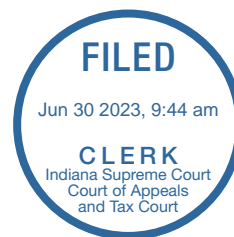


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

S.L. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

June 30, 2023

Court of Appeals Case No.
23A-JC-117

Appeal from the Marion Superior
Court

The Honorable Alicia A. Gooden,
Judge

The Honorable Marcia J. Harper,
Magistrate

and

Kids' Voices of Indiana,
Appellee-Guardian Ad Litem

Trial Court Cause No.
49D14-2202-JC-1349

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

[1] S.L. (Mother) challenges the trial court's determination that her 14-year-old son (Child) was a child in need of services (CHINS) based on domestic violence in their home. The judgment followed two assaults by Mother's long-time boyfriend (Boyfriend) against Mother while Child was present. After Boyfriend's attacks, Mother denied or minimized the domestic violence, was generally uncooperative in the CHINS proceedings, and had continued contact with Boyfriend, despite claiming that she had ended the relationship.

[2] The trial court determined that Child was a CHINS because he lacked "a safe and stable home environment that is free from domestic violence" and was "unlikely to receive [it] without the coercive intervention of the Court." App. Vol. II, p. 116. Concluding the record supports that judgment, we affirm.

Facts

- [3] The domestic violence that prompted the CHINS proceedings first arose in December 2021, when Boyfriend was charged with domestic battery against Mother. The trial court issued a no-contact order barring Boyfriend's contact with Mother. Mother soon wrote the court to request that it vacate the order so that Boyfriend could return to living with Mother and Child. Mother asserted in the letter that Boyfriend was not a danger to her. She referred to Boyfriend as Child's surrogate father and noted that he helped to care for Child, who has both physical and intellectual disabilities.
- [4] Less than one month after Boyfriend's arrest, he assaulted Mother again, smacking her in the face and throwing her around her living room. The attack, which occurred while Child was within the home, left Mother bloodied and with torn clothes. Mother refused to allow investigating officers to speak to Child.
- [5] A couple of months later, the Indiana Department of Child Services (DCS) received a report about the family. A DCS investigator traveled to Mother's home, but Mother said she could not meet then and that Child was not at home. The investigator and Mother agreed to meet at Mother's home the next day. But when the investigator arrived at Mother's home at the agreed time, Mother was not there. After Mother failed to respond to the investigator's numerous phone calls that day, the investigator left a letter at Mother's home. When Mother still did not respond, the investigator returned to Mother's home again but found her absent. The investigator then spoke to Child at his school.

[6] The investigator asked Child “if he felt safe at home, if he was happy there, if he got enough food to eat.” Tr. Vol. II, p. 11. Child responded by shifting in his seat, appearing nervous, and wetting his pants. DCS therefore took emergency custody of Child. The investigator repeatedly attempted to contact Mother by phone and eventually notified her by leaving a letter on the door of Mother’s home. Mother went to the DCS office and screamed profanities at the investigator and other DCS staff. Mother denied all domestic violence incidents, claiming that Boyfriend and she had merely argued and no physical violence had ever occurred. Mother also denied that Boyfriend had ever lived in her home.

[7] DCS asked Mother to leave the office due to her behavior. The investigator spoke to Child’s father (Father), who said that he was aware of possible domestic violence between Mother and Boyfriend. DCS placed Child temporarily with Father, who lived in Illinois.¹

[8] DCS petitioned to find Child to be a CHINS. After a detention hearing, the court ordered Child to remain with Father and for Mother to participate in supervised visitation. When first meeting with DCS, Mother again denied any domestic violence. Mother then refused to cooperate with DCS. She was combative and expressed resentment over what she viewed as DCS’s unnecessary intervention. Ultimately, Mother underwent a domestic violence

¹ Father did not participate in this appeal.

assessment. Still, she informed DCS that she would not participate in any recommended domestic violence classes.

[9] During a visit with Child in Illinois, Mother and a DCS visitation supervisor noticed bruising on Child's arm and neck. Mother and the visitation supervisor reported the injuries to the DCS "hotline." Mother never visited with Child after that and did not respond to requests to schedule more visits. Video visits with Child were arranged because Mother told DCS that she did not want in-person visits with Child. Mother also did not complete home-based therapy services to which she had been referred.

[10] After the CHINS factfinding hearing but before the court entered judgment, DCS moved to remove Child from Father's care. The trial court granted that motion, and Child ultimately was placed in Mother's home for a temporary trial visitation. The court later entered its judgment finding Child to be a CHINS.

[11] Mother failed to appear at the dispositional hearing, although her counsel represented her there. The court ordered Mother to complete a domestic violence assessment and follow all related recommendations. Mother appeals.

Discussion and Decision

[12] Mother contends the evidence does not support several of the trial court's factual findings as well as its ultimate CHINS determination. A valid CHINS judgment requires proof by a preponderance of the evidence that: (1) the child is under the age of eighteen; (2) there exists at least one of eleven different

statutory circumstances under which a child may be found a CHINS; and (3) the child needs care, treatment, or rehabilitation that they are not receiving and are unlikely to receive without the coercive intervention of the court. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). The trial court found DCS adequately proved all three elements, including that Child was a CHINS under Indiana Code § 31-34-1-1.

[13] A child is a CHINS under Indiana Code § 31-34-1-1 when

(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 . . . to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:

(A) when the parent . . . is financially able to do so;

(B) due to the failure, refusal, or inability of the parent . . . 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.

[14] When reviewing the trial court’s CHINS determination, we will neither reweigh the evidence nor judge witness credibility. *K.D.*, 962 N.E.2d at 1253. When, as here, the trial court enters findings of facts and conclusions of law sua sponte, we apply a two-tiered standard of review requiring that we first consider whether the evidence supports the findings and then determine whether the

findings support the judgment. *Matter of A.R.B.*, 199 N.E.3d 1232, 1237 (Ind. Ct. App. 2022). “We review the remaining issues under the general judgment standard, which provides that a judgment ‘will be affirmed if it can be sustained on any legal theory supported by the evidence.’” We will reverse only if the CHINS determination is clearly erroneous. *Id.*

I. Challenged Factual Findings

- [15] Mother contests ten of the trial court’s findings as either unsupported by the evidence or immaterial to the judgment. Mother’s claims are unpersuasive.
- [16] Mother first challenges Finding No. 15, which states that the DCS investigator observed Child to be “very uncomfortable” during her interview of him, given his squirming and urination. App. Vol. II, p. 115. Mother contends Child’s actions could be interpreted differently and that his discomfort during the interview did not support the CHINS finding. But such a claim is merely a request to reweigh the evidence.
- [17] Mother next challenges Finding No. 16, which detailed Mother’s combative behavior in the DCS office after Mother learned that DCS had taken emergency custody of Child. Mother alleges that Finding No. 16 is incomplete, but she does not claim that it is unsupported by the evidence. Therefore, we view this claim as just another request to reweigh the evidence.
- [18] Mother also contends Finding No. 16 is immaterial. But Mother’s combative behavior and refusal to recognize any problems in her care of Child were highly relevant to the trial court’s determination under Indiana Code § 31-34-1-1(2)

that, absent court intervention, Child was not likely to receive the safe home that he needed.

[19] Mother similarly claims that Findings 18-20 and 22-25 are immaterial to the CHINS determination. Those findings relate to Boyfriend’s domestic violence, Mother’s request to lift the no-contact order, and various activities in the CHINS case. These findings, whose accuracy Mother does not challenge, detail the actions that led the trial court to find that Child was endangered under Indiana Code § 31-34-1-1(1). Therefore, these findings support the CHINS judgment.

[20] Finally, Mother contends Finding No. 26, which specified that “Mother will not voluntarily participate in DCS’s recommended services,” is inaccurate because Mother participated in some services. App. Vol. II, p. 116. Mother specifically stated that she would not participate in services unless ordered by the court. She also refused in-person visits, was dropped from home-based therapy due to her lack of cooperation, and did not participate in domestic violence classes until after the CHINS finding. This evidence supports Finding No. 26.

II. Challenged Conclusions

[21] Mother next argues that the trial court improperly concluded that Child was a CHINS under Indiana Code § 31-34-1-1. She contends the evidence did not establish any endangerment or serious impairment of Child. The essence of Mother’s argument is that her home is safe for Child because any past domestic

violence did not endanger Child and her breakup with Boyfriend eliminated any risk of future domestic violence.

[22] Just as she did in the trial court proceedings, Mother minimizes the impact on Child of the domestic violence in Mother's home. Children exposed to domestic violence in their homes have been found to be CHINS under Indiana Code § 31-34-1-1. *See, e.g., Matter of L.T.*, 145 N.E.3d 864, 871-72 (Ind. Ct. App. 2020) (affirming CHINS determination that was based on violence by child's father against mother and child's siblings but not child). Even a single incident of domestic violence may be enough to warrant a CHINS finding. *See Matter of K.A.H.*, 119 N.E.3d 1115, 1121 (Ind. Ct. App. 2019).

[23] But a CHINS adjudication may not hinge on conditions that no longer exist. *In re R.S.*, 987 N.E.2d 155, 159 (Ind. Ct. App. 2013). Similarly, we have reversed a CHINS finding when the evidence failed to establish domestic violence ever occurred in the child's presence or that the child was impacted by the violence. *Matter of D.P.*, 72 N.E.3d 976, 984-85 (Ind. Ct. App. 2017).

[24] Mother's claim, both in the trial court and on appeal, is that her relationship to Boyfriend and any threat that he represented no longer exist and, therefore, could not justify the CHINS finding. She also seems to argue that DCS failed to prove that Child was exposed to domestic violence. The record reflects differently.

[25] Mother lived with Boyfriend for five years and sought his return to her home even after he assaulted her. When Boyfriend attacked Mother a second time,

responding officers found Mother in a car with Child in the driveway. Mother had torn clothes and a bloodied face and was crying—all of which Child witnessed as he sat in the back seat of Mother’s vehicle. Before the officers noticed Child, Mother reported to the officers that Boyfriend had smacked her in the face and “tossed” her around the living room while Child was in his bedroom. This evidence shows Child was exposed to the domestic violence even if he was not in the room where it occurred.

[26] Despite this second assault by Boyfriend that Mother specifically reported to police, Mother later maintained that no domestic violence had occurred. Even after her purported breakup with Boyfriend and just days before the CHINS factfinding hearing, Mother spent time with Boyfriend at her home, where he was arrested. Boyfriend reported Mother’s home as his address on his probation paperwork, and Mother’s utilities also were in Boyfriend’s name.

[27] This evidence suggests Mother’s relationship with Boyfriend—and more importantly, the threat that Child would be exposed to domestic violence by Boyfriend—had not ceased, as the trial court implicitly found. *See In re R.S.*, 987 N.E.2d at 159 (ruling CHINS court should consider the parents’ situation at the time the case is heard). The evidence of Mother’s refusal to acknowledge the domestic violence or cooperate in efforts to reunite her with Child also support the trial court’s finding that Child likely would not obtain a safe home without the coercive intervention of the court.

[28] As Mother has failed to establish the CHINS determination was clearly erroneous, we affirm the trial court's judgment.²

Riley, J., and Bradford, J., concur.

² Mother also challenges the actions of the guardian ad litem and DCS in failing to immediately seek removal of Child from Father in Illinois after bruises were discovered on Child there. We view this placement challenge as moot because Child ultimately was removed from Father's home before the CHINS judgment. *See M.M. v. Indiana Department of Child Services*, 118 N.E.3d 70, 78 (Ind. Ct. App. 2019) (noting that mootness applies when no effective relief can be rendered to the parties before the court). In any case, as the CHINS court found both parents had failed to provide a safe home for Child and Mother essentially argues that Father's home was unsafe, we fail to see how this claim advances Mother's appeal of the CHINS judgment.