

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of O.B. (Child in
Need of Services);
J.B. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

April 30, 2021

Court of Appeals Case No.
20A-JC-2110

Appeal from the Clay Circuit
Court

The Honorable Joseph D. Trout,
Judge

Trial Court Cause No.
11C01-2006-JC-141

Brown, Judge.

- [1] J.B. (“Mother”) appeals the trial court’s order determining her daughter O.B. to be a child in need of services (“CHINS”). We affirm.

Facts and Procedural History

- [2] O.B. was born in March 2008. On June 19, 2020, the Indiana Department of Child Services (“DCS”) filed a petition as amended alleging O.B. was a CHINS. The petition alleged that DCS received an assessment on April 13, 2020, that Mother was abusing illegal substances and unable to care for her child and that she had tested positive for methamphetamine and amphetamine on April 14, April 22, and June 5, 2020. The court issued an order on initial hearing stating that O.B.’s father (“Father”) admitted O.B. was a CHINS.
- [3] On August 11, 2020, the court held a factfinding hearing at which Mother did not appear. The court admitted exhibits showing that two of Mother’s other children had been determined to be CHINS in December 2018. O.B.’s siblings had been placed with their maternal grandmother (“Maternal Grandmother”) and step-grandfather (“Step-Grandfather”), and Mother agreed to a safety plan which included a requirement that all visitation be supervised. The court also admitted exhibits showing that visitation between Mother and O.B.’s siblings had been suspended following allegations that, in September 2019, Mother and her boyfriend made threats toward DCS employees, and service providers reported they were unwilling to supervise visitation. That month, Mother was charged with three counts of intimidation and disorderly conduct, and she later pled guilty to disorderly conduct as a class B misdemeanor, was sentenced to 132 days, and received credit for sixty-six actual days served. The court further

admitted exhibits showing that Mother tested positive for methamphetamine and amphetamine on numerous dates between October 2018 and February 2020, and on April 14, April 22, and June 5, 2020.

[4] DCS Family Case Manager Linda Airhart (“FCM Airhart”) testified that DCS received a report in April 2020 that O.B.’s siblings were observed in the unsupervised care of Mother. She indicated that, due to drug use by Mother and her boyfriend, there were concerns they could be impaired when supervising the children. FCM Airhart testified that she and another family case manager went to the home of Maternal Grandmother and Step-Grandfather and determined that O.B. and her siblings had been in Mother’s care for the previous approximately four days and had been at Mother’s apartment. She testified she observed O.B. with Mother on several occasions and Mother would rant about DCS and curse at her. She testified that later there was a situation where O.B.’s siblings were removed, O.B. was present, and Mother had problems with law enforcement which resulted in her arrest and emergency detention for mental health issues.

[5] Family Case Manager Holly Bell (“FCM Bell”) testified that she and another case manager went to the home of Maternal Grandmother and Step-Grandfather, the children were not there, the case managers eventually went to the apartment of Mother’s sister where Mother had been residing, the children were not visibly present, and the case managers contacted law enforcement for assistance in locating the children. According to FCM Bell, Mother first stated that she had dropped the children off with Step-Grandfather, later stated she

knew but would not disclose where they were located, became verbally aggressive, and eventually said that O.B.'s siblings were on their way to Maternal Grandmother and Step-Grandfather's home. The case managers returned to the home of Maternal Grandmother and Step-Grandfather.

[6] FCM Bell testified that Step-Grandfather "talk[ed] about his frustrations with this case and that he felt [Mother] easily manipulated [Maternal Grandmother] and that [Maternal Grandmother] was becoming frustrated and was allowing [Mother] to have the children unsupervised just so [Mother] would not get escalated with her." Transcript Volume II at 131-132. She testified that the children arrived at the home, she helped Step-Grandfather pack clothes for O.B.'s siblings, Mother arrived at the home and started yelling, and Mother was placed in handcuffs and started hitting her head on the window in the car. The court admitted an exhibit showing that Mother was charged with battery against a public safety official as a level 6 felony, resisting law enforcement as a class A misdemeanor, and disorderly conduct as a class B misdemeanor in June 2020.

[7] Family Case Manager Supervisor Ashanti Strader ("FCM Strader") testified that she was concerned about Mother's mental health and drug use. When asked "all the times that [DCS] ha[s] been involved with the two younger children, why was [DCS] not involved with [O.B.]," she testified, "[i]n the beginning it was made known to us that it was believed that [Maternal Grandmother] had guardianship over" O.B. and "[i]t was later determined that that was not . . . true; that [O.B.] was just staying with [her], that there was not

a legal guardianship in place.”¹ *Id.* at 138-139. When asked if “DCS felt like a DCS [sic] would somewhat protect [O.B.] because those guardians would be responsible for her safety,” she replied affirmatively. *Id.* at 139. She indicated Mother was under an emergency detention order and went to Valle Vista for a week. She testified that she had concerns regarding Mother’s continued drug use, her refusal to maintain sobriety, her refusal to be medicated for her mental health, and the fact Mother tells her children not to speak to DCS and has called DCS kidnappers in front of the children.

- [8] Family Case Manager Supervisor June Diaz Perera (“FCM Perera”) testified that O.B. was currently placed with her grandfather and step-grandmother and O.B. has indicated she is happy and content with the placement. She testified that, since June 2020, Mother was offered weekly visits with O.B. and attended two of six visits. She indicated Mother has been referred to home-based case management, attended one meeting, and had not participated since June 2020. She indicated Mother had not participated in a substance abuse evaluation or further mental health treatment, and that Mother was refusing to submit to drug screens.

¹ Maternal Grandmother did not testify at the factfinding hearing. At a previous detention hearing, Maternal Grandmother testified: “We asked you for guardianship to give to me and you declined it. I was gonna ask again and then this – Linda Airhart told me ‘Oh, I’ll bring you the paperwork for the guardianship. I’ll help you get it filled out. I can’t guarantee anything but I’ll get the guardianship paperwork for you.’ Never heard from her again. She keeps saying she’s working remotely and it’s in her office.” Transcript Volume II at 55.

[9] On August 18, 2020, the court issued an order determining that O.B. was a CHINS which included the following findings:

1. On April 13, 2020, [DCS] received an assessment regarding [Mother] and her three (3) daughters to include [O.B.]. The allegations included that the adults were abusing illegal substances, impaired, and unable to care for the children. It was also alleged [Mother] and her boyfriend have a volatile relationship and get physical with each other. It was also alleged that the children were given multiple melatonin to put them to sleep.
2. On April 14, 2020, FCM's Airhart and the FCM's were given multiple locations where the children were to include the library that was closed.
3. Ultimately, [Mother's sister] brought the children to meet the FCM's. The children reported having been at their Mother's home. The FCM's discussed with [Maternal Grandmother] that [Mother] was not to have [O.B.'s] siblings unsupervised pursuant to a previous safety plan.
4. On April 14, 2020, the FCM's went to the home of [] maternal aunt, where [Mother] also resides. [Mother's] behavior during this time raised concern that she was impaired.
5. [Mother] submitted to a drug screen on April 14, 2020 that later returned positive for methamphetamine and amphetamine.
6. While at [Mother's sister's] home, the FCM's talked with [Mother's] father . . . [He] reported he is an alcoholic and has to drink daily to prevent "the shakes." [He] also refused a drug screen.
7. [O.B.] was observed to be at [Mother's sister's] home on April 14, 2020. [Mother] did not allow the Child to be interviewed alone and continued to interject in the conversation with [O.B.].
8. On April 15, 2020, FCM Airhart interviewed three (3) other children that had been in [Mother's sister's] home. A seven (7) year

old child reported observing a needle in the trash as well as observing [Mother's boyfriend] shove [Mother] onto the bed during an argument. The Child further reported there is a lot of arguing in the home.

9. Mother participated in a drug screen on April 22, 2020 that later returned positive for methamphetamine and amphetamine. On June 5, 2020, [Mother] participated in a drug screen that later returned positive for methamphetamine, 875.7 ng, and amphetamine 62.1 ng.

10. On June 8, 2020, FCM Airhart went to the [Maternal Grandmother and Step-Grandfather's] home and spoke with [Step-Grandfather]. [He] advised that [Maternal Grandmother] had a medical emergency, [Mother] had her children and was to return with the children that were wards so that he could supervise a visit.

11. Ultimately, [Mother] hid the children and a court order was obtained to detain the children that were wards.

12. At the time of the detention of the half-siblings, Mother was acting erratic and was arrested. [Mother] was then detained under an emergency detention order and hospitalized at Valle Vista.

13. [Mother] currently has pending criminal charges that relate to her behavior at the time of removal of the half-siblings.

14. This Court previously found that [Mother] was having unsupervised contact with the Child's half-siblings, who are wards, in contradiction to court orders and safety plans signed by both [Mother] and [Maternal Grandmother]/placement.

15. It was later discovered that [O.B.] was present at [Mother's] home when DCS was attempting to locate her half-siblings.

16. Throughout the assessment DCS discovered that [O.B.] was frequently in the care of her mother. DCS has attempted to speak to [O.B.] about the assessment. [O.B.] when asked about her Mother

hangs her head and refuses to answer or says that her mother has instructed her not to talk to DCS.

17. [O.B.] reports she lives with her grandparents, [Maternal Grandmother and Step-Grandfather], but usually stays with her mom or a friend.

18. On June 12, 2020, FCM Airhart spoke with [] Father. He reported he did not have regular visitation with [O.B.]. He did express concerns about [Mother] abusing substances and her unpredictable behaviors.

19. [Father] stated he believed [O.B.] would best have her needs met by being placed with her paternal grandmother or paternal great-grandmother. He stated he was not able to care for her but would like services to be able to care for [O.B.].

Appellant's Appendix Volume II at 66-68. Following a dispositional hearing at which Mother failed to appear, the court entered a dispositional order providing that participation by Mother was necessary to enhance her ability to fulfill her parental obligations and ensure the child's well-being and ordering her to complete certain services including a home-based counseling program, a substance abuse assessment and all recommendations, random drug screens, and parenting assessments and all recommendations.

Discussion

[10] Mother claims DCS failed to carry its burden to show O.B. is a CHINS. She argues O.B.'s needs were met while in Maternal Grandmother's care and the coercive intervention of the court was not needed. She argues that DCS was aware for months of her alleged drug use and erratic behavior and had not removed O.B. because it believed Maternal Grandmother had a legal

guardianship which protected the child. DCS maintains the trial court's adjudication is not clearly erroneous and notes that Mother does not challenge any of the court's factual findings. It argues Mother has a long history of methamphetamine use, continued to use methamphetamine during the CHINS cases for O.B.'s siblings, tested positive for methamphetamine and amphetamine three times since it began its assessment in this case in April 2020, and refused to submit to random drug screens. It contends her erratic behavior led to her arrest on June 8, 2020, when DCS was removing O.B.'s siblings from Maternal Grandmother's home and points to testimony that Mother was able to manipulate Maternal Grandmother.

[11] The State must prove by a preponderance of the evidence that a child is a CHINS. *Matter of Eq. W.*, 124 N.E.3d 1201, 1208 (Ind. 2019). We do not reweigh the evidence or judge the credibility of witnesses and consider only the evidence which supports the trial court's decision and reasonable inferences drawn therefrom. *In re S.D.*, 2 N.E.3d 1283, 1286-1287 (Ind. 2014), *reh'g denied*. We apply the two-tiered standard of whether the evidence supports the findings and whether the findings support the judgment. *Id.* We will reverse a CHINS determination only if it is clearly erroneous. *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017). A decision is clearly erroneous if the record facts do not support the findings or if it applies the wrong legal standard to properly found facts. *Id.*

[12] Ind. Code § 31-34-1-1 provides:

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.

[13] The CHINS statute does not require a court to wait until a tragedy occurs to intervene. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is to protect children. *Id.* The Indiana Supreme Court has discussed the impact on children of exposure to domestic violence including psychological and developmental issues. *See S.H. v. D.W.*, 139 N.E.3d 214, 216-217 (Ind. 2020).

[14] Mother does not challenge the trial court's findings of fact, and the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[15] The trial court found that Mother had been having unsupervised contact with O.B.'s siblings in contradiction to court orders and safety plans, that on June 8, 2020, Mother was acting erratic, arrested, detained under an emergency detention order, and hospitalized, and that criminal charges were filed against her in connection with her behavior. The court admitted exhibits related to Mother's positive test results for methamphetamine and amphetamine since October 2018, including those in April and June 2020, the CHINS proceedings involving O.B.'s siblings, and the criminal proceedings against Mother. The court heard testimony from FCM Airhart, FCM Bell, FCM Strader, and FCM Perera related to O.B.'s placement and well-being, Maternal Grandmother, and Mother's drug use, interactions with DCS and law enforcement, criminal behavior, and participation in visitation and referred services. The court was able to consider the testimony and evidence and Mother's actions and omissions, relationship with Maternal Grandmother, drug use, and ability to protect the children. We conclude the judgment reached by the trial court is not clearly erroneous.

[16] For the foregoing reasons, we affirm the trial court's order.

[17] Affirmed.

Bradford, C.J., and Vaidik, J., concur.