

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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In the Matter of:

N.E. and M.W. (Minor  
Children),

And

M.E. (Mother) and J.W.  
(Father),

*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

December 21, 2023

Court of Appeals Case No.  
23A-JC-1322

Appeal from the Marion Superior  
Court

The Honorable Danielle Gaughan,  
Judge

The Honorable Tara Melton,  
Magistrate

Trial Court Cause Nos.  
49D15-2207-JC-5251 & 49D15-  
2207-JC-5252

**Memorandum Decision by Judge Riley.**  
Judges Crone and Mathias concur.

**Riley, Judge.**

## **STATEMENT OF THE CASE**

[1] Appellant-Respondent, M.E. (Mother), appeals the trial court's Child in Need of Services (CHINS) adjudication of her minor children, N.E. and M.W. (collectively, Children); while Appellant-Respondent, J.W. (Father), appeals the trial court's CHINS adjudication of his minor child, M.W.

[2] We affirm.

## **ISSUE**

[3] In this consolidated appeal, Parents collectively present this court with six issues, which we restate as the following single issue: Whether the trial court erred in adjudicating Children as CHINS.

## **FACTS AND PROCEDURAL HISTORY**

[4] Mother is the biological parent of N.E., born on December 7, 2016, and M.W., born on December 10, 2019. Father is the biological parent of M.W.; while S.G., whose whereabouts are unknown, is the biological parent of N.E. Children resided with Mother and Father in Indianapolis, Indiana, at the time DCS became involved with the family. On July 9, 2022, police officers were dispatched to the residence and observed Parents being verbally hostile toward one another because Mother had left Children unattended while going to a gas

station to buy cigarettes. Officers noticed that Children’s hair was matted, they were dirty, and their feet were black from not wearing shoes. The house was unkempt, and N.E., who was five years old, was wearing a soiled diaper and “was non-verbal or speaking gibberish.” (Father’s App. Vol. II, p. 206).

Although the officers believed Parents to be under the influence of narcotics, Parents refused to submit to a drug screen. “Based on the behaviors of Parents and the fact that [Father] is a sex offender and not the father of the oldest child,” the officers contacted DCS on a report of possible child abuse or neglect. (Father’s App. Vol. II, p. 206).

[5] When DCS’s Family Case Manager (FCM) arrived at the residence, Mother informed FCM that Father was a “wifebeater” and a “child molester.” (Father’s App. Vol. II, p. 208). Mother advised FCM that Father “puts his hands on her” and that she had gotten into a physical altercation with Father earlier that day during which he pushed her against the wall. (Father’s App. Vol. II, p. 208). Mother also admitted to using marijuana earlier in the day. She had rapid speech, glassy eyes, and was “bouncing around.” (Father’s App. Vol. II, p. 208). After DCS decided to remove Children from Parents’ care on an emergency basis and FCM was taking Children out of the house, Parents “exhibited violent behaviors” which prompted police intervention. (Father’s App. Vol. II, p. 208).

[6] After FCM removed Children from the home, they were taken to Riley Hospital Emergency Room where they received medical care. M.W. was admitted to the hospital for malnutrition, dehydration, and low blood sugar.

Although she was almost two years old, M.W. was still on a completely liquid diet because of feeding problems and she was developmentally delayed. N.E, who was also developmentally delayed, had not recently seen a pediatrician and had a diaper rash. While Children's immediate medical issues were being met during this examination, the attending pediatrician identified several long-term medical needs for Children, including developmental, occupational, gastrointestinal, and neurological needs. It was determined that Children required "consistent treatment and care because the developmental delays and feeding problems are serious and need to be closely monitored." (Father's App. Vol. II, p. 210).

- [7] A nurse practitioner (NP) with the Foster Care Bridge Clinic at Riley Hospital evaluated Children and reviewed their medical files. Both Children have complex medical histories which require consistent follow-up. M.W. was born "premature with poor weight gain and feeding, her sutures closed too quickly," she was diagnosed with autism, and had "long term prior standing diagnoses." (Father's App. Vol. II, p. 210). M.W. had referrals to an ENT specialist for hearing loss and tube dysfunction, and she had undergone three outpatient ophthalmology surgeries when she was younger. M.W.'s past medical history also indicated that she had skull surgery, and although M.W. had received some follow-up care after the surgery, this care did not continue as recommended. N.E.'s medical history includes developmental delays for which she was referred to occupational therapy, speech therapy, and physical therapy. She was also referred to Riley Development Center for an evaluation on the

autism spectrum disorder. N.E. had brain surgery in 2019, after which she did not receive appropriate follow-up care or attend follow-up appointments.

[8] On July 11, 2022, two days after the removal of Children, DCS filed a CHINS petition, alleging Children to be CHINS because Mother had left Children home alone, admitted to domestic violence in the presence of Children, smoked marijuana but refused to submit to screening, and appeared to be under the influence of an unknown substance in the presence of DCS. The following day, the trial court conducted an initial detention hearing and authorized Children's removal from the home. After removal, Parents were ordered to participate in supervised parenting time with Children. The trial court conducted fact-finding hearings on DCS's petition on November 7, 2022, December 1, 2022, February 22, 2023, and February 23, 2023.

[9] Testimony elicited in these fact-finding hearings reflects that during parenting time with Children, Parents "failed to be consistent, punctual, responsible for all of [C]hildren's needs [], respectful, sober, and to abstain from speaking of the DCS case in front of [C]hildren." (Father's App. Vol. II, p. 211). During a scheduled visit on September 25, 2022, Parents lacked any empathy and patience for M.W., who was ill and crying during most of the visit. Although both Parents initially attempted to cancel a next supervised visit, Father eventually attended the visit but he "appeared to be under the influence of drugs and was extremely angry" after he noticed a bruise on M.W.'s thigh. (Father's App. Vol. II, p. 212). Father hit his fists against his thighs, which frightened Children, and began slamming doors, eventually breaking one of them. Father

stripped both Children completely naked and took pictures of them. Even though police arrived at the visit, Father continued to behave in an angry, belligerent, and aggressive manner. After the officers escorted Children and the DCS visitation supervisor from the room, Father texted the visitation supervisor a disparaging and insulting message.

[10] Visitation was suspended but ultimately reinstated in November 2022. During November, Parents attended three out of nine visitation sessions. On November 28, 2022, DCS filed a motion requesting the trial court to continue its scheduled hearing on DCS's CHINS petition because "DCS has discussed the case with providers in place and believes that an Informal Adjustment is appropriate." (Mother's App. Vol. II, p. 190). The trial court conducted a hearing on the Informal Adjustment on December 1, 2022. During the hearing, DCS assured the trial court that it would not dismiss the case. However, testimony at the hearing raised red flags for the trial court to the extent that the court observed that "I've heard a lot of information which quite frankly, I've heard a lot of testimony which would make me even concerned about signing off on an [Informal Adjustment]." (Transcript Vol. II. p. 129). The trial court explained that it was "not going to make a decision, a knee jerk decision to put [Children] back in the house to make it convenient for everybody and then I put them back in a dangerous situation. I'm not doing that." (Tr. Vol. II, p. 130). Accordingly, the trial court concluded that it was "not making a decision on these kids until I hear the whole case where they move because there's too much going on[.]" (Tr. Vol. II, p. 131).

- [11] In December 2022, Parents attended three out of four visitation sessions. Mother missed one visit in January 2023. That same month, Mother contacted DCS, requesting visitation to be held separate from Father's because Father had become violent with her and she did not feel safe with him. On January 24, 2023, Mother contacted the home-based caseworker and requested her help in filing a restraining order against Father. Mother informed the caseworker that Children had witnessed Father strangling Mother in the past and that Father was using methamphetamine. Mother reiterated these allegations the following day to FCM and also informed FCM that Father physically abused N.E. Mother never filed a restraining order against Father but instead testified that she "plan[ned] to remain with Father indefinitely as a couple." (Father's App. Vol. II, p. 222). Parents missed the majority of the scheduled visitation sessions in February 2023.
- [12] Parents failed to submit to the ordered drug screens. Mother failed to call in for a drug screen eighty-three times and missed twenty scheduled screens. Father failed to call in for a drug screen seventy-eight times and missed twenty scheduled screens.
- [13] Although being informed of Children's medical appointments, Parents did not regularly attend. Children exhibited severe signs of trauma. N.E. had a bald spot on her scalp from pulling out her hair, and M.W. was self-harming and grinding her teeth. M.W. would grab her own cheeks, throw herself down, lash out at others by hitting and spitting, pull her hair, and bang her head when angry. Both Children's behaviors improved with therapy.

[14] During the fact-finding hearings, Parents admitted to lying about facts surrounding the case, they did not accept any responsibility for their actions, and they could not name any of Children's doctors. FCM did not recommend returning Children to Parents' care because of their inability and refusal to acknowledge the endangerment of Children's safety due to Parents' violent behavior, substance abuse, lack of understanding, and general indifference to Children's medical needs.

[15] On May 15, 2023, the trial court entered its Order, adjudicating Children to be CHINS based upon Parents' history of domestic abuse, Parents' substance abuse, the medical neglect of Children, and Parents' failure to acknowledge any wrongdoing. Specifically, the trial court concluded, in pertinent part:

Mother and Father have engaged in domestic violence, some of which has occurred in front of [C]hildren. They either deny domestic altercations or minimize domestic violence to simple "arguments" or "disagreements". Mother has admitted to physical violence by Father and his pattern of rage and destruction of property. Mother has reported multiple times she is afraid of Father. there is absolutely no certainty that the violence will not continue given [P]arents' attitude toward prior incidents. As a result, [C]hildren's mental and physical welfare are endangered by the violence between Mother and Father.

[] Father admitted to police officers that he was under the influence of narcotics during parenting time with [C]hildren. Mother admitted to her use of marijuana on multiple occasions. Both [P]arents accused each other of being on methamphetamine. Multiple law enforcement officers on different occasions testified about parents appearing to be under the influence of illegal drugs. Parents deny any substance abuse



problem and have consistently failed to provide any evidence of sobriety. Parents have also declined services for substance abuse treatment despite [M]other testifying that she is willing to try drug treatment.

[] Parents have thus far demonstrated an inability to understand and appreciate all the medical conditions and needs of [M.W.] and [N.E.]. Parents have not been proactive in attending medical appointments or inquiring about the specific needs of each child. Even the nurse case manager admitted that she could not handle all of [C]hildren's medical appointments on her own. Given that [P]arents have not taken [N.E.] to Riley PEDS since 2019, it is not likely [P]arents will, or can, keep up with the medical needs of [C]hildren. The impact of [P]arents' inaction on [C]hildren has been proven and there is evidence of improvement in the girls' conditions since they started consistently receiving therapeutic and medical services.

[] Mother and Father's complete denial of medical negligence, domestic violence, and substance abuse, along with their refusal to seek treatment or engage in services, places [C]hildren in danger and requires this court to intervene.

(Father's App. Vol. II, pp. 222-25). The trial court explicitly found that Mother's statement that she had lied about Father physically abusing her, destroying the home, and using methamphetamine was not credible. Likewise, the trial court found that Father's testimony in which he denied domestic violence was not credible.

[16] Parents now appeal. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

[17] Mother and Father separately appeal the trial court's adjudication of Children as CHINS. 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, a CHINS adjudication is simply 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.*

[18] 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. *Id.* 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.

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). “When determining whether a child is a CHINS under Indiana Code section 31-34-1-1, the trial 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 in need of services, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re S.D.*, 2 N.E.3d at 1287. Instead, “[w]e consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom.” *Id.*

#### I. *Serious Endangerment*

[20] In a very detailed Order, which consisted of 123 findings of fact and eleven conclusions of law, the trial court demonstrated that Children’s physical and mental condition was seriously endangered as a result of Parents’ lack of supervision, their domestic violence, and their substance abuse. Disputing the serious endangerment prong of the CHINS statute, Father contends that even though he admitted to marijuana use, DCS failed to present evidence that he

used marijuana in the presence of Children or that Children were endangered by his use of illegal substances. However, the record reflects that at the time of removal of Children from Parents' care, the responding police officers testified that Father was under the influence of a narcotic. Later, during a visit with Children on September 25, 2022, Father appeared to be under the influence of illegal substances. Father hit his fists against his thighs, which frightened Children, and began slamming doors, eventually breaking one of them. He even stripped Children naked and took pictures of them.<sup>1</sup> Father's angry, belligerent, and aggressive behavior, prompted police intervention to ensure the safety of Children and DCS's personnel. Also, during the October 2, 2022 visit, Father again appeared to be under the influence of illegal drugs. Despite being requested to submit to drug screens, both Parents missed several scheduled screens.

[21] Children were also exposed to instances of domestic violence between Parents. A single incident of domestic violence in a child's presence may support a CHINS finding, and it need not necessarily be repetitive. *K.B. v. Ind. Dep't of Child Servs.*, 24 N.E.3d 997, 1003-04 (Ind. Ct. App. 2015). If there is no surety that the violence will not recur, a child's exposure can seriously endanger their welfare. *Id.* at 1004. Here, DCS's involvement commenced with a domestic

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<sup>1</sup> We echo the trial court's expressed concern in its finding no. 121 that "[Father] photographing the girls without clothes during every parenting time, particularly N.E. [who is not his biological daughter], is concerning considering his conviction for two [C]ounts of child molestation under cause number 49G05-1207-FA-049034. [Father's] victims were between the age of 5 and 6." (Father's App. Vol. II, p. 221).

violence dispute. Mother confirmed that there were physical altercations between her and Father, in that he pushed her against the wall. Mother in turn called Father a “wife beater” and “child molester.” (Father’s App. Vol. II, pp. 207-08). When FCM was removing Children from the home, Parents’ behaviors became so violent that police intervention was necessary. During the course of the CHINS proceedings, Mother expressed that Father had become violent with her and she no longer felt safe. Although she made arrangements to file a protective order against Father, she never went through with the filing.

[22] Father’s claim that the drug use and domestic violence did not occur in front of Children is an impermissible request to reweigh the evidence. *See In re S.D.*, 2 N.E.3d at 1287. The trial court explicitly found that Mother’s statement that she had lied about Father physically abusing her, destroying the home, and using methamphetamine was not credible. In turn, the trial court also determined Father’s testimony in which he denied domestic violence not to be credible.

[23] Focusing on DCS’s November 28, 2022 motion in which it requested the trial court to continue its scheduled hearing on DCS’s CHINS petition because “DCS has discussed the case with providers in place and believes that an Informal Adjustment is appropriate[,]” Mother contends that direct evidence of actual endangerment or impairment by Parents is absent as DCS agreed that a program of Informal Adjustment was the proper solution to the family’s needs. (Mother’s App. Vol. II, p. 190). Generally, an Informal Adjustment is a negotiated agreement between a family and DCS whereby the family agrees to

certain conditions and to participate in services. *See* I.C. Ch. 31-34-8. After a preliminary inquiry, and with the trial court's approval, a DCS intake officer may implement an Informal Adjustment if the officer has probable cause to believe child is a CHINS. I.C. § 31-34-8-1. The child and parents must consent to the program. I.C. § 31-34-8-2. Once the parties enter the agreement, the court can approve or deny the program. I.C. § 31-34-8-1(b), (c). Typically, a court denies the program because it finds no probable cause that the child is a CHINS or finds that the court's coercive intervention is needed. I.C. § 31-34-8-1(b). Although DCS and Parents represented to the trial court that they were negotiating an Informal Adjustment and Parents were amenable to its conditions, DCS never filed the Informal Adjustment for the trial court's approval. Furthermore, when alerted by DCS that it was negotiating a possible Informal Adjustment, the trial court cautioned the parties that "I've heard a lot of information which quite frankly, I've heard a lot of testimony which would make me even concerned about signing off on an [Informal Adjustment]." (Tr. Vol. II. p. 129). As such, the trial court informed the parties that it was "not making a decision on these kids until I hear the whole case where they move because there's too much going on[.]" (Tr. Vol. II, p. 131). By subsequently declaring Children to be CHINS, the trial court implicitly rejected the possibility of an Informal Adjustment and Mother's premise that no endangerment existed. *See* I.C. § 31-34-8-1(b) (a court can deny the program on the ground that the court's coercive intervention is needed.)

[24] Based on the record before us, we conclude that the evidence supports the trial court's conclusion that Children's physical and mental condition was seriously endangered by Parents because of their failure to provide Children with the necessary care and supervision.

## II. *Coercive Intervention by the Court*

[25] DCS is permitted to intervene in a family's life when the family cannot meet the child's needs without intervention of the court. *In re S.D.*, 2 N.E.3d at 1286.

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." *Matter of 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. *See, e.g., In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010) (same evidence used to establish more than one element of the parental rights intervention statute), *trans. denied*; *In re V.C.*, 867 N.E.2d 167, 179 (Ind. Ct. App. 2007) (same evidence supported CHINS and custody modification).

[26] Here, the trial court determined that coercive intervention was necessary because Parents demonstrated an inability to understand and appreciate the medical conditions and needs of Children. When a child has a fragile medical stature, parents must have the "ability, resources, and knowledge to address a child's medical concerns." *Matter of To.R.*, 177 N.E.3d 478, 491 (Ind. Ct. App.

2021). Although the home-based caseworker informed Parents of Children's various appointments with different medical providers, which included a hematologist, dentist, audiologist, the center for child development, First Steps therapy, ophthalmologist, ENT specialist, neurosurgeon, pediatrician, and Foster Care Bridge Clinic, Parents did not regularly attend, which corresponds to Parents' history of not taking Children to their medical appointments. Prior to DCS's involvement, N.E. had not seen a pediatrician since 2019, and although M.W. had received some follow-up care after brain surgery, Parents had not continued with this care as recommended.

[27] During their visits with Children, Parents failed to be consistent and responsible for Children's needs. When M.W. became ill during a scheduled visit, Parents displayed a lack of empathy and patience, and they did not comfort M.W. even though she was crying throughout the visit. During the fact-finding hearing, FCM did not recommend returning Children to Parents' care because of their inability and refusal to acknowledge the endangerment of Children, their violent behavior, their substance abuse, their lack of understanding for Children's medical needs, and their general indifference.

[28] Father now contends that his own testimony reflects that he was able and willing to take care of M.W.'s medical needs. However, Father's argument is nothing more than a request to reweigh the evidence. *See In re S.D.*, 2 N.E.3d at 1287. Considering Father's other testimony, where he could not name M.W.'s doctors, as well as FCM's testimony indicating that Parents had not been taking



Children to their medical appointments, the trial court was free to award less or no weight to this portion of Father's testimony.

[29] In support of her argument that no coercive intervention was needed, Mother reiterated her claim that because DCS was considering an Informal Adjustment, court intervention was not required. Again, as we noted before, DCS never submitted an Information Adjustment for court approval, as statutorily required.

[30] Because the record supports that Parents did not always comply with services, including visitation, did not attend to Children's medical appointments, and refused to submit to drug screens, the trial court properly concluded that coercive intervention was required to ensure Children received the care and services needed. Therefore, the trial court properly adjudicated Children as CHINS.

## **CONCLUSION**

[31] Based on the foregoing, we hold that the trial court did not err in adjudicating Children as CHINS.

[32] Affirmed.

[33] Crone, J. and Mathias, J. concur