

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

B.T. (Minor Child),
Child in Need of Services,

and

A.H. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

November 30, 2022

Court of Appeals Case No.
22A-JC-1345

Appeal from the Madison Circuit
Court

The Honorable Stephen Koester,
Judge

Trial Court Cause No.
48C02-2109-JC-306

Altice, Judge.

Case Summary

- [1] A.H. (Mother) appeals the juvenile court's order adjudicating B.T. (Child) a child in need of services (CHINS) and the court's subsequent dispositional order. Mother argues that the CHINS adjudication and the conditions placed on her in the dispositional order are not supported by the evidence.
- [2] We affirm.

Facts & Procedural History

- [3] Child was born on April 2, 2015, to Mother and B.J.T. (Father). Mother has a history with the Indiana Department of Child Services (DCS) prior to Child's birth that includes substantiated allegations regarding domestic violence, marijuana use, and a child testing drug positive in 2010. In 2013, DCS substantiated allegations against Mother regarding lack of supervision, the hitting of a child with a stick, and Mother testing positive for methamphetamine and amphetamine. In another matter, occurring in May 2014, Mother was substantiated on allegations of a dirty home, substance abuse, and Father's temper. In March 2021, DCS removed Child from Mother's care following allegations that Child suffered abuse and neglect.¹ According to Mother, Child was placed with Mother's sister at that time.

¹ It is not clear from the record how this matter was handled by DCS.

[4] In September 2021, Child, along with two half-siblings, lived with Father, and DCS believed Father to be the custodial parent.² On September 28, 2021, DCS received a report that Child was a victim of abuse or neglect. Specifically, it was alleged that Father physically assaulted and choked his girlfriend while Child and his half-siblings were home and at least one of the children reported witnessing the incident.³ As a result, Father was arrested and criminally charged, and a protective order was issued prohibiting him from being in Child's presence. Child was detained by DCS. At the time, Mother's whereabouts were unknown.

[5] DCS filed a CHINS petition on September 29, 2021, and at an initial hearing the following day, Father admitted Child was a CHINS and that he would benefit from services. An initial hearing for Mother was held on December 1, 2021, but Mother failed to appear. Mother's counsel informed the court that he had not had any contact with Mother since he was appointed and that he did not have contact information for her. The court entered a denial on her behalf as to the CHINS petition.

[6] After several continuances, the court held a CHINS fact-finding hearing on March 28, 2022. The evidence showed that Mother was living with her fiancé, who had been convicted of child molesting in 2004. Mother testified that her

² It is unclear how Child came to be in Father's custody.

³ The incident occurred the day before and police responded to the home following a 911 call that was made by a child.

fiancé paid for their housing and that she worked part-time at a Speedway Gas Station. Mother had never paid support for Child. She also admitted that Child had been out of her care for a year and that she had not seen Child since November 2021, even though DCS had offered her visitation services. During the pendency of the CHINS action, Mother did not maintain contact with DCS and, in fact, contacted DCS for the first time only a “few days” before the fact-finding hearing. *Transcript* at 44. On April 14, 2022, the juvenile court adjudicated Child a CHINS.

- [7] The court held a dispositional hearing on May 11, 2022. During the hearing Mother specifically objected to the requirement that she submit to random drug screens, arguing that there was nothing in the CHINS allegations or the court’s findings relating to substance abuse by her. Ultimately, the court did not include random drug screens for Mother in the dispositional order. Mother now appeals. Additional facts will be provided as necessary.

Discussion & Decision

- [8] Although Mother argues that the CHINS adjudication is not supported by sufficient evidence and must be reversed, she does not challenge any of the court’s findings. Rather, she asserts that she was the “non-offending parent” and baldly claims that “[t]he evidence failed to show any needs of [C]hild that could not be met by [M]other if [Child] was in her custody.” *Appellant’s Brief* at 6, 7.

[9] It is well established that the purpose of a CHINS adjudication is to protect the children, not punish the parents. *In re K.D.*, 962 N.E.2d 1249, 1255 (Ind. 2012). A CHINS adjudication under Ind. Code § 31-34-1-1 requires proof of three basic elements: the parent’s actions or inactions have seriously endangered the child; the child’s needs are unmet; and “perhaps most critically,” those needs are unlikely to be met unless the State intervenes. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). The focus of a CHINS proceeding is on “the best interests of the child, rather than guilt or innocence as in a criminal proceeding.” *D.S. v. Ind. Dep’t of Child Servs.*, 150 N.E.3d 292, 295 (Ind. Ct. App. 2020).

[10] A CHINS finding is about the status of the child, not about whether one or the other parent was at fault. *K.D.*, 962 N.E.2d at 1255. A child may be a CHINS even though one parent did not actively participate in the acts which cause the child harm. *Id.* Here, in adjudicating Child a CHINS, the court found that Father exposed Child to domestic violence.⁴ The court also considered that Mother’s whereabouts were unknown when Child was detained, that Mother had limited contact with DCS after learning that Child had been detained, and that, at the time of the fact-finding hearing, Mother had not seen Child in over six months. Mother’s failure to visit Child and her clear inaction since the filing of the CHINS petition shows her lack of commitment to the parent-child relationship and buttresses the court’s determination that Child was endangered

⁴ Indeed, Father admitted that Child was a CHINS and could benefit from services.

and his needs were unlikely to be met unless the State intervened. The court's CHINS determination is supported by the evidence.

[11] Mother also challenges the dispositional order, arguing that she was being “punished . . . for the actions of [Father]” and “forc[ed] to jump through multiple hoops,” some of which she claimed “are impossible” for her to comply with. *Appellant’s Brief* at 8.

[12] Once the court adjudicates a child to be a CHINS, Ind. Code § 31-34-11-2 requires the court to hold a dispositional hearing and enter a dispositional decree. The dispositional decree must be “consistent with . . . the best interest of the child,” and, among other things, be “in the least restrictive (most family like) and most appropriate setting available” and provide a reasonable opportunity for participation by the parent. I.C. § 31-34-19-6. “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 circumstances that was revealed by the evidence.” *A.C. v. Marion Cnty. Dep’t of Child Servs.*, 905 N.E.2d 456, 464 (Ind. Ct. App. 2009). In this case, the court found, and Mother does not challenge, that Child needed Mother “to fulfill [her] parental obligations and provide [Child] with a safe and appropriate home, free from the effects of neglect, abuse, domestic violence, or substance abuse.” *Appellant’s Appendix* at 8. To that end, the trial court ordered Mother to inform DCS about individuals who lived in her home, to permit DCS and service providers to make announced and unannounced visits to her home, to secure and maintain a legal and stable source of income adequate to

support all household members, including Child, to ensure that Child has clothing and necessary supplies even when Child is out of her care, to not use illicit substances, to obey the law, and to ensure that Child and/or herself participate in individual counseling as referred by a case manager.

[13] Mother challenges the dispositional order by arguing that the conditions placed upon her are impossible to comply with because Child is not in her care. She also claims that the court granted “unbridled discretion” to DCS to force her to participate in counseling. *Appellant’s Brief* at 8. Finally, she takes issue with the conditions requiring her to obey the law and not use illicit substances, characterizing them as “conditions imposed on criminals.” *Id.* at 9. Mother’s arguments are not well taken.

[14] The record demonstrates that Mother lives with her fiancé, who is a convicted sex offender. Mother has only a part-time job, and her fiancé is solely responsible for covering the cost of their home. Further, Child, at the tender age of six, has been exposed to, if not directly witnessed, domestic violence. Under these circumstances, we conclude that the conditions imposed upon Mother in the dispositional decree are consistent with the best interests of Child, not overly restrictive, and provide Mother with a reasonable opportunity to participate.

[15] Judgment affirmed.

Brown, J., and Tavitas, J., concur.