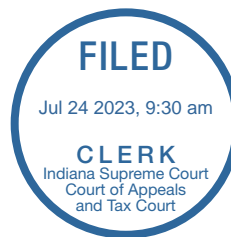


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

K.W., C.W., T.R., and K.R.
(Minor Children),

Children in Need of Services,

K.W. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

July 24, 2023

Court of Appeals Case No.
23A-JC-120

Appeal from the Marion Superior
Court

The Honorable Geoffrey A.
Gaither, Judge

The Honorable Scott Stowers,
Magistrate

Trial Court Cause Nos.
49D09-2207-JC-5099
49D09-2207-JC-5100
49D09-2207-JC-5101
49D09-2207-JC-5102

Memorandum Decision by Judge Kenworthy
Judges Bailey and Tavitias concur.

Kenworthy, Judge.

Case Summary

- [1] K.W. (“Mother”) challenges the sufficiency of evidence supporting the trial court’s orders adjudicating her four children—C.W. (born 5/27/2013), K.W. (born 7/3/2014), K.R. (born 9/19/2016), and T.R. (born 4/30/2018) (collectively, “Children”)—Children in Need of Services (“CHINS”).¹ Identifying sufficient evidence Children are CHINS, we affirm the trial court.

Facts and Procedural History

- [2] In June 2022, the Indiana Department of Child Services (“DCS”) received a report of domestic violence at Mother’s residence. Eventually, DCS filed petitions alleging Children were CHINS. At the consolidated fact-finding hearing—which took place on October 5, 12, and 26, 2022—there was evidence a violent altercation took place at Mother’s residence in June 2022. DCS learned of the altercation after law enforcement responded to Mother’s 9-1-1 call. Mother told law enforcement about the altercation, which involved the father of two of the Children (“Ex-Boyfriend”). Mother said she and Ex-Boyfriend were separated and “she had a protective order against him.” *Tr. Vol. 2* at 8. Mother explained that, despite the protective order, she allowed Ex-

¹ No other biological parent actively participates in this appeal.

Boyfriend to come to the residence because “it was his birthday[.]” *Id.* According to Mother, she and Ex-Boyfriend “got into a verbal altercation because she had another male friend over[.]” *Id.* at 7. Ex-Boyfriend became aggressive, ran out the front door, and fired one shot. He then came to the front of the house and “reached through the front window and slapped her in the face[.]” *Id.* at 7–8. Mother reported Ex-Boyfriend “returned to the front of the residence and fired three more shots” before leaving. *Id.* at 8. Mother also said Children were in the living room during the altercation. At that point, Children were between the ages of four and nine.

[3] Because of the severity of the allegations reported to DCS—involving domestic violence with gunshots—a DCS family case manager (“FCM”) tried to fulfill a requirement to speak with Children within twenty-four hours. The FCM went to the residence, left a notice, called and texted Mother with no response, and left another notice. Several days passed. Eventually, the FCM reached Mother by phone and scheduled an interview. When the FCM tried to resolve “conflict between times” for the interview, Mother stopped responding. *Id.* at 26. The FCM went to the residence and spoke with Mother. At the time, Children were sleeping, and Mother would not allow the FCM to wake them. On July 1, Mother brought Children to the DCS office for the FCM to conduct interviews. When Mother spoke with the FCM about the violent altercation leading to Mother’s 9-1-1 call, Mother did not mention gunshots. Mother acknowledged being slapped, but said “it wasn’t a big deal[.]” *Id.* at 27. In general, Mother “kind of down played [*sic*] . . . the domestic disturbance.” *Id.* The FCM also

spoke with Ex-Boyfriend, who denied firing a gun. At that point, DCS substantiated the report and filed petitions alleging Children were CHINS.

[4] The trial court held an initial hearing, appointed Children a guardian ad litem (“GAL”), and granted temporary wardship of Children to DCS. The trial court allowed Children to remain in Mother’s care so long as Mother participated in a family-preservation assessment and followed all the recommendations.

[5] A family-preservation caseworker soon met with Mother, who said she “did not want to participate in services” and “DCS could come take her children because she was not going to be forced to participate in services[.]” *Id.* at 54. Mother did allow the caseworker to walk through the home and see Children, at which point the caseworker observed “very deplorable” conditions in the apartment. *Id.* at 41. The caseworker saw “black mold in several areas,” including in the ventilation. *Id.* There were cracks in the ceiling and the floorboards. As for bedding, the caseworker recalled seeing only one box spring and one mattress in the home. At one point, the caseworker saw C.W. and T.R. sleeping on the box spring, which had “exposed springs” and “holes in it,” was “very dirty,” and was generally “not appropriate for children to be sleeping or sitting on.” *Id.* at 71. Children informed the caseworker “they sleep on the floor sometimes,” *id.*—and the caseworker learned that, when it rained in the area, “there would be about one to two inches of water on the floor,” *id.* at 42.

[6] As to the structural integrity and overall habitability of the living space, the caseworker helped Mother by contacting the local health department, which

prompted repairs and rendered “the conditions better and livable.” *Id.* at 43. Still, the caseworker maintained independent safety concerns for Children based on issues with cleanliness, observing “lots of trash in the home” and bugs in the refrigerator. *Id.* at 42. The floors were “very dirty” with “food and trash everywhere,” *id.* at 56, and sometimes the caseworker would “hav[e] to call [for a] safety check” after visiting the home “because of . . . safety concerns” from the “very horrible” conditions, *id.* at 58. Although Mother had been “making efforts” to clean the apartment, *id.* at 42, there were still issues with cleanliness as of October 10, 2022—the last time that caseworker visited the home—with only “mild improvement,” *id.* at 62. The caseworker testified, although the carpet had been replaced, there were “bags of trash on the floor,” “food on the new carpets,” and the living space “was not very walkable[.]” *Id.* at 63. The caseworker believed the conditions were recurring “to make the carpet dirty again.” *Id.* As to Mother’s commitment to change, the caseworker said Mother was “in a very pre-contemplative state of change”—that is, Mother was “intermittently compliant” and, at times, could be “very manipulative” in working with service providers. *Id.* at 61. As the caseworker summarized: “[S]ometimes she won’t meet for case management, sometimes she will.” *Id.*

[7] At times, the caseworker observed Mother “being verbally aggressive” toward Children “when it came to addressing the cleanliness of the home.” *Id.* at 56. And Mother was “still very verbally aggressive” toward Children as of October 10, 2022. *Id.* at 57. Mother would tell Children “they needed to clean up and if they didn’t . . . she was going to let them live in filth and with roaches so they

can learn what it was like.” *Id.* at 56. At one point, Mother “was screaming at them,” causing C.W. to cry and making K.W. become “quiet.” *Id.* at 65. The caseworker testified these interactions were “inappropriate[.]” *Id.* at 64. A different caseworker later broached cleanliness issues after noticing dirty dishes piling up. Mother said: “[I]f the kids wanted the dishes to be washed[,] they’ll wash them.” *Id.* at 93. When the caseworker encouraged Mother to coach Children to help, Mother said: “I’m tired of telling them to do these things[;] if they wanted them clean[,] then they’ll just do them themselves.” *Id.* at 94.

[8] The GAL contacted Mother in July 2022 about the case. At first, Mother did not respond. The GAL was eventually able to meet with Mother in October 2022. The GAL expressed concerns about Children’s safety based on Mother’s “explosive nature” around Children. *Id.* at 88. The GAL was also concerned because Mother made comments—in front of Children—that “DCS can take the kids.” *Id.* Mother made similar comments to the FCM, saying “she would surrender the kids” to DCS, which the FCM understood to mean Mother “was going to drop them off at the DCS office[.]” *Id.* at 85. The GAL noted Mother “said she is not participating in services moving forward.” *Id.* at 88. There was also evidence Mother failed to maintain contact with the FCM, which hindered the FCM’s attempts to help Mother obtain beds and orchestrate delivering those beds to the home. As for communication obstacles, at times Mother blocked the FCM’s phone number. When Mother first interacted with the FCM in person, she “angrily shut the door in [the FCM’s] face” and then “after a couple [of] minutes she . . . opened the door.” *Id.* at 79.

[9] Regarding Ex-Boyfriend, there was evidence he previously committed domestic violence against Mother. That is, in the summer of 2021, Mother and Ex-Boyfriend “got into an argument over some keys.” *Id.* at 16. When Ex-Boyfriend went to leave, “he slammed the door, somehow he came back in, the argument escalated[,] and he punched [Mother] in the collarbone” before “proceed[ing] to destroy the house, throw things around the house.” *Id.* In recounting the violence, Mother said she “was informed by a friend . . . that [Ex-Boyfriend] was going to come and shoot up her house.” *Id.* at 17. When DCS went to Mother’s residence to conduct an assessment, “[t]he home was in disarray” with “items kind of thrown around[.]” *Id.* DCS spoke with Ex-Boyfriend. Although Ex-Boyfriend “denied any sort of domestic violence,” he said he “was concerned for . . . [C]hildren’s safety” while in Mother’s care. *Id.* at 18. According to Ex-Boyfriend, Mother “doesn’t really take care of them” and “he would be the one, when he was there, [who] would take care of them.” *Id.* DCS later closed the assessment when Mother obtained a protective order.

[10] Before long, Mother disregarded the protective order. Specifically, there was evidence a DCS representative went to Mother’s residence in September 2021 to investigate an unrelated allegation (which DCS did not substantiate). In conducting the investigation, the DCS representative found Children at home with only Ex-Boyfriend. When the representative spoke with Mother about the protective order, Mother said she “dropped” the order. *Id.* at 19. DCS was unable to verify Mother’s claim the protective order was no longer valid. When DCS asked if Mother could provide information about the change in status,

Mother told the DCS representative “she doesn’t have to do [her] job for [her].” *Id.* at 20. The representative ultimately told Mother and Ex-Boyfriend: “[A]s long as the protective order is in place[,] they need to follow it,” else Ex-Boyfriend could “get[] arrested.” *Id.* As to the order, in meeting with DCS about the violent altercation in June 2022, Mother said she knew a protective order had been “put in place” but she “did not understand what that meant because she didn’t physically have [the order] in her hands[.]” *Id.* at 35.

[11] At the hearing, several witnesses recommended Mother participate in services to remedy issues affecting Children. One recommended service was parenting education to address Mother’s unrealistic expectations of Children’s role in maintaining the cleanliness of the home, helping Mother give “direction” and “structure” to Children in ways appropriate to their ages. *Id.* at 99. Other recommendations were for a domestic-violence assessment, home-based services, and Mother’s participation in a mental-health evaluation to determine whether her “very aggressive” communications stemmed from unresolved mental-health issues. *Id.* In general, recommendations revolved around Mother’s struggles to effectively communicate, including with Children—an unresolved issue one service provider testified could “turn into safety concerns[.]” *Id.* at 80. That is, when Mother displayed “outburst and anger” in communications with Children, it would “really impact the kids” and their ability to “communicate with her[.]” *Id.* As for the ongoing communication issues, there was testimony Mother “would benefit from . . . parent education” to help her communicate “more effectively and properly.” *Id.* at 57. Moreover,

as to whether Mother was likely to participate in these services “without court involvement,” the FCM testified court involvement would be necessary to garner Mother’s participation because “[t]hroughout . . . the course of this case,” Mother “[m]entioned that she’s not going to do anything multiple times[.]” *Id.* at 81.

[12] The trial court entered a written order adjudicating Children CHINS. In that order, the court determined each child’s physical or mental condition was “seriously impaired or physically endangered” because of “domestic violence, their Mother’s volatility, and Mother’s inability to maintain an appropriate living environment[.]” *Appellant’s App. Vol. 2* at 193. The court also determined Children need “care, treatment, or rehabilitation” that was “unlikely to be provided or accepted without the coercive intervention of the [c]ourt[.]” *Id.* The court later held a dispositional hearing and ordered Mother to complete both a domestic-violence assessment and a psychological evaluation, participate in home-based case management and therapy, and follow all recommendations.

[13] Mother now appeals the determination Children are CHINS.

Discussion and Decision

[14] The trial court adjudicated Children CHINS under Indiana Code Section 31-34-1-1. Under the statute, a minor child is a CHINS if:

(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 (2019).

[15] Our Supreme Court has synthesized this statutory language, explaining a CHINS adjudication requires proof of “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). All in all, DCS must prove by a preponderance of the evidence a child is a CHINS. I.C. § 31-34-12-3 (1997); *In re Eq.W.*, 124 N.E.3d 1201, 1208 (Ind. 2019).

[16] Here, the CHINS order included special findings—but neither party requested findings and “no statute expressly requires formal findings in a CHINS fact-

finding order[.]” *S.D.*, 2 N.E.3d at 1287. The trial court’s findings are therefore *sua sponte* findings that control only on the issues they cover, with a general judgment standard controlling any “issues . . . not covered by such findings.” Ind. Trial Rule 52(D). Where a general judgment standard applies, we affirm if the judgment can be sustained on any legal theory supported by the evidence. *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). As to matters covered by the findings, we will not “set aside the findings or judgment unless clearly erroneous.” T.R. 52(A). And we will affirm if the evidence supports the findings and the findings support the judgment. *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). Moreover, in conducting our appellate review, we will not reweigh evidence, *id.* at 124, and we must give “due regard” to the opportunity of the trial court to judge the credibility of witnesses, T.R. 52(A).

[17] Here, the trial court adjudicated Children CHINS based on issues involving domestic violence, home conditions, and volatility resulting in ineffective communications. In now challenging the sufficiency of evidence supporting the determination Children are CHINS, Mother generally focuses on evidence favorable to her position. For example, regarding home conditions, Mother contends: “[W]hile the DCS-contracted service providers found Mother’s apartment to be in poor condition, DCS focused its attention on Mother, rather than the landlord.” *Appellant’s Br.* at 22. She asserts “both DCS and Mother apparently had bedding on order” as of the fact-finding hearing. *Id.* But there is ample evidence Mother would not maintain a healthy environment for Children because of her unrealistic expectation they bore responsibility for

housekeeping. Indeed, the evidence includes testimony Mother believed Children—who were all under the age of nine, with one child just four years old—“needed to clean up and if they didn’t . . . she was going to let them live in filth and with roaches so they can learn what it was like.” *Tr. Vol. 2* at 56.

[18] As for evidence related to Mother’s volatile temperament, Mother generally minimizes the evidence, asserting: “[T]he fact that Mother was not welcoming to service workers and was characterized as ‘hostile’ or ‘volatile’ is legally insufficient to support a CHINS finding.” *Appellant’s Br.* at 23. Yet there is evidence showing Mother’s volatility impacts her ability to be a fit parent for Children, with Mother “screaming at them” to participate in chores and at times displaying verbal aggression. *Tr. Vol. 2* at 65. As one service provider testified, “the manner [Mother] directed them to clean up was inappropriate.” *Id.* at 64. And the court specifically found Mother’s “affect and demeanor interfere with her ability to communicate her own, the [C]hildren’s, and the family’s needs”—a significant unresolved issue under the circumstances in that the court determined Mother was “not meeting the [C]hildren’s basic needs” as a “direct result of her inability to communicate with others.” *Appellant’s App. Vol. 2* at 192.

[19] Turning to the issue of domestic violence, Mother focuses on her own testimony indicating she “had split up with [Ex-Boyfriend], had undertaken domestic[-]violence training, and attempted to deescalate a single situation before contacting police for assistance.” *Appellant’s Br.* at 21–22. Yet the trial court was free to reject this self-serving testimony. Moreover, although Mother

asserts “[t]here is no direct evidence . . . Children witnessed an act of domestic violence on or after June 16, 2022, much less suffered from its effects,” *id.* at 22, Mother concedes Children heard the violent altercation that led to these CHINS proceedings, *Reply Br.* at 5 (“While the Children heard an argument, there is no evidence the Children actually ‘witnessed domestic violence.’”); *see also Appellant’s Br.* at 20 (noting “it is likely that the Children *heard* an argument”). But *hearing* domestic violence can also negatively affect children. And, as the Indiana Supreme Court has observed, even “[i]nfants as young as fifteen months exhibit behavioral disturbances from spousal violence.” *In re E.M.*, 4 N.E.3d 636, 644 (Ind. 2014).

[20] In any case, regardless of evidence Children witnessed domestic violence, the evidence shows a risk of physical harm to Children based on Mother’s disregard of the protective order, which suggests Mother lacks appreciation for its function. Thus, to the extent Mother argues the evidence does not show Children are “seriously endangered” under Indiana Code Section 31-34-1-1, the evidence of gun violence and Mother’s disregard for the protective order supports the trial court’s finding of serious endangerment. In light of Mother’s pattern of disregarding the protective order, the evidence before the trial court reflects a risk gun violence would again erupt at the home with Children

present. This line of evidence supports the trial court’s finding Children need care they will not receive without the court’s intervention.²

[21] Mother’s other appellate arguments amount to a request to reweigh evidence. Declining this request, we conclude the evidence supports the pertinent findings, which support the decision to adjudicate Children CHINS.

Conclusion

[22] Sufficient evidence supports the determination Children are CHINS.

[23] Affirmed.

Bailey, J., and Tavitas, J., concur.

² Thus, to the extent Mother contends other predicate findings are clearly erroneous, we need not address her contentions; those findings amount to mere surplusage tantamount to harmless error at most. *See, e.g.*, App. R. 66(A) (“No error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.”).