

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

M.H. (Minor Child),
A Child in Need of Services,
and

C.H. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

September 19, 2023

Court of Appeals Case No.
23A-JC-613

Appeal from the Vanderburgh
Superior Court

The Honorable Brett J. Niemeier,
Judge

Trial Court Cause No.
82D04-2209-JC-1398

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

Altice, Chief Judge.

Case Summary

[1] C.H. (Father) appeals the trial court’s adjudication of his minor child M.H. (Child) as a child in need of services (CHINS). Father presents three issues for our review,¹ which we restate as follows:

1. Did the trial court err in adopting the majority of the proposed findings of fact and conclusions of law submitted by the Indiana Department of Child Services (DCS)?

2. Did the trial court err in not placing Child with Father during the pendency of the CHINS proceedings?

3. Is the evidence sufficient to support the CHINS adjudication?

[2] We affirm.

¹ Mother denied the allegations in the CHINS petition but opted to forego an evidentiary hearing and asked the court to make a decision based upon the documents before it. Thereafter, on behalf of Mother, the court adjudicated Child a CHINS. Mother does not participate in this appeal.

Facts & Procedural History

- [3] Child was born on May 5, 2020, to M.C. (Mother) and Father. Mother has another child, Ma.C. (Sibling), who was born on October 3, 2015. Mother has custody of both Child and Sibling (collectively, the Children).
- [4] Father has an extensive criminal history. Father was first incarcerated in August 1998, and he was again incarcerated at the time of the CHINS fact-finding hearing in December 2022 and the dispositional hearing in March 2023. Father's criminal history includes convictions for various felony drug offenses, residential entry, and burglary. He has also accumulated twenty-five misdemeanor convictions ranging from driving violations, false informing, criminal trespass, possession of drugs, resisting law enforcement, and operating while intoxicated. In October 2022, after the current CHINS petition was filed, Father was sentenced to three years, all suspended, after pleading guilty to a charge of auto theft dating back to September of 2021.
- [5] In addition to his criminal history, Father has a history of domestic violence. DCS noted that in a two-year span from 2019 through October 2021, there had been "52 police runs specifically for Domestic Violence between [Father] and [Mother]." *Exhibits* at 94. The domestic violence continued in April and May 2022 and culminated in Father's arrest on May 13, 2022, after he used an object to smash Mother's windshield.
- [6] Domestic violence served as the basis for DCS's prior involvement with Father. In the fall of 2019, DCS attempted an informal adjustment (IA) due to reports

of violence in the home. The IA was eventually closed when Father was incarcerated, and thus no longer in the home. In September 2020, DCS filed a CHINS petition due to continued domestic violence. Father denied the allegations in the petition, refused to participate in services, and requested a full fact-finding hearing. The hearing was later vacated due to the Covid-19 pandemic. While on hold, Mother participated in services and represented that she had ended her relationship with Father. As a result, the CHINS case was closed on March 1, 2021.

[7] In October 2021, DCS filed a second CHINS petition after Father, Mother, and the Children were involved in an automobile accident around 3:30 a.m. and the Children were not properly restrained, leading to excessive injuries. Sibling reported that Father and Mother were fighting over a phone when the crash occurred. On March 1, 2022, after a hearing, the Children were adjudicated CHINS. Father was offered supervised visits, but he was not compliant. Father also did not participate in services or communicate with DCS in any way. The CHINS action was closed in August 2022 when Children were returned to Mother.

[8] The instant CHINS petition arose out of a tragic incident that occurred on September 4, 2022. Around 9:30 p.m., DCS received a report that Sibling had accidentally shot himself in the head while Mother and Child were downstairs in the same house. Sibling was taken to the hospital, where he died.

- [9] A DCS family case manager interviewed Mother at the hospital, during which Mother admitted to using marijuana but denied using other illegal substances. She submitted to a urine screen, which came back positive for marijuana. Mother also informed the FCM that Father had been at the hospital but because he was “drunk,” law enforcement ordered him to leave. *Appellant’s Appendix* at 27. A search warrant was granted for Mother’s home, and, during an initial sweep, officers located two corner bags of marijuana and a corner bag of a “rock-like white substance” that later tested positive for methamphetamine and fentanyl. *Id.* Mother requested that if Child was going to be removed from her care that Child be placed with maternal grandparents.
- [10] Just after midnight on September 5, 2022, two FCMs, accompanied by law enforcement, went to Father’s home. Father appeared to be under the influence as he was slurring his words, unable to stand up straight or stay still, and was quick to become agitated. Father agreed to submit a urine screen but after five to ten minutes came out and said he could not complete it. When Father became very aggressive toward both FCMs, law enforcement warned him to calm down or he would be taken to jail. The decision was made to place Child with maternal grandmother.
- [11] On September 7, 2022, DCS filed a CHINS petition. Father appeared at the initial hearing on September 8, 2022, and requested that Child be placed in his custody. DCS objected, pointing out Father’s history with DCS, a recent domestic violence incident between Father and Mother, Father’s criminal history, and Father’s “very aggressive” behavior with FCMs. *Transcript* at 13.

The trial court denied Father's request for placement. At a September 27 hearing, Father denied the allegations in the CHINS petition and again requested that Child be placed in his care. The court denied his request and set a fact-finding hearing for October 19, 2022.

[12] On October 7, 2022, DCS filed an amended CHINS petition adding that on September 11, 2022, DCS received a report that Father had forced his way into a home where Mother was visiting, struck Mother and stole her cell phone. On November 28, 2022, DCS filed a second amended CHINS petition, adding that Father had been arrested and charged with possession of cocaine, possession of a narcotic drug, domestic battery with bodily injury against a pregnant woman, domestic battery with a prior conviction, and resisting law enforcement. Father was incarcerated and remained incarcerated throughout the remainder of the CHINS proceedings. Based on these charges, Father also faced revocation of his three-year probation.

[13] A fact-finding hearing commenced on October 19, 2022, with DCS presenting its documentary evidence pertaining to Father's prior DCS involvement as well as his criminal history. The fact-finding hearing was completed on December 8, 2022, with one witness testifying for DCS. Father did not appear at the hearing because he was incarcerated and refused to be transported. DCS filed its proposed findings of fact and conclusions of law with the court on December 22, 2022. On January 31, 2023, the trial court issued its findings of fact and conclusions of law and therein adjudicated Child to be a CHINS. The court

held a dispositional hearing on March 1, 2023. Father now appeals. Additional facts will be presented as necessary.

Discussion & Decision

Findings of Fact and Conclusions of Law

[14] Father argues that the trial court erred in adopting DCS’s proposed findings and conclusions “almost verbatim.” *Appellant’s Brief* at 5. As Father recognizes, however, trial courts are not prohibited from adopting a party’s proposed findings and conclusions in their entirety. Indeed, as this court and the Indiana Supreme Court have recognized:

It is not uncommon for a trial court to enter findings that are verbatim reproductions of submissions by the prevailing party. The trial courts of this state are faced with an enormous volume of cases and few have the law clerks and other resources that would be available in a more perfect world to help craft more elegant trial court findings and legal reasoning. We recognize that the need to keep the docket moving is properly a high priority of our trial bench. For this reason, we do not prohibit the practice of adopting a party’s proposed findings.

Prowell v. State, 741 N.E.2d 704, 708-09 (Ind. 2001); *Kitchell v. Franklin*, 26 N.E.3d 1050, 1057-58 (Ind. Ct. App. 2015), *trans. denied*. There is nothing inherently suspect about findings of fact and conclusions of law even when adopted verbatim from a prevailing party. *Kitchell*, 26 N.E.3d at 1057.

[15] Here, DCS submitted proposed findings of fact and conclusions to the court. The chronological case summary (CCS) does not indicate that Father likewise

filed proposed findings and conclusions. The trial court then made some alterations to the proposed findings and conclusions submitted by DCS and issued the remaining as its findings and conclusions. The trial court did not err in doing so.

Least Restrictive Placement

[16] Father argues that the trial court erred in not placing Child in his care during the pendency of the CHINS proceedings. Father asserts that there were “no substantial allegations against [him] which would have warranted not placing the Child with him at the time the Child was detained.” *Appellant’s Brief* at 14. Father is mistaken.

[17] When Child was initially detained on September 5, Mother had informed DCS that Father was drunk. DCS, along with law enforcement, went to Father’s home and determined that Father indeed was under the influence and therefore not able to properly care for Child. In response to Father’s subsequent requests that Child be placed in his care, DCS objected, pointing out Father’s extensive criminal history, his history with DCS, and the ongoing issues with domestic violence, even noting a recent domestic violence incident between Father and Mother since the filing of the instant CHINS petition. DCS also pointed out that Father had an upcoming sentencing hearing on October 17 on felony charges. In denying Father’s request, the court considered the information provided and stated that it “seriously question[ed] the safety of a child in [Father’s] care right now.” *Transcript* at 15.

[18] Further, in its entries on the CCS, the court indicated that it made the findings required under Ind. Code § 31-34-5-2 (detention hearing) and I.C. § 31-34-9-2 (probable cause for CHINS) regarding placement of the Child. Essentially, the court found that Child's detention was necessary to protect Child because under the circumstances, Child's safety and welfare precluded placement with Father. Moreover, by the time the court adjudicated Child a CHINS and entered a dispositional order, Father was incarcerated. Father has failed to demonstrate any error or harm.

Sufficiency

[19] Father also challenges the sufficiency of the evidence supporting the CHINS adjudication. 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 upon a showing that the decision of the trial court was clearly erroneous. *Id.* Further, in family law matters, we generally grant latitude and deference to trial courts in recognition of the trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied.*

[20] There are three elements DCS must prove by a preponderance of the evidence 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 eleven 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* I.C. § 31-34-1-1. 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*.

[21] The purpose of a CHINS adjudication is to protect the children, 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)). Further, when determining CHINS status, particularly the coercive intervention element, courts should consider the family’s condition not just when the case was filed, but also when it is heard 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)).

[22] Father challenges several of the court’s findings of fact. Many of Father’s challenges are simply requests to reweigh the evidence, which we will not do. For example, the evidence supported the court’s finding that Father has an “extensive history” with DCS. *Appellant’s Appendix* at 15. Indeed, Father has been involved in at least three other child welfare cases involving allegations of neglect. The current CHINS action is the third action involving Child in the first three years of Child’s life.

[23] Father also argues that the court’s finding of repeated and continued domestic violence does not support the CHINS determination because “there is no evidence or findings that the Child was present or observed the alleged domestic violence.” *Appellant’s Brief* at 16. Contrary to Father’s claim in this regard, there was evidence that Child was present during the domestic violence that resulted in a car accident in which Child was injured. *See Matter of Ar.B.*, 199 N.E.3d 1232, 1238 (Ind. Ct. App. 2022) (holding that a single incident of domestic violence in a child’s presence may support a CHINS finding, and it need not necessarily be repetitive”). Further, we note that Mother and Sibling also “described multiple vivid domestic violence encounters in the home in which [Father] physically attacked [M]other in the presence of the children” throughout DCS’s multiple involvements with the family. *Appellant’s Appendix* at 69.

[24] Father's challenge to the court's finding that Father was "observed to be under the influence" of alcohol is again an improper request to reweigh the evidence. *Appellant's Appendix* at 16. That Father was under the influence of alcohol at the time of the initial detention was not the sole reason for the court's CHINS adjudication; rather, this finding was properly considered and weighed with the other findings made by the court in making its CHINS determination. Similarly, regarding the court's findings that Father exhibited "erratic," "violent," and/or "dangerous" behaviors toward others, such findings were not the sole basis for the court's CHINS adjudication. *Id.* at 17. Instead, the court properly considered and weighed this evidence in making its CHINS determination. Again, these findings were not considered in isolation but rather, were supported by the record and properly weighed with the court's other findings.

[25] To the extent Father argues that the findings are insufficient because they are mere recitations of witness testimony, Father misrepresents the court's findings. In noting the testimony provided by an FCM, the trial court does so as support for its independent finding that Father was unable to provide care, supervision, and support for Child. Other challenged findings flow directly from the court's taking of judicial notice of Father's pending criminal cases and charges and of his pending hearing on the petition to revoke his probation related to one of his earlier convictions. Simply put, we have reviewed the record and conclude that the court's findings are not mere recitations of witness testimony.

[26] The court adjudicated Child a CHINS based on Father's criminal history, his prior involvement with DCS, the continued and ongoing domestic violence directed toward Mother, and Father's current incarceration. The trial court's findings in support of the CHINS adjudication are supported by the record. The CHINS adjudication is affirmed.

[27] Affirmed.

May, J. and Foley, J., concur.