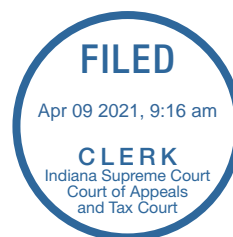


MEMORANDUM DECISION

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 D.H.-O. (Child
in Need of Services)

A.M. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

April 9, 2021

Court of Appeals Case No.
20A-JC-2065

Appeal from the Lawrence Circuit
Court

The Honorable Nathan Nikirk,
Judge

The Honorable Anah Hewetson
Gouty, Referee

Trial Court Cause No.
47C01-2003-JC-79

May, Judge.

[1] A.M. (“Mother”)¹ appeals the trial court’s adjudication of D.H.-O. (“Child”) as a Child in Need of Services (“CHINS”). Mother argues the trial court’s findings do not support its conclusion that Child is a CHINS. We affirm.

Facts and Procedural History

[2] Mother gave birth to Child on January 27, 2005. Child has been the subject of twelve different reports of neglect by Mother since 2007 and one prior CHINS adjudication. Following a report to DCS in July 2019 alleging neglect and sexual abuse, Child was removed from Mother’s care and placed in residential treatment. Though there was not a CHINS adjudication connected to the July 2019 report, Child remained in inpatient treatment for mental health issues until March 12, 2020.

[3] On March 4, 2020, DCS filed a petition alleging Child was a CHINS because Mother did not give Child his medication as prescribed, did not take Child to appointments to treat his degenerative eye condition, and acted in an inappropriate sexual way towards Child – all of which had been alleged by service providers and Family Case Managers in 2019. The trial court held a detention hearing on March 5, 2020. Upon his release from residential treatment on March 12, 2020, Child returned to Mother’s home. On June 22,

¹ Child’s father, T.O. (“Father”), does not participate in this appeal.

2020,² the trial court held its initial hearing as to Father, who admitted Child was a CHINS. On July 13, 2020, the trial court held an initial hearing on the CHINS petition as to Mother. Mother denied the allegations in the CHINS petition, and the trial court appointed her counsel. The trial court set the fact-finding hearing for July 27, 2020, but it was rescheduled for September 18, 2020, by agreement of the parties.

[4] The trial court held its fact-finding hearing on September 18, 2020. On October 5, 2020, the trial court issued an order adjudicating Child as a CHINS. On November 2, 2020, the trial court held its dispositional hearing. On November 5, 2020, the trial court entered its dispositional order requiring Mother to participate in services including allowing announced and unannounced visits from the Family Case Manager; maintaining a safe and stable environment for Child; attending appointments for assessments and recommended programs; ensuring Child attend all medical and service-based appointments; and meeting all of Child's medical and mental health needs.

Discussion and Decision

[5] Mother challenges Child's adjudication as a CHINS. Because a CHINS proceeding is a civil action, DCS must prove by a preponderance of the

² The delay in holding the initial hearings occurred because on March 16, 2020, the Indiana Supreme Court granted the Lawrence County Clerk's request to toll all legal matters in Lawrence County until April 30, 2020, due to the COVID-19 pandemic. On May 13, 2020, the Indiana Supreme Court extended the order until May 30, 2020.

evidence that a child is a CHINS as defined by the juvenile code. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). The CHINS petition was filed pursuant to Ind. Code § 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; 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.

Under Indiana Code section 31-34-1-2, DCS must prove “the child’s physical or mental health is seriously endangered due to injury by the act or omission of the child’s parent, guardian, or custodian.”

[6] A CHINS adjudication focuses on the needs and condition of the child, rather than the culpability of the parent. *In re N.E.*, 919 N.E.2d at 105. 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. “[T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* at

105. “A CHINS adjudication can also come about through no wrongdoing on the part of either parent[.]” *Id.*

While we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that - a determination that a child is in need of services. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. Only when the State moves to terminate a particular parent’s rights does an allegation of fault attach. We have previously made it clear that CHINS proceedings are “distinct from” involuntary termination proceedings. The termination of the parent-child relationship is not merely a continuing stage of the CHINS proceeding. In fact, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child.

Id. (citations omitted).

[7] When a trial court enters findings of fact and conclusions of law in a CHINS decision, we apply a two-tiered standard of review. *In re Des. B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). We first consider whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We may not set aside the findings or judgment unless they are clearly erroneous. *Id.* Findings are clearly erroneous when the record contains no facts to support them either directly or by inference, and a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.* We give due regard to the trial court’s ability to assess witness credibility and do not reweigh the evidence; we instead consider the evidence most favorable to the judgment with all reasonable

inferences drawn in favor of the judgment. *Id.* We defer substantially to findings of fact, but not to conclusions of law. *Id.* Unchallenged findings “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1991). Mother does not challenge any of the trial court’s findings.

[8] In adjudicating Child a CHINS, the trial court found, in relevant part:

4. On July 19, 2019, [Child] resided with [Mother] when Lawrence County DCS received the first report alleging that [Child] was the victim of neglect.

5. DCS received several other reports regarding [Child] in the latter part of 2019 for neglect, sex abuse, and lack of supervision.

6. The assessing Family Case Manager, Lisa Burton (hereinafter “FCM Burton”), met with Mother to discuss the allegations in her reports.

7. Mother told FCM Burton that [Child] had been sexually abused, was suicidal, and needed treatment.

8. FCM Burton observed Mother to make comments about [Child’s] body, stroke his body and hair, and she would sit on his lap and bounce up and down. FCM Burton thought [Child] and Mother sexualized each other.

9. FCM Burton has worked for DCS for seven (7) years, has training in sexual abuse, and found Mother’s behavior concerning.

10. After reviewing treatment records of [Child], FCM Burton described Mother's treatment obtained for [Child] prior to DCS involvement as "inconsistent."

* * * * *

12. Family Case Manager, Amy Grafton (hereinafter "FCM Grafton") was assigned to the case after FCM Burton. FCM Grafton completed training on sexual abuse with FCM Burton.

13. Mother told FCM Grafton [that Child] was suicidal, needed treatment, and was in Meadows for suicide attempts. She indicated she thought [Child] was drinking alcohol because she marked her alcohol bottles and the level of alcohol in her bottles was going down when she was not drinking alcohol.

14. FCM Grafton prepared a field interview and conducted it in July 2019.

15. During the field interview Mother disclosed to FCM Grafton [that Child] was sexually abused by a former housemate, [B.A.]. Mother disclosed [B.A.] alleged he had a sexual relationship with Mother too.

16. Mother has Major Depressive Disorder and takes medication prescribed by a Nurse Practitioner through a Psychologist. She visits this office every three (3) months.

17. On December 6, 2019, Family Case Manager, Vicki Strunk, (hereinafter "FCM Strunk") was assigned to this case. FCM Strunk has been with DCS for three and one half (3 ½) years.

* * * * *

19. FCM Strunk observed [Child] on Mother's lap at the Neuro Diagnostic Institute (NDI) the same time FCM Burton observed this interaction. FCM Strunk saw Mother massaging [Child's] shoulders and back. FCM Strunk thought Mother's behavior was odd considering [Child's] age. Mother described this encounter as a calming mechanism she learned from a friend (because [Child] has Attention Deficit Hyperactive Disorder (ADHD)).

20. Mother told FCM Strunk she wanted [Child] to be interviewed at Susie's Place for the sexual abuse by [B.A.].

21. Prior to DCS involvement Mother went to Centerstone to get [Child] therapy. Mother said Centerstone was not getting long term care for [Child], but he has been attending therapy since age four (4).

22. After DCS involvement, [Child] was admitted to NDI for treatment from August 14, 2019 through March 12, 2020.

23. While at NDI, [Child] worked with a sexual abuse counselor, Allison Robertson.

24. [Child] disclosed to Robertson he was previously suicidal.

25. Around October 21, 2019, Mother and Robertson discussed Robertson's concern for Mother and [Child's] behavior. Robertson addressed Mother's sitting on the [Child's] lap and Mother's "twerking on [Child]" while he was at NDI. Robertson told Mother they were working on boundaries with [Child] and the NDI team recommended Mother's visits with [Child] be supervised going forward.

26. On March 5, 2020 [Child] disclosed to Robertson that [B.A.] sexually abused and assaulted him. [Child] said he thought his Mother was sleeping with [B.A.] because [B.A.] showed him naked pictures of her.

27. [Child's] diagnoses are: Major Depressive Disorder Recurrence Severe, Attention Deficit Hyperactive Disorder (ADHD), Post-Traumatic Stress Disorder (PTSD), and Oppositional Defiant Disorder. [Child] was treated for these problems at NDI: Parent-Child problems, Victim Suspected of Sexual/Child Abuse, and Victim Suspected of Child Neglect.

28. Before being picked up for a visit [Child] told Robertson his Mother "is sexy" and commented on the size of her chest.

29. NDI sought [Child] help with his Individualized Education Plan (IEP) and his aggressive behaviors when he was not admitted back to the School of the Blind.

30. Since [Child's] release from NDI, he has been living with Mother. Mother testified, "[I] had to go through the Court system to get help." However, Mother believes that because [Child] finally got long-term care, "he's good now."

31. [Child] is currently receiving Family Preservation Services through Ireland Home Based Services based on a DCS referral. If released from DCS' supervision [Child] cannot receive Family Preservation Services, which "allow the child to maintain his home placement"; "do assessments to see what the family needs"; and all services are provided by the same provider.

(App. Vol. II at 75-7.) Based thereon, the trial court adjudicated Child a CHINS and concluded Child's "physical or mental condition is seriously

impaired or seriously endangered due to the actions/inactions of [Child's] Mother and Father[;]" that the Court had "serious concerns that such actions and conditions have not been remedied, and will not be, in the absence of Court intervention[;]" and that Child's "physical and/or mental condition is seriously endangered as a result of the inability and/or neglect of [Child's] parents to supply [Child] with the necessary needs, care, or appropriate supervision." (*Id.* at 78-9.)

[9] Mother argues that DCS did not present evidence to show that, at the time of the fact-finding hearing, Child was a CHINS. She claims that in the six months between the filing of the petition and the fact-finding hearing, Child has lived with her without incident. Mother testified at the fact-finding hearing, when asked what she would do if the trial court did not adjudicate Child as a CHINS:

Well, I would continue doing what we need now. What I was needing [sic] was to get [Child] into long term and his insurance would run out, so they would have to send him back for [sic] Meadows. And it just kept being – and then [Child] would do another suicide attempt and then he would be back into Meadows and then they would send him back home. And now that he's had that long term care, I feel like we can start – we've made steps to where we – he could be at home and continue treatment without having to involve the courts, because we got what we needed. He needed long term care that I was having problems getting. And thanks to the court system, we did – we finally got that.

(Tr. Vol. II at 73-4.) However, the Family Case Manager testified that Mother seemed indecisive about services for Child:

I – when [Child] was released [from NDI], he had wraparound services through Centerstone that was [sic] set up by NDI, but [M]other did not want those services, so then I put in individual therapy through Ireland. He worked with an Ireland therapist for a while, but then [M]other decided that if we pulled out, that she wanted the Centerstone services (indiscernible) to be available.

(*Id.* at 65.) The Family Case Manager testified that she felt that Child “needed services that he was not being provided” and would not receive without court intervention. (*Id.* at 64.) Additionally, the Family Case Manager testified that while she was aware of Mother’s mental health issues, Mother had not provided DCS with any documentation regarding her treatment and had not completed any assessments regarding her mental health.

[10] Mother’s arguments are invitations for us to reweigh the evidence by discounting the Family Case Manager’s testimony, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court cannot reweigh evidence or judge the credibility of witnesses). The trial court’s findings regarding Child’s mental health issues and the inappropriate sexualized behavior between Mother and son, coupled with Mother’s historic inability to consistently procure proper care for Child and Mother’s statements regarding her ambiguous future plans to do so lead us to hold that the trial court’s findings support its conclusion that Child is a CHINS. *See In re V.C.*, 867 N.E.2d 167, 182 (Ind. Ct. App. 2007) (affirming adjudication of child as a CHINS based on mother’s pattern of harmful behavior).

Conclusion

[11] The trial court's findings support its conclusion that Child is a CHINS. Accordingly, we affirm the trial court's adjudication of Child as a CHINS.

[12] Affirmed.

Bailey, J., and Robb, J., concur.