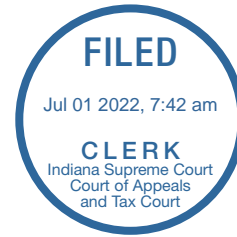


MEMORANDUM DECISION

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

In the Matter of Am.S. and
An.S., Children in Need of
Services,

A.S., Mother,
Appellant-Respondent,

v.

Indiana Department of Child
Services,

July 1, 2022

Court of Appeals Case No.
21A-JC-2786

Appeal from the
Marion Superior Court

The Honorable
Scott B. Stowers, Magistrate

Trial Court Cause No.
49D09-2108-JC-6684
49D09-2108-JC-6686

Appellee-Petitioner,

and

Kids' Voice of Indiana,
Appellee-Guardian Ad Litem.

Molter, Judge.

[1] P.W. (“Father”)¹ and A.S. (“Mother”) (collectively, “Parents”) have two children, Am.S. and An.S. (“Children”). Children lived with Parents and were removed from the home after the Indiana Department of Child Services (“DCS”) received a report alleging neglect of Children. DCS consequently filed a petition alleging that Children were children in need of services (“CHINS”) due to Parents’ use of illegal drugs, and Mother appeals the juvenile court’s determination that Children are CHINS, claiming that DCS presented insufficient evidence that Children are CHINS and that the juvenile court abused its discretion in ordering her to participate in various services. Finding no error, we affirm.

¹ Although Father participated in the CHINS proceedings, he does not participate in this appeal.

Facts and Procedural History

- [2] Father and Mother are the parents of Am.S., born on July 31, 2013, and An.S., born on May 29, 2021. A couple of years after Am.S. was born, in 2015, DCS received a report alleging neglect of Am.S. When Family Case Manager (“FCM”) Kindal Johnson investigated the report, she learned that Parents were homeless and abusing illegal drugs. DCS had also investigated a report of domestic violence between Parents.
- [3] DCS removed Am.S. from Parents’ care and filed a petition alleging that Am.S. was a CHINS. Parents participated in the CHINS matter, which was eventually resolved, and Am.S. was placed in their care.
- [4] A few years later, shortly after An.S. was born in 2021, DCS received a report alleging neglect of Children. Particularly, after An.S.’s arrival, Mother tested positive for methamphetamine. Also, An.S.’s umbilical cord tested positive for amphetamine and methamphetamine. When FCM Synphanie Crosby visited Parents to investigate the report, Mother admitted that she had used methamphetamine before An.S. was born. She also told FCM Crosby that she began using drugs again after her mother’s death in 2020. Consequently, DCS opened an informal adjustment, which is a lesser intervention than a CHINS case. *Id.* But, after Mother continued to abuse illegal drugs, DCS closed the informal adjustment because it had failed.
- [5] In 2021, DCS filed a petition alleging that Children were CHINS, and the juvenile court held a fact-finding hearing. During the hearing, FCM Alexis

Coffman, who had worked with the family for several months, testified that Parents tested positive for amphetamine and methamphetamine during the informal adjustment. She also explained that DCS subsequently removed Children from the home because no sober caregiver was present, which was required for DCS to ensure the safety and well-being of Children. Further, although FCM Coffman testified that Parents were communicative and compliant with their services, she explained that DCS was concerned whether Parents would be able to “fully complete [their] services and continue maintaining their sobriety.” Tr. at 83, 85.

[6] Mother, who was thirty-seven years old at the time of the fact-finding, also testified at the hearing. She explained that she began using methamphetamine during her early twenties, and her longest period of sobriety was between 2014 and 2016. Mother further testified that she had tried various forms of substance abuse treatment and that she was arrested for drug-related charges in 2012. As to her recent relapse, Mother explained that she began reusing drugs after her mother’s death in 2020. She also admitted to using methamphetamine before An.S. was born and stated that her last drug use was in August 2021.

[7] Relatedly, Carolyn Passen, a therapist with Families First/Children’s Bureau, testified as to Mother’s drug use at the fact-finding hearing. She explained that she assessed Mother, diagnosed her with stimulant use disorder, and believed Mother should participate in a sixteen-week substance abuse program—the intensive outpatient group at Families First. Passen also indicated that, while Mother had not used drugs for several weeks, she was still not considered to be

in remission. She further explained how Mother's drug use can affect her parenting, stating that methamphetamine can impair a parent's ability to make decisions.

[8] In October 2021, the juvenile court entered its order determining that Children were CHINS. Among other things, the court found that its coercive intervention was necessary because Children were endangered due to Parents' substance abuse and mental health issues. Also, as to Mother, the court noted that, although Mother was participating in substance abuse treatment, she had used methamphetamine for roughly fifteen years—including during the informal adjustment—and had been sober for less than two months. The court further emphasized that Children were too young to care for themselves and that they required Parents to meet their needs.

[9] Shortly after, DCS placed Children with Parents for a trial home visit. However, the juvenile court ordered Father to vacate the family home after he tested positive for methamphetamine. The court found that allowing Father to remain in the home would have been contrary to Children's welfare since DCS would not have been able to ensure their safety if Father was using drugs. The court issued its dispositional and parental participation orders in November 2021, which required Parents to engage in home-based therapy and submit to random drug screens. Also, the court directed Mother to complete home-based case management, substance abuse assessment, parenting assessment, and intensive family preservation. Mother now appeals.

Discussion and Decision

[10] On appeal, Mother challenges the juvenile court's determination that Children are CHINS. She argues that DCS presented insufficient evidence that Children are CHINS and that the juvenile court abused its discretion in ordering her to participate in various services.

I. Sufficiency of the Evidence

[11] Mother first argues that DCS presented insufficient evidence that Children are CHINS. When reviewing the sufficiency of evidence, we neither reweigh evidence nor judge witness credibility. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). Instead, we consider only the evidence and reasonable inferences most favorable to the juvenile court's decision. *Id.* We reverse only upon a showing that the decision of the juvenile court was clearly erroneous. *Id.*

[12] The juvenile court here entered sua sponte findings and conclusions supporting its CHINS determination, although such findings and conclusions are not statutorily required. *See In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). "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.* "But we review the remaining issues under the general judgment standard," meaning we will affirm the judgment "if it can be sustained on any legal theory supported by the evidence." *Id.*

[13] "A CHINS proceeding is a civil action; thus, the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the

juvenile code.” *K.D.*, 962 N.E.2d at 1253 (quotation marks omitted). Here, DCS alleged that Children were CHINS under Indiana Code section 31-34-1-1, which provides, in pertinent part: A child is a CHINS if “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 . . . supervision.”

[14] Mother claims that DCS failed to present evidence that Children’s physical or mental condition was seriously endangered. Appellant’s Br. at 10. However, she does not specifically challenge any of the juvenile court’s findings of fact.² *See id.* at 9–14. As such, we simply determine whether the unchallenged findings are sufficient to support the judgment. *In re A.M.*, 121 N.E.3d 556, 562 (Ind. Ct. App. 2019), *trans. denied*. The relevant findings can be summarized as follows:

- Mother, who was thirty-seven years old at the time of the fact-finding hearing, first tried methamphetamine in her early twenties. At one point, she used the drug daily. Her longest period of sobriety lasted two years, and she has tried different forms of substance abuse treatment.

² While Mother contends that the juvenile court’s “description of [her] as a heavy or chronic user of illegal drugs is inaccurate and not supported by the evidence,” we note that the juvenile court never made any such description or finding. *See* Appellant’s App. Vol. 2 at 96–98. Instead, the juvenile court summarized Mother’s statements regarding her on-and-off drug use. *See* Tr. 11–13, 44. Nevertheless, Mother’s argument is an invitation to reweigh the evidence, which we will not do. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012).

- Children’s physical or mental condition is seriously endangered due to Mother’s inability to adequately supervise them when under the influence of methamphetamine.
- Children need care that they are not receiving and are unlikely to receive without the juvenile court’s coercive intervention. Although Mother is seeking treatment for her substance abuse issues, she has a history of on-and-off drug use and has been sober for only two months.

Appellant’s App. Vol. 2 at 98.

[15] These unchallenged findings sufficiently support a conclusion that Children’s physical or mental condition is seriously endangered. *See A.M.*, 121 N.E.3d at 563. Mother’s only claims to the contrary are that Passen’s testimony at the fact-finding hearing was speculative and that her occasional drug use did not endanger Children. Appellant’s Br. at 11–12.

[16] Regarding Mother’s claim about Passen’s testimony, she argues that Passen only testified as to “stereotypical effects” that some methamphetamine users experience (*e.g.*, increased heart rate, paranoia, increased temperature, and increased breathing rate). As such, Mother contends that Passen’s testimony was speculative because there was no evidence that she experienced any “stereotypical effects” or that her methamphetamine use endangered Children. *See K.D.*, 962 N.E.2d at 1256 (“Speculation is not enough for a CHINS finding.”).

[17] Here, Mother’s argument amounts to an improper request to reweigh the evidence, which we will not do. *Id.* at 1253. Passen’s account was not speculative. She clearly articulated Mother’s issues with substance abuse, describing how Mother was not yet in remission, has stimulant use disorder, and should participate in a substance abuse program. Passen also explained how Mother’s drug use could affect her parenting by impairing her ability to make decisions. Her testimony was bolstered by FCM Coffman, who testified that Mother has abused methamphetamine on and off for several years and that methamphetamine affects an individual’s logical reasoning.³ Tr. at 33, 36–37.

[18] As to Mother’s claim that her occasional drug use did not endanger Children, she equates her intermittent use of methamphetamine to casual drinking. Particularly, she contends that although methamphetamine is a mind-altering substance, so is alcohol. She further explains that a mother who consumes any mind-altering substance, whether it is alcohol or methamphetamine, a few times a year does not “automatically” endanger her children. Appellant’s Br. at 11. In support, Mother cites to *In re S.M.*, 45 N.E.3d 1252 (Ind. Ct. App. 2015), and *Perrine v. Marion County Office of Child Services*, 866 N.E.2d 269 (Ind. Ct. App. 2007), in which panels of this court reversed CHINS adjudications based

³ To the extent Mother asserts that Passen was not qualified to provide expert testimony on the effects of methamphetamine use, Appellant’s Br. at 11, she has waived this claim for our review. *See Shepherd v. Truex*, 819 N.E.2d 457, 483 (Ind. Ct. App. 2004) (concluding appellant waived claim by failing to present cogent argument); Ind. App. Rule 46(A)(8)(a) (requiring that contentions in an appellant’s brief be supported by developed reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal).

partly on drug use. Specifically, Mother argues that DCS did not prove a connection between her drug use and Children's lack of a sober caregiver.

[19] In *S.M.*, we reversed a CHINS adjudication that was based in part on the mother's use of marijuana while pregnant. 45 N.E.3d at 1253–54. We noted that the mother had a history of sporadic marijuana use and the child was born with a marijuana positive meconium, but each drug screen the mother provided during the CHINS proceedings was negative for illegal substances. *Id.* at 1256. The mother also stopped using marijuana when she realized she was pregnant, and her therapist did not recommend that she participate in substance abuse treatment. *Id.* at 1254.

[20] In *Perrine*, we held that a single admitted use of methamphetamine, outside the presence of a child and without more, was insufficient to support a CHINS determination. 866 N.E.2d at 277.

[21] Here, we find *S.M.* and *Perrine* distinguishable. The record reveals that Parents were the only caregivers to Children, who were roughly eight years old and less than six months old. During Mother's clinical assessment at Families First/Children's Bureau, Mother informed Passen that she had used methamphetamine sporadically for approximately fifteen years and that her longest period of sobriety was between 2014 and 2016. Tr. at 44. The record also shows that Mother had tried different forms of substance abuse treatment, which were unsuccessful, and that she had used methamphetamine while pregnant with An.S. She also tested positive for the drug three times during the

underlying proceedings, and her last use of methamphetamine was in August 2021. Appellant's App. Vol. 2 at 98.

- [22] Further, as to her recent relapse, the record indicates that Mother began using drugs after her mother's death in 2020 and due to the stresses caused by her pregnancy with An.S. and the renovation of her home. Tr. at 33. Consequently, Passen determined that mother was not yet in remission based on the circumstances, and she diagnosed Mother with stimulant use disorder. She also recommended that Mother participate in a sixteen-week substance abuse program. Thus, unlike *S.M. and Perrine*, it appears that Mother smoked methamphetamine while caring for Children and had a substance abuse disorder. Moreover, *S.M. and Perrine* did not involve a parent who failed to specifically challenge the juvenile court's findings of fact. *See S.M.*, 45 N.E.3d at 1253; *see also Perrine*, 866 N.E.2d at 274. As noted above, the unchallenged findings stand as proven and sufficiently support a conclusion that Children's physical or mental condition is seriously endangered. *See A.M.*, 121 N.E.3d at 563.

II. Coercive Intervention of the Court

- [23] Children cannot be adjudged CHINS unless they need care, treatment, or rehabilitation that they are not receiving and are "unlikely to be provided or accepted without the coercive intervention of the court." Ind. Code § 31-34-1-1(2)(B); *S.D.*, 2 N.E.3d at 1288 (describing coercive intervention as a "critical determination" and "element" of a CHINS finding). Mother argues that she

voluntarily participated in all services after Children were removed, rendering coercive court intervention unnecessary by the time of the fact-finding hearing. She also emphasizes that she communicates well with DCS, has a good support system, and has participated in additional services.⁴

[24] Again, Mother impermissibly requests that we reweigh the evidence. *See K.D.*, 962 N.E.2d at 1253. The trial court found that Mother's drug use continued during the underlying proceedings and after Children were removed.⁵ The court also found that Mother has intermittently struggled with substance abuse issues for at least fifteen years and that her longest period of sobriety was between 2014 and 2016. It further noted that Mother has tried other forms of substance abuse treatment in the past, which failed due to her relapses, and that Mother has only been sober for two months. These findings were supported by testimony from Mother and caseworkers. Thus, although Mother presented evidence that she feels comfortable contacting her recovery sponsor if she were to experience a trigger, it was within the juvenile court's discretion to not credit

⁴ Mother also argues that she is the person who suggested that Am.S. participate in therapy sessions due to the traumatic effects of being removed from the home. She seems to claim that Am.S. cannot be adjudged a CHINS because Mother would continue to provide that treatment for her, even without the juvenile court's involvement. Appellant's Br. at 13. However, Mother does not fully develop this argument or cite to any authorities to support her claim. Ind. App. Rule 46(A)(8)(a) (requiring that contentions in an appellant's brief be supported by developed reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal). Thus, Mother has waived this claim for our review. *See Shepherd*, 819 N.E.2d at 483 (concluding appellant waived claim by failing to present cogent argument). But waiver notwithstanding, Mother's argument is just another impermissible request that we reweigh the evidence, which we will not do. *See K.D.*, 962 N.E.2d at 1253.

⁵ Children were removed on August 5, 2021, and Mother's last use of methamphetamine occurred on August 10, 2021. Appellant's App. Vol. 2 at 98, 141.

that evidence. *See In re Des.B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014) (citing Ind. Trial Rule 52(A), which states that “due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses”). As such, we cannot say that the conclusion that Children would not receive necessary treatment without the coercive intervention of the court was clearly erroneous.

III. Propriety of Services

[25] Mother next argues that the juvenile court abused its discretion when it ordered her to participate in various services. Following a CHINS determination and dispositional hearing, the juvenile court issues a dispositional or parental participation order, which details the plan of care, treatment, and rehabilitation required to address the needs of the child—including the entry of findings and conclusions. *See* Ind. Code §§ 31-34-19-1, -10. Indiana Code section 31-34-20-3 also provides:

If the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, the court may order the parent, guardian, or custodian to do the following:

- (1) Obtain assistance in fulfilling the obligations as a parent, guardian, or custodian.
- (2) Provide specified care, treatment, or supervision for the child.
- (3) Work with a person providing care, treatment, or rehabilitation for the child.

(4) Participate in a program operated by or through the department of correction.

(5) Participate in a mental health or addiction treatment program.

[26] “Although the juvenile court has broad discretion in determining what programs and services in which a parent is required to participate, the requirements must relate to some behavior or circumstance that was revealed by the evidence.” *In re A.C.*, 905 N.E.2d 456, 464 (Ind. Ct. App. 2009). This court has recognized that forcing unnecessary requirements on parents whose children have been determined to be CHINS can set them up for failure and can result in failed reunification of the family and even the termination of parental rights. *Id.* at 464–65.

[27] Mother contends that the juvenile court abused its discretion in ordering her to participate in various services. Appellant’s App. Vol. 2 at 144 (directing Mother to complete home-based therapy, submit random drug screens, home-based case management, substance abuse assessment, parenting assessment, and intensive family preservation). She argues that these requirements were unrelated to the behavior or circumstances revealed by the evidence, especially since Mother was voluntarily participating in services before the court’s order. We disagree.

[28] As to her required home-based therapy, home-based case management, parenting assessment, and intensive family preservation, Mother argues that these services were unnecessary because her home and economic situation were

suitable. However, the record reveals otherwise. Particularly, Jazzmine Anderson, who is a service provider with Family and Community Partners, testified that she worked on helping Mother secure stable employment. Tr. at 55. She also testified that she and Mother worked on getting the home organized, especially since the family recently began renovating the home and did not have working smoke detectors. *Id.* at 32, 54. The record further reveals that Father was ordered to vacate the home because he continued using drugs after the fact-finding hearing. The family had relied on his disability payments of \$1,200 per month as a source of income, and Father has not had any contact with Mother, Children, DCS, or his trial counsel since he was forced to leave the family home. Appellant's App. Vol. 2 at 140; Tr. 108–09. Thus, Mother is now a single mother, who is trying to secure stable employment, raise her children, and participate in substance abuse treatment.

[29] Next, as to Mother's required random drug screens and substance abuse treatment, she argues that these services are also unnecessary because she was already assessed and diagnosed with stimulant use disorder and is voluntarily participating in substance abuse treatment.⁶ Again, we disagree. Mother's fifteen-year history of intermittent drug use, difficulty maintaining sobriety, and failed attempts at substance abuse treatment were concerns for FCM Coffman, Passen, and even Mother, upon whose testimony the juvenile court established

⁶ To the extent that Mother contends that the coercive intervention of the court is not required, we already addressed this argument above.

the factual basis for the CHINS adjudication. Also, Mother was sober for only two months at the time of the fact-finding, and Passen explained that Mother was not yet in remission. Thus, the juvenile court did not abuse its discretion in issuing its parental participation order and ordering Mother to complete home-based therapy, random drug screens, home-based case management, substance abuse assessment, parenting assessment, and intensive family preservation.⁷

[30] In sum, the juvenile court's findings support a conclusion that Children are seriously endangered, and we cannot say that the court's CHINS determination was clearly erroneous. Also, the court did not abuse its discretion in ordering Mother to participate in various services.

[31] Affirmed.

Mathias, J., and Brown, J., concur.

⁷ We note that Mother argues DCS failed to accommodate her disability, stimulant use disorder, under the Americans with Disabilities Act. Appellant's Br. at 15. However, Mother made no such claim in the juvenile court. *See* Tr. at 107–08. Accordingly, she has waived this claim by making it for the first time on appeal. *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015) (explaining that an argument cannot be presented for the first time on appeal).