether the

findings support the judgment. *In the Matter of S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). We review the remaining issues under the general standard judgment and affirm if the judgment can be sustained on any legal theory supported by the evidence. *Id.* We will reverse a CHINS determination only if it is clearly erroneous. *K.D.*, 962 N.E.2d at 1253.

I. Sufficiency of the Evidence

[10] Mother claims two defects in the trial court's judgment. First, she argues that DCS did not prove by a preponderance of the evidence that Children's physical or mental conditions were seriously endangered. Second, she claims the evidence does not support the trial court's determination that Children needed care or treatment that they were unlikely to receive without the court's coercive intervention. We find sufficient evidence of both elements.

A. Serious Endangerment

[11] Mother asserts that any serious endangerment to Children was cured before the CHINS factfinding hearing. "[A] CHINS adjudication may not be based solely on conditions that no longer exist" *In re R.S.*, 987 N.E.2d 155, 159 (Ind. Ct. App. 2013). Focusing on her status as a victim of Father's criminal conduct, Mother notes that Children had no exposure to domestic violence during the two months between the kidnapping and the CHINS factfinding hearing. Additionally, Mother contends DCS presented no evidence that she and Father would reconcile, that Father would return to the home, or that V.H.'s father would have any future contact with Mother or Children.

- [12] We are unpersuaded by Mother’s argument that Children were not seriously endangered. Mother ignores her history of domestic relationships with violent men that continued to impact Children at the time of the CHINS determination. For instance, Mother obtained a protective order against Father in early 2020 after he broke into the home Mother was sharing with V.H.’s father. Tr. Vol. II, p. 35. That protective order was a way to limit Children’s further exposure to domestic violence in their home. But while that order was still in effect, Mother—with Children—began living with Father again, largely negating the protections the order afforded.
- [13] And with this renewed contact with Mother and Children, Father soon perpetrated more domestic violence. In what Mother aptly describes as a “horrible” crime, Father pointed a gun at Mother while hurling accusations of sexual promiscuity at her in front of at least two of the children while the others slept. Appellant’s Br., p. 14. Mother admitted that her relationship with V.H.’s father was also violent.
- [14] But rather than distancing herself from Father to protect Children from further violence, Mother almost immediately sought dismissal of the protective order barring Father’s contact with her. When the criminal court entered a no-contact order in response to the kidnapping charge, Mother told the DCS family case manager (FCM) that she did not see the need for that order either. Tr. Vol. II, p. 36. Mother reported that Father was not a danger to Children and that the kidnapping “was a one-time incident” *Id.* at 39. Mother and Children continued

to live in Father's home. Father likewise did not appear to appreciate the seriousness of his conduct.

[15] Mother's and Father's statements leave little confidence that they will take the steps necessary to ensure Children are not exposed to further domestic violence. Domestic violence harms children, whether they are the targets or the witnesses. *See In re E.M.*, 4 N.E.3d 636, 644-45 (Ind. 2014) (noting that both older children and an infant who were in the presence of domestic violence were impacted by it). Our Supreme Court has noted that "[c]hildren exposed to domestic violence are more likely to suffer significant psychological and developmental issues." *S.H. v. D.W.*, 139 N.E.3d 214, 216 (Ind. 2020) (citations omitted). The evidence of repeated domestic violence within Children's home was enough to prove by a preponderance of the evidence that Children were seriously endangered. *See K.B. v. Ind. Dep't. of Child Servs.*, 24 N.E.3d 997, 1004 (Ind. Ct. App. 2015) (finding children endangered when exposed to domestic violence).

B. Coercive Intervention

[16] Mother next claims that DCS failed to prove that Children needed care and supervision that they were not receiving and were unlikely to receive without the coercive intervention of the court. Mother argues that the trial court effectively punished her for past mistakes that she had already corrected. She asserts that her abusers no longer are in her life, that she is financially providing

for Children through her steady employment, and that she is ensuring Children obtain any services and other care that they need.

[17] The trial court found that Mother and Father will continue to place Children at risk, “[a]bsent court supervision and coercion.” Appellant’s App. Vol. II, p. 78. “This is evidenced by the [kidnapping] incident, which occurred when there was already a Protective Order in place,” according to the court. *Id.* The court also noted Father’s unwillingness to acknowledge that his behavior was problematic. *Id.*

[18] We acknowledge that the purpose of a CHINS proceeding is to protect children, not to punish parents. *See In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Whatever strides Mother had taken by the time of the CHINS factfinding hearing did not remove the threat of domestic violence that still hovered over Children. Children lived in the home owned by Mother’s abuser. Both Mother and Father had minimized his criminal conduct, and Mother had attempted to remove any restraints on his ability to return to their home. A juvenile court need not wait until a tragedy occurs to intervene. *Id.* at 305. The court properly determined that Children needed care and supervision that they were not receiving—that is, a safe home free of the threat of domestic violence—and that such care and supervision likely would not be provided without the court's coercive intervention.

II. Conclusion

[19] Mother has failed to establish that the evidence did not support the trial court's determination that Children are CHINS. We therefore affirm the trial court's judgment.

May, J., and Crone, J., concur.