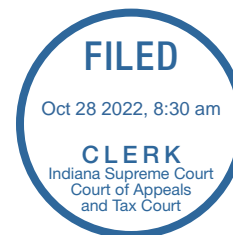


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Danielle L. Gregory
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of T.M., Minor
Child Alleged to be a Child in
Need of Services;

S.S. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner,

and

Kids' Voice of Indiana,

October 28, 2022

Court of Appeals Case No.
22A-JC-1188

Appeal from the Marion Superior
Court

The Honorable Geoffrey A.
Gaither, Judge

The Honorable Scott B. Stowers,
Magistrate

Trial Court Cause No.
49D09-2112-JC-10883

Tavitas, Judge.

Case Summary

- [1] S.S. (“Mother”) appeals the trial court’s order adjudicating her child (“Child”), as a child in need of services (“CHINS”). Mother argues that: (1) the trial court abused its discretion in permitting a Department of Child Services (“DCS”) witness to testify telephonically; (2) the DCS presented insufficient evidence to support the trial court’s adjudication of Child as a CHINS; and (3) the trial court abused its discretion in ordering Mother to participate in home-based therapy. Because we find that Mother’s arguments are without merit, we affirm.

Issues

- [2] Mother raises three issues on appeal, which we restate as:
- I. Whether the trial court committed reversible error in permitting a DCS witness to testify telephonically.
 - II. Whether sufficient evidence supports the CHINS adjudication.
 - III. Whether the trial court abused its discretion in ordering Mother to participate in home-based therapy.

Facts

- [3] Child was born in July 2020 to Mother and T.M. (“Father”)¹ (collectively, “Parents”). On March 2, 2021, Father assaulted Mother in a hotel room in front of Child (the “March incident”). Father hit Mother’s legs with “an infant car seat,” stomped on her body several times, kicked her once in the face, and stomped on her glasses. Tr. Vol. II p. 14. Indianapolis Metropolitan Police Department (“IMPD”) Sergeant Mark Ayler responded to the incident.
- [4] On May 31, 2021, while Father and Mother were exchanging Child, Father “struck” Mother in her car and “vandalized [Mother’s] vehicle with [Child] present” (the “May incident”). *Id.* at 20, 32. IMPD Officer Kelly Chappell responded to the incident and saw that Mother’s vehicle “had stuff thrown it [sic] and was shambled inside, there was stuff all over the inside of the vehicle.” *Id.* at 32. Mother was upset, and Child was crying.
- [5] Mother met with DCS on June 2, 2021, to discuss the impact of the domestic violence on Child. DCS Assessment Family Case Manager Patrick Stimpson observed that Mother “had first denied having any previous incidents of domestic violence but then later on did admit to another incident from March[.]” *Id.* at 24. Stimpson further observed, “[Mother] minimized the amount or the extent of the domestic violence in the relationship Additionally, [Mother] stated that she had already dropped the charges on

¹ Father does not participate in this appeal.

[Father.]” *Id.* DCS became “concerned for the minimization of domestic violence as well as the . . . multiple incidents of domestic violence in the present [sic] of [Child].” *Id.* at 26. On June 7, 2021, Parents and DCS agreed to an Informal Adjustment, which required Parents to participate in services, including home-based case management and a family preservation program.

[6] Since at least June 2021, Child was living with Parents in his paternal grandfather’s house. In September 2021, Father told Mother to take Child and “leave the premises.” *Id.* at 37. Mother told DCS that “[Mother] had nowhere else to go,” and DCS worked with Mother and the Children’s Bureau to “provide [Mother] a month stay at a hotel while [Mother] found another primary residence.” *Id.* at 38.

[7] Mother and Child moved into an apartment in October. Father contacted DCS to “request[] [Mother’s] location,” which DCS did not provide. *Id.* at 38. Mother “excelled in services during that time” when Father was not in the home. *Id.* at 39. Mother completed her domestic violence assessment, and DCS recommended twenty-six weeks of classes.

[8] In November 2021, Mother was looking for employment and “requested [Father] to come to the home to watch [Child].” *Id.* at 39. Father came but refused to leave. *Id.* at 49. Mother “called the police and wanted [Father] to be removed but the police said that they could not remove [Father] due to [Father]

being on the utility bill.”² *Id.* at 39. DCS worked with Mother to pay her utility bill and transfer the utility account to Mother’s name, and Mother “stated an intent to have [Father] removed as soon as that transfer . . . was made.” *Id.* DCS attempted to pay Mother’s November rent but was unable to do so because DCS had an incorrect rent amount on file.

[9] In December 2021, DCS reached out to Mother, and Mother indicated she “decided to have [Father] remain in the home.” *Id.* at 40. DCS told Father he would need to engage in services if he lived with Mother and Child, and Father became “irate.” *Id.* at 49. Mother also “became very verbally accusatory” toward DCS. *Id.* at 40. DCS was “concerned that there could be repeated domestic violence incidents due to [Father] not successfully engaging in services as well as [Mother’s] verbal escalation and disengagement from services at that point.” *Id.*

[10] Later in December, DCS attempted to contact Mother regarding her participation in services, and Mother “wasn’t responding or she would say, ‘stop contacting me[.]’”³ *Id.* at 49. DCS then filed a petition, in which DCS alleged Child was a CHINS and requested authorization to take custody of Child (“CHINS petition”). DCS alleged Parents “failed to provide the [Child] with a safe and appropriate living environment free from domestic violence”

² Mother denied calling the police to have Father removed.

³ Mother communicated to DCS that she found employment at some point in December.

and cited: (1) the March and May incidents; (2) the September eviction from Child's paternal grandfather's house; (3) Father's refusal to leave Mother's apartment in November; (4) Parents' refusal to participate in services; (5) Mother's failure to obtain a protection order or pursue charges against Father; and (6) Mother's potential eviction for failure to pay November's rent. Appellant's App. Vol. II p. 19.

- [11] DCS took custody of Child and placed him in "relative placement with [Father's] aunt." Tr. Vol. II p. 51. Mother then asked Father to leave the apartment, and Mother began participating in services again.
- [12] On February 18, 2022, at 5:14 a.m., Mother contacted the police to report that Father was "trying to get into her apartment." *Id.* at 44. Mother was "crying" and looked "genuinely frightened[,] and she explained that there has already been domestic violence in the past involving [Father] and her and that she just didn't want him around." *Id.* at 45. Mother filed for a protection order, but the matter was dismissed when she failed to appear for the evidentiary hearing. On March 18, 2022, Mother filed a second petition for a protection order, which was still pending at the time of the CHINS fact-finding hearing. Mother has not communicated with Father since the February incident.
- [13] The trial court held a virtual fact-finding hearing on the CHINS petition on April 6, 2022. At the time of the hearing, Mother had only one domestic violence class remaining, which she later completed. During the hearing, Sergeant Ayler testified regarding the March incident. Sergeant Ayler's video

was not working, so he testified telephonically, to which Mother objected. The trial court stated: “This is the only technical issue, he is hear [sic] on audio, so over objection we’ll allow him to testify[.]” *Id.* at 12.

[14] On April 14, 2022, the trial court determined Child was a CHINS and found:

45. [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 parents to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; due to that failure refusal, or inability of the parent to seek financial or other reasonable means to do so; and the child needs care, treatment, or rehabilitation that the child is not receiving; and is unlikely to be provided or accepted without the coercive intervention of the court.

46. There is a long history of domestic violence between the parents, in the presence of the child. [Mother] not only declined to prosecute, she allowed [Father] back into the home. She was unable to maintain stable housing for the child without the financial assistance of DCS and Children’s Bureau. Although she has a protective order pending against [Father], she failed to present evidence on a previous protective order petition. [Mother] did not remove [Father] from her residence and did not reengage in services until DCS removed the child from her care and custody. Therefore, the Court finds [Child] to be a child in need of services pursuant to IC 31-34-1-1[.]

Appellant’s App. Vol. II p. 81. The trial court held a dispositional hearing on April 27, 2022, and issued a Parental Participation Order requiring Mother to participate in home-based therapy.⁴ Mother now appeals.

Discussion and Decision

[15] Mother argues that: (1) the trial court committed reversible error in permitting Ayler to testify telephonically; (2) DCS presented insufficient evidence to support the trial court’s adjudication of Child as a CHINS; and (3) the trial court erred in ordering Mother to participate in home-based therapy. We disagree and affirm.

I. Telephonic Testimony

[16] Mother argues the trial court abused its discretion in permitting Sergeant Ayler to testify telephonically.⁵ Mother contends “the trial court was limited in its ability to judge the credibility of [Sergeant Ayler] without video” and that

⁴ DCS recommended the trial court order home-based therapy for Mother “because it is one thing to follow a curriculum and attend a class but it is another thing to apply that to real life.” Tr. Vol. II p. 73. Mother’s domestic violence class provider did not recommend home-based therapy.

⁵ Indiana Administrative Rule 14 provides, in pertinent part: “[a] trial court may use telephone or audiovisual telecommunication to conduct . . . [p]roceedings during a declared emergency under [Indiana Administrative Rule 17.]” In the wake of the Covid-19 pandemic, on May 13, 2020, our Supreme Court modified Indiana Administrative Rule 14 to provide: “[t]he court may use telephonic communication for the proceeding for a party or witness if the court finds audiovisual communication is not possible, practical, or safe for a victim, and no party will be prejudiced.” *Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating To the 2019 Novel Coronavirus (Covid-19)*, 144 N.E.3d 197, 198 (Ind. 2020). On May 7, 2021, our Supreme Court extended its modifications to Administrative Rule 14 “until further order of the Court.” *Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (Covid-19)*, 167 N.E.3d 289 (Ind. 2021). On September 30, 2022, our Supreme Court rescinded the May 13, 2020 emergency order, effective January 1, 2023. See *Interim Administrative Rule 14 for Remote Proceedings*, No. 22S-MS-1, at 1 (Ind. 2022).

permitting Sergeant Ayler to testify telephonically “prejudiced Mother because the trial court used that information and that incident to find Mother had a ‘long history’ of domestic violence.” Appellant’s Br. p. 34.

[17] It is well established that “errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party.” *Sibbing v. Cave*, 922 N.E.2d 594, 598 (Ind. 2010) (quoting *McClain v. State*, 675 N.E.2d 329, 331 (Ind. 1996)). “To determine whether the admission of evidence affected a party’s substantial rights, we assess the probable impact of the evidence upon the [fact-finder].” *Id.* (citing *McClain*, 675 N.E.2d at 331).

[18] Any error in permitting Sergeant Ayler to testify telephonically was harmless. Mother did not question Sergeant Ayler’s credibility at the fact-finding hearing, nor does she do so on appeal. In addition, during the fact-finding hearing, Mother admitted that she was involved in a domestic violence incident in March, and Mother did not dispute Sergeant Ayler’s account of the March incident. *See In re Des.B.*, 2 N.E.3d 828, 835 (Ind. Ct. App. 2014) (finding any error in admitting telephonic testimony harmless when testimony was cumulative of other evidence). On appeal, Mother does not challenge the trial court’s findings of fact regarding the March incident. *Matter of De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020) (“Any unchallenged findings stand as proven.”). We find, accordingly, that any error in the trial court’s admission of Sergeant Ayler’s testimony was harmless.

II. CHINS Adjudication

[19] Mother challenges the sufficiency of the evidence to support the trial court’s adjudication of Child as a CHINS. CHINS proceedings are civil actions; thus, “the State must prove by a preponderance of the 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); *see* Ind. Code § 31-34-12-3. On review, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.J.*, 68 N.E.3d 574, 577-78 (Ind. 2017). “As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). 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.” *Id.* (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). We will reverse a CHINS determination only if it is clearly erroneous. *D.J.*, 68 N.E.3d at 578.

[20] DCS must prove three elements for a juvenile court to adjudicate a child a CHINS: (1) the child is under the age of eighteen; (2) that one of eleven different statutory circumstances exist that would make the child a CHINS;⁶ and (3) the child needs care, treatment, or rehabilitation that he or she is not

⁶ These eleven different statutory circumstances are codified in Indiana Code Section 31-34-1-1 to 11.

receiving and is unlikely to be provided or accepted without the coercive intervention of the court. *Id.* at 580.

[21] Here, the trial court found Child was a CHINS under the general category of neglect as defined in Indiana Code Section 31-34-1-1, which 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.

[22] “[T]he purpose of a CHINS adjudication is to protect children, not [to] punish parents.” *N.E.*, 919 N.E.2d at 106. A CHINS adjudication is not a determination of parental fault but rather is a determination that a child is in need of services and is unlikely to receive those services without intervention of the court. *Id.* at 105. “A CHINS adjudication focuses on the condition of the

child [T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* (citations omitted). “A CHINS finding should consider the family’s condition not just when the case was filed, but also when it is heard.” *S.D.*, 2 N.E.3d at 1290.

A. Challenges to Factual Findings

- [23] Mother challenges the trial court’s finding that there was a “long history” of domestic violence between the parents in the presence of Child. Appellant’s Br. pp. 23-24. Mother argues “there were only two (2) incidents”—which we understand to refer to the March and May incidents—“over the span of two (2) months, approximately a year prior to the Fact-Finding Hearing.” *Id.*
- [24] In addition to the domestic violence incidents in March and May 2021, in September 2021, Father evicted Mother and Child from his home. In November, Mother called the police to remove Father, who “refused to leave” Mother’s apartment. Tr. Vol. II p. 49. In December, when DCS attempted to engage Father in services in accordance with the Informal Adjustment, Father became “irate,” *id.* at 49, and Mother became “verbally aggress[ive]” toward her case-worker, such that her case-worker determined that continuing to provide in-home services would present a safety risk to Child. *Id.* at 36. After Child was taken into DCS’s custody and Father left the home, Mother contacted the police in February 2022 when Father tried to enter her apartment. The record supports the trial court’s finding of acts of domestic violence and Mother’s continued fear of Father.

[25] Mother also appears to challenge the trial court’s findings that Mother was unable to provide stable housing for Child. Child lived in three different homes during a four-month span, and Mother required assistance from DCS and the Children’s Bureau to provide housing for Child. The trial court, accordingly, did not err in finding Mother was unable to provide stable housing for Child.

B. Challenges to Legal Conclusions

[26] Mother next argues that the trial court erred in concluding the Child was endangered.⁷ “[A] child’s exposure to domestic violence can support a CHINS finding.” *K.A.H. v. Ind. Dep’t of Child Servs.*, 119 N.E.3d 1115, 1120-21 (Ind. Ct. App. 2019) (quoting *K.B. v. Ind. Dep’t of Child Servs.*, 24 N.E.3d 997, 1003 (Ind. Ct. App. 2015)). “Additionally, a single incident of domestic violence in a child’s presence may support a CHINS finding, and it need not necessarily be repetitive.” *Id.* at 1121 (citation omitted). The CHINS statute does not require the juvenile court and DCS to wait until a child is physically or emotionally harmed to intervene; rather, a child may be adjudicated as a CHINS “when he or she is endangered by parental action or inaction.” *In re R.P.*, 949 N.E.2d 395, 401 (Ind. Ct. App. 2011); *see also K.A.H.*, 119 N.E.3d at 1121.

[27] Here, Child—a one-year old—was exposed to at least two incidents of domestic violence. *See In re E.M.*, 4 N.E.3d 636, 644-45 (Ind. 2014) (recognizing the

⁷ Though styled as a challenge to the trial court’s findings of fact, we find this argument is better cast as a challenge to the trial court’s conclusions of law.

emotional and developmental effects of witnessing domestic violence on infants). Child was also present when Father evicted Mother and when Father refused to leave Mother's apartment, which involved police intervention. These instances demonstrate that Child's domestic life was far from peaceful. Moreover, Mother demonstrated a pattern of refusing to take steps to ensure Child was raised in an environment free from domestic violence. Mother declined to press charges against Father and invited Father back into the home. Mother did not seek a protection order against Father until two months after DCS took custody of Child, and Mother failed to appear at a hearing on the protection order, causing the protection order to be dismissed.

[28] Furthermore, before DCS took custody of Child, Mother and Father failed to follow through on their Informal Adjustment by refusing to participate in services and allow their in-home case manager to monitor Child's well-being. *See K.B.*, 24 N.E.3d at 1003-04 (affirming endangerment finding when children were exposed to domestic violence and parents did not comply with informal adjustment). Under these facts, the trial court did not err in finding Child was endangered.

[29] Mother also argues the trial court erred in concluding that the coercive intervention of the court was necessary. Mother essentially argues that the domestic violence incidents and her previous refusal to participate in services—in short, the facts that necessitated the CHINS petition in the first place—no longer threaten Child because she completed her domestic violence classwork and because she has not been in contact with Father.

[30] “Not every endangered child is a child in need of services, permitting the State’s *parens patriae* intrusion into the ordinarily private sphere of the family.” *S.D.*, 2 N.E.3d at 1287. Such an intrusion by the courts is reserved for situations “‘where parents lack the *ability* to provide for their children,’ not merely where they ‘encounter *difficulty* in meeting a child’s needs.’” *Id.* (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charleston*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)). “A CHINS finding should consider the family’s condition not just when the case was filed, but also when it is heard.” *Id.* at 1290.

[31] We commend Mother on her progress in completing services prior to the trial court’s fact-finding hearing. Mother, however, has a pattern of failing to take steps to ensure Child is raised in a stable environment free from domestic violence. Mother did not reengage in services until DCS intervened and took custody of Child. *Cf. id.* (finding court interference not necessary when “none of the State’s actions *compelled* [the parent’s] accomplishments”) (emphasis original). Mother also “minimized domestic violence,” and failed to appear at a hearing on her petition for a protection order against Father. Appellant’s App. Vol. II p. 80; *see E.M.*, 4 N.E.3d at 643 (finding parent’s “apathy towards services[,]” “hostility toward service providers[,]” and “miniz[ation]” of his domestic violence” significant). These facts and circumstances support the trial court’s conclusion that coercive intervention was necessary, and we, accordingly, find no error.

III. Home-Based Therapy

- [32] Mother argues the trial court erred in ordering Mother to participate in home-based therapy as a part of its dispositional decree. Specifically, Mother argues therapy is not necessary because Mother completed her domestic violence classwork.⁸ “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.” *K.D.*, 962 N.E.2d at 1258 (quoting *A.C. v. Marion Cnty. Dep’t of Child Servs.*, 905 N.E.2d 456, 464 (Ind. Ct. App. 2009)).
- [33] Mother cites *A.C.*, in which we held that the trial court erred in ordering the parent to submit to random drug testing and complete a substance abuse treatment program when there was no “allegation or even an indication that [the parent] ha[d] a substance abuse problem.” 905 N.E.2d at 464. *A.C.* is distinguishable. Here, multiple instances of domestic violence occurred in the presence of Child, and Mother recognized “the trauma” she went through and its effect on Child. Tr. Vol. II p. 78; see *In re R.G.*, 130 N.E.3d 1171, 1180 (Ind. Ct. App. 2019) (affirming order for parents to participate in therapy to address

⁸ Mother appears to argue that the trial court erred in ordering her to participate in home-based therapy because DCS did not give Mother notice that it recommended therapy until DCS filed its predispositional report. Indiana Code Section 31-34-18-1 provides that, “[u]pon a finding that a child is a child in need of services, the juvenile court shall order [DCS] to prepare a predispositional report that contains a . . . recommendation for the care, treatment, rehabilitation, or placement of the child.” Pursuant to Indiana Code Section 31-34-18-6, “[p]redispositional reports shall be made available at least forty-eight (48) hours before the dispositional hearing” Mother does not argue that DCS’s predispositional report was untimely. Accordingly, we find no error.

concerns of physical abuse), *trans. denied*. The trial court did not abuse its discretion in ordering Mother to participate in home-based therapy.⁹

Conclusion

[34] Any error in permitting the DCS witness to testify telephonically was harmless. Sufficient evidence supported a CHINS adjudication, and the trial court did not abuse its discretion in ordering Mother to participate in at-home therapy. Accordingly, we affirm.

[35] Affirmed.

Brown, J., and Altice, J., concur.

⁹ Mother also argues that the trial court's order that she participate in therapy serves "only to delay the preservation and reunification of the family." Appellant's Br. p. 30. The trial court had the discretion to order Mother to participate in therapy, and the trial court did not abuse that discretion. We observe, moreover, that the trial court granted unsupervised parenting time up to and including temporary in-home trial visitation with Mother upon positive recommendations from Mother's providers.