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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of B.P., S.P., L.P.,
Mad.P., and Mac.P., Children
Alleged to be Children in Need
of Services;

J.P. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

July 7, 2022

Court of Appeals Case No.
22A-JC-44

Appeal from the Shelby Superior
Court

The Honorable R. Kent Apsley,
Judge

Trial Court Cause Nos.

73D01-2105-JC-35

73D01-2105-JC-36

73D01-2105-JC-37

73D01-2105-JC-38

73D01-2105-JC-39

Najam, Judge.

Statement of the Case

- [1] J.P. (“Mother”) appeals the trial court’s adjudication of her five children as Children in Need of Services (“CHINS”). Mother raises two issues for our review, but we address a single dispositive issue, namely, whether the trial court erred when it found her children to be CHINS. We reverse.

Facts and Procedural History

- [2] Mother has five children: B.P., born November 25, 2005; S.P., born December 3, 2008; L.P., born February 28, 2012; and twins Mac.P. and Mad.P., born December 18, 2019 (collectively, the “Children”).¹ Mother has a history of PTSD, anxiety, and depression, and, before she became pregnant with the twins, Mother managed her mental illness through therapy and medication. Mother took Klonopin, which “ke[pt] her calm.” Tr. at 42. During her pregnancy with the twins, however, Mother stopped taking Klonopin because of her concern that it might have a negative impact on the babies’ health. Mother’s mental health suffered as a result.
- [3] A few months after the twins were born, the Covid-19 pandemic hit, and in-person therapy sessions were unavailable to Mother. Mother attempted virtual therapy sessions. Mother was told that she could not get a prescription for Klonopin. She tried “several different medicines,” but “most of [them] made

¹ The Children’s fathers are mostly absent from their lives and are not parties to this appeal.

her sleep all day,” so she stopped taking them. *Id.* And Mother stopped attending therapy in approximately January 2021.

[4] In May 2021, Mother was at her home in Shelby County with the Children when the electricity was shut off. Mother called the electric company and was not able to get information about the power outage. Mother left the house and “was heading to the bank to pay” her electric bill when she was involved in an accident. *Id.* at 7. A short time later, Mother was arrested for leaving the scene of an accident and reckless driving.² Mother was placed in jail. Mother’s eldest child, B.P., who was fifteen years old at the time, was left in charge of the younger children. When none of the Children attended school the next day, a school resource officer went to Mother’s house and found the Children there without electricity and without adult supervision. Accordingly, the officer contacted the Department of Child Services (“DCS”).

[5] Sarah Lloyd, a family case manager (“FCM”) with DCS, contacted Mother, who “refused to give [Lloyd] any information” about the situation and used profane language with her. *Id.* at 49. Ultimately, Mother told FCM Lloyd that she thought it was fine for the older children to take care of the younger children and for the Children to miss school while Mother was in jail. DCS filed a petition alleging that the Children were CHINS, and the Children were “placed in emergency detention.” *Id.* at 4. Lloyd was able to contact Mother’s

² The record does not include details of the accident.

mother (“Grandmother”) in Kentucky, and Grandmother came to stay with the Children at Mother’s house. The electricity was turned back on immediately.

[6] During a detention hearing on May 13, Mother used profane language with the trial court, and the DCS attorney stated that her conduct during the hearing led him “to believe that [Mother had] some untreated mental problem[.]” *Id.* at 20. Per DCS’s request, the trial court ordered that the Children would remain under Grandmother’s care until Mother could convince the court that she was “mentally stable.” *Id.* at 22. At the time of the hearing, Mother was serving a ten-day sentence in jail for direct contempt in her criminal proceeding. She underwent a mental health assessment in jail on May 20, and the result was a recommendation that Mother receive a full psychological evaluation.

[7] Before Mother was released from jail, DCS instructed Grandmother to take the Children to live with Mother’s sister (“Aunt”) in Decatur County.³ DCS did not ask the trial court for permission before changing the Children’s placement, which required that they change schools. And DCS did not notify Mother of the placement change. When Mother came home and found out about the removal of the Children from their home, she was extremely upset. Mother and Aunt were not on good terms at that time.

[8] Approximately one week later, on June 1, Mother attempted to take the Children from Aunt’s home without permission, and Mother was arrested and

³ There is no evidence regarding the reason for this sudden placement change.

charged with Level 6 felony intimidation, Class A misdemeanor criminal trespass, and Class B misdemeanor disorderly conduct. In jail following her arrest, Mother allegedly spat on an officer, and she was charged with Level 6 felony battery by bodily waste. Mother was released from jail on July 21.

[9] The trial court held a factfinding hearing on the CHINS petition on July 26. Mother was present, and she was agitated. Mother used a lot of profane language. Mother interrupted the trial court on several occasions, and she told the judge to “shut up” at one point. *Id.* at 34. The trial court found Mother in contempt of court. Thereafter, Mother stated as follows:

The State owns my kids! They kidnapped my children and I can't speak! I'm supposed to remain calm! I have 5 kids! They are, they are my life! When you take that I have no life left! There's no, there's no penalty you can give me right now to hurt me any further! There's nothing you can do to me beside pull your f***ing gun out and blow my f***ing brains out! Period! And I'm sorry that I can't remain calm at this point!

Id. at 36. Mother then left the hearing, which continued in her absence.

[10] DCS called Grandmother to testify, and she stated:

For the record[, s]he's a wonderful mother and she loves her kids very passionately. And that's a lot of what you see, is the frustration that no matter where she has been with her mental illness she has never once harmed her kids. I have never seen her even spank one of her kids. She is very loving and very affectionate and has always provided a roof over their head[s], food on the table and a place that they could call home and know

that they had love there. And no, I mean I, in my estimation that's the definition of a good mother.

Id. at 39. And Grandmother testified further, "I would really love to see the kids returned to [Mother] and then she would be stable enough to get, I think straight. Right now all she can think is 'I need my kids back.'" *Id.* at 40-41. Grandmother testified that Mother had treated her mental illness in the past with therapy and medication, but that since her pregnancy with the twins, Mother has been unable to get the help she needs or find a medication that works for her. Grandmother stated that Mother needs medication but that she "still functions well without [medication] as long as she's surrounded by her children." *Id.* at 43.

[11] DCS asked the trial court to take judicial notice of the three pending criminal matters, including the charges of resisting law enforcement and direct contempt in one case; intimidation, criminal trespass, and disorderly conduct in another case; and battery by bodily waste in the third case. The court took judicial notice of the pending criminal proceedings.

[12] Family Case Manager ("FCM") Karen Newell testified as follows:

I'm unable to have an exchange, like a coherent exchange of information [with Mother]. Our conversations are very circular. I've had the exact same conversation with her every time I've engaged her. All the home visits I've done, which I can't go without law enforcement. And when I visit her at the jail it's the exact same conversations and we devolve very quickly. She calls me filthy names and gets vulgar and we, we just can't get anywhere. I cannot (indiscernible).

* * *

I offered her a visit with her children. A supervised visit at the DCS office and couldn't even, she just was like you've never seen me with my kids. I'm like I'm offering that now []. So, and we never got to arranging that. We just can't get anywhere.

Id. at 54-55.

[13] At the conclusion of the hearing, the trial court stated as follows:

The Court has had a couple [of] inter[actions] now with [Mother] and it becomes very apparent to me that she's in [a] mental or emotional crisis right now. [She c]learly is unstable or the Court would be very concerned with her having care and custody [of the] children, particularly ones as young as the twins are in this case. The Court will grant the petition that's been filed in this case. I will find the children to be Children in Need of Services. And we'll set the matter for [a] Dispositional Hearing. My hope is in the meantime that her mom might be able to get her to reengage in mental health therapy services or medication that might be needed. If any of that could be, I guess jump started by DCS in the meantime in such a manner that, that again [Grand]mother be able to be the, I guess the liaison between mental health providers that would be outstanding. I don't think that's there any doubt that [Mother] loves her children passionately. She just needs some help right now. So, I'll set it for [a] Dispositional Hearing.

Id. at 58-59.

[14] On August 23, the trial court held the dispositional hearing. Mother's counsel advised the court that DCS had just handed them the predispositional report, and Mother's counsel requested a continuance to give them time to read it. The

trial court granted that motion and rescheduled the hearing for November 22. At that hearing, FCM Newell testified that Mother had refused to submit to a psychological evaluation without a court order. The court ordered Mother to submit to a psychological evaluation. Mother requested that it be conducted by her former physician, Dr. Michael Miller, and the court agreed.

[15] Grandmother was present at the hearing and requested that the court order supervised visitation for Mother with the Children. The trial court asked Grandmother whether she was concerned about Mother's bad behavior and its impact on the Children. Grandmother testified that Mother did not behave badly around the Children. But the trial court ordered that visitation would "continue to be suspended pending the evaluation." *Id.* at 118-19. DCS reminded the court that Mother was "doing video and phone calls" with the Children, and the court agreed that those visits could continue. *Id.* at 119. This appeal ensued.

Discussion and Decision

[16] Mother contends that DCS failed to present sufficient evidence to demonstrate that the Children are CHINS. Our standard of review is well settled:

When reviewing a trial court's CHINS determination, we do not reweigh evidence or judge witness credibility. *In re S.D.*, 2 N.E.3d 1283, 1286 (Ind. 2014). "Instead, we consider only the evidence that supports the trial court's decision and [the] reasonable inferences drawn therefrom." *Id.* at 1287 (citation, brackets, and internal quotation marks omitted). When a trial court supplements a CHINS judgment with findings of fact and conclusions law, we apply a two-tiered standard of review. We

consider, first, “whether the evidence supports the findings” and, second, “whether the findings support the judgment.” *Id.* (citation omitted). We will reverse a CHINS determination only if it was clearly erroneous. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). 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.” *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997) (citation omitted).

Gr.J. v. Ind. Dep’t. of Child Servs. (In re D.J.), 68 N.E.3d 574, 577-78 (Ind. 2017) (alterations in original).

[17] In *J.B. v. Ind. Dept. of Child Servs. (In re S.D.)*, 2 N.E.3d 1283, 1287-88 (Ind. 2014), our Supreme Court explained the three elements required to prove that a child is a CHINS under Indiana Code Section 31-34-1-1 (2021), as alleged in this case:

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. *See generally In re K.D.*, 962 N.E.2d at 1255. Rather, a CHINS adjudication under Indiana Code section 31-34-1-1 (often called a “CHINS 1,” in reference to the section number) requires three basic elements: that the parent’s actions or inactions have seriously endangered the child, that the child’s needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion. In full, the statute 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; 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.

I.C. § 31-34-1-1 (2008). That final element guards against unwarranted State interference in family life, reserving that intrusion for families “where parents lack the ability to provide for their children,” not merely where they “encounter difficulty in meeting a child’s needs.” *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994).

(Emphasis removed).

[18] Mother contends the trial court erred in adjudicating the Children to be CHINS because there was no evidence that the Children were seriously endangered as a result of Mother’s mental illness or that the Children’s needs were unmet. Initially, we note that the trial court did not make specific findings on the three statutory elements. While the court was not required to make specific findings, our Supreme Court has stated that “trial courts’ best practice would be to enter findings on each necessary element.” *See In re S.D.*, 2 N.E.3d at 1288. The trial court did find that Mother had left the Children without adult supervision and without electricity for at least one day before DCS was notified, and the

Children missed school. But Indiana law does not set a minimum age for the supervision of children, and nothing in the record shows that fifteen-year-old B.P. was incapable of adequately caring for the younger children for the brief period of time before Grandmother arrived.⁴ And it is not unusual for children to miss school occasionally due to a family emergency.⁵ In any event, without findings to review on the statutory elements, we examine the whole record under the general judgment standard, considering only the evidence favorable to the trial court's judgment. *Id.*

[19] Indiana law is clear that a parent's mental illness, without more, is not sufficient to support a CHINS determination. In *U.F. v. Indiana Department of Child Services (In re E. Y.)*, we reversed the trial court's CHINS determination where DCS had not shown any harm or danger to the child from mother's obvious mental illness. 93 N.E.3d 1141 (Ind. Ct. App. 2018). As we observed,

it is well settled that "the focus of a CHINS adjudication is on the condition of the child alone." [*J.M. v. Indiana Department of Child*

⁴ This Court recently reversed a mother's conviction for neglect of a dependent where she had left her thirteen-year-old son home alone for the weekend. See *Beckleheimer v. State*, No. 21A-CR-1646, 2022 WL 2284050 (Ind. Ct. App. June 24, 2022). One element of proof required to show neglect of a dependent as charged in that case is that the child was endangered. Ind. Code § 35-46-1-4(a)(1). We noted that "Beckleheimer presented evidence that suggested thirteen-year-old J.K. was responsible enough to be left home alone, and the State did not introduce contradictory evidence." *Id.* at * 4. Here, while not dispositive, Mother testified that she believed that B.P. was capable of caring for herself and the other children, and the State did not introduce contradictory evidence.

⁵ The record is unclear, but it appears that the Children were alone overnight for only one night before DCS intervened and asked Grandmother to come and stay with them. And there is no evidence regarding how many days of school the Children had missed on that one occasion, but it appears to have been only a few days, at the most. In any event, DCS did not present any evidence that the Children struggled in school while under Mother's care. To the contrary, the undisputed evidence shows that B.P. was on track to get her Core 40 high school diploma.

Servics (In re N.C.), 72 N.E.3d 519, 524 (Ind. Ct. App. 2017)]. And here, DCS presented no evidence relevant to the impact, if any, of Mother’s mental illness on Child’s condition.⁶ Indeed, the evidence does not support a reasonable inference that, at the time of the fact-finding hearing, Mother’s mental health endangered Child at all, let alone that her mental health seriously endangered him. *See id.* . . . As our Supreme Court has recognized, “it is an unfortunate instance for any child to experience the ‘emotional turmoil’ and difficulties of living with a parent suffering from mental illness[.]” [*A.A. v. Ind. Dep’t. of Child Servs. (In re V.A.)*], 51 N.E.3d 1140, 1148 (Ind. 2016)]. But that does not mean that a parent’s mental illness necessarily presents a serious danger to a child.

Id. at 1146.

[20] Here, there is no question that Mother’s conduct in the courtroom was inappropriate. The trial court was correct to be concerned about the potential for Mother’s mental illness to negatively impact the Children. But DCS had the burden to prove that the Children were *actually* and *seriously* endangered as a result of Mother’s mental illness. And, other than the one occasion in May 2021 when Mother was arrested and jailed and the Children were left without adult supervision overnight, DCS did not present evidence that the Children had been impacted in any way by Mother’s mental illness.⁶ It is well settled that “a CHINS adjudication may not be based solely on conditions that no longer exist.” *See R.M. v. Ind. Dept. of Child Servs. (In re M.M.)*, 118 N.E.3d 70,

⁶ We note, for example, that there is no evidence that Mother was inappropriate with the Children during visitations. To the contrary, the undisputed evidence shows that Mother is a good parent to the Children.

74 (Ind. Ct. App. 2019). Thus, DCS was required to present evidence of conditions bearing on the Children’s well-being since May 2021, which it did not do.

[21] On appeal, DCS asserts that “it is undisputed that Mother’s behaviors that led the criminal court finding Mother in contempt affected her ability to care for Children because the criminal court ordered Mother to serve 10 actual days in jail.” Appellee’s Br. at 36. But again, the proper focus here is upon the condition of the Children, not Mother’s conduct. *See In re N.C.*, 72 N.E.3d at 524. And DCS has not presented evidence that the Children have been harmed or endangered because of Mother’s criminal conduct or short-term incarceration. Again, while Mother failed to arrange for adult supervision in May 2021 while she was incarcerated, that is a condition that no longer exists and it is, therefore, insufficient evidence to support a CHINS adjudication. *See (In re M.M.)*, 118 N.E.3d at 74.

[22] We cannot ignore the impact of the Covid-19 pandemic on the mental health of many Hoosiers, but especially those already suffering from mental illness at its onset, such as Mother. While the pandemic remains a public health concern, the drastic and dire circumstances associated with the pandemic at its inception have dissipated. The additional stress that Mother had experienced in her life because of her struggle to get mental health treatment early in the pandemic was situational, and the situation has abated. Given Mother’s history of voluntarily seeking treatment for her mental illness, there is simply no evidence that the coercive intervention of the State is needed here.

[23] The evidence does not support a finding that Mother is either unwilling or unable to care for the Children. This is not a case of child abuse or neglect. The trial court expressed compassion for Mother, and we agree with the court's statement that Mother "just needs some help right now." Tr. at 59. But there is no evidence that, until Mother gets the help she needs, the Children must be separated from her. And there is undisputed evidence that the separation has been harmful both to the Children and to Mother. Of course, if new facts arise that would support a CHINS determination in the future, a more stringent and coercive intervention may be required. But no matter what happens, DCS must prove "three basic elements," namely, that Mother's actions or inactions have seriously endangered the Children, that the Children's needs are unmet, and that those needs are unlikely to be met without State coercion. *See (In re S.D.)*, 2 N.E.3d at 1287. In any event, DCS might provide or facilitate services to help Mother and the Children move forward together as a family.

[24] The dissent notes this family's history with DCS, but those CHINS proceedings are in the past, and, again, "a CHINS adjudication may not be based solely on conditions that no longer exist." *See In re M.M.*, 118 N.E.3d at 74. The dissent also mentions Mother's alleged substance abuse, but the CHINS petition at issue in this appeal does not include any allegations of substance abuse by Mother, DCS did not request that Mother be evaluated for substance abuse or submit to drug tests in this proceeding, and DCS presented no evidence to the trial court that Mother has an active substance abuse problem. Indeed, many of the details cited by the dissent, including the allegations that Mother has

threatened to kill Grandmother and other people and that she uses methamphetamine daily, are found only in the predispositional report, which was not admitted into evidence. There is no testimony or other evidence on these subjects.⁷

[25] In sum, the evidence shows that Mother suffers from PTSD, anxiety, and depression. But there is no evidence that the Children's physical or mental health are seriously impaired or seriously endangered as a result of Mother's mental illness. Mother's behavior in the courtroom and her criminal conduct were wrong, and she rightfully does not question the trial court's contempt finding. Mother was defiant, and she resented and resisted DCS. But, as Grandmother testified, Mother's behavior is easily tied to her sheer desperation to get her five daughters back. And our focus on appeal is not Mother's bad behavior, but whether it adversely affects the Children. We cannot base a CHINS determination upon speculation that Mother might direct her bad behavior towards the Children in the future. Ultimately, here, DCS has not shown—as required—that Mother's behavior has seriously endangered the Children, that the Children's specific needs have not been met, and that the Children's needs are unlikely to be met without the coercive intervention of the State. *See In re E. Y.*, 93 N.E.3d at 1147. We hold that the trial court clearly erred when it found the Children to be CHINS.

⁷ We note that a trial court has discretion to admit a predispositional report into evidence. *See A.B. v. Ind. Dep't of Child Servs. (In re C.B.)*, 865 N.E.2d 1068, 1072 (Ind. Ct. App. 2007), *trans. denied*.

[26] Reversed.

Bailey, J., concurs.

Bradford, C.J., dissents with separate opinion.

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Bradford, Chief Judge, dissenting.

[27] Because I disagree with the majority's conclusion that the trial court abused its discretion in finding the Children to be CHINS, I respectfully dissent. I believe that the record before the trial court is more than sufficient to support its judgment. In short, the abundant evidence of Mother's propensity to resort to violence (or threats thereof) and/or verbal abuse as her response to seemingly any situation she does not like is sufficient to support an inference that the Children, if they have not already, will sooner or later feel the wrath Mother

has directed at just about everybody involved in this case, including the trial court, several DCS employees, Mother's sister, Mother's mother, and several law-enforcement officers. The record also contains substantial evidence that Mother's anger issues are related to untreated mental illness and/or drug use. In addition to the portions of the record mentioned in the majority opinion, I believe it necessary to highlight some additional pieces of evidence that were before the trial court.

[28] First, Mother's tendency to resort to violence and/or threats of violence is troubling, to put it mildly. Following the May 11, 2021, incident that precipitated this CHINS case, Mother, in addition to being charged with reckless driving and leaving the scene of an accident, was also charged with two counts of resisting law enforcement, one for fleeing in her vehicle and one for forcibly resisting. During her first meeting with the FCM assigned to her case, Mother lunged at the FCM repeatedly, in addition to verbally abusing her. On May 3, following an attempt to take the Children from the placement home, Mother was charged with criminal trespass, intimidation (for threatening to commit a forcible felony), and battery against a public safety officer. On July 8, 2021, Mother was charged with battery by bodily waste on a public safety officer. Finally, Mother has threatened to kill several persons involved in this case, including her own mother, whose throat she threatened to slit if she did not return the Children to her. It is not unreasonable to assume that Mother's violent tendencies will directly affect the Children at some point if left unaddressed.

[29] The record also supports an inference that Mother’s troublesome behavior is largely the result of untreated mental illness and/or substance abuse, neither of which has been appropriately addressed to date. Mother has a significant history with DCS regarding these issues, detailed in a predispositional report filed on August 23, 2021:

12/08/2015, (ID 10000726512) substantiated, sexual abuse, perpetrator not linked to this current case has sexually abused [S.P].

10/04/2017, (ID 10000965604) substantiated, neglect, against [Mother] in regard to [B.P., S.P., and L.P.] Substance use, concerns for mental health, housing stability.

07/25/2020, (ID 10001315540), substantiated, neglect, against [Mother] in regards to [Mad.P. and Mac.P.] Concerns for [Mother] not treating her mental health, substance use, and refusing to have the children seen by medical providers resulting in an open case.

Case ID #100002945 13, opened on 09/02/2020 for neglecting to get medical treatment for [Mac.P. and Mad.P.]; concerns for mental health and substance use. The case was successfully closed with reunification to [Mother] on 12/07/2020.

Appellant’s App. Vol. II pp. 58–59. Moreover, Mother reported in a mental-health evaluation performed on May 20, 2021, that she “uses methamphetamine daily[,]” and FCM Newell noted in the predispositional report that Mother “does have a history of substance abuse.” Appellant’s App. Vol. II p. 68. In my view, the above is sufficient to support an inference that Mother’s mental-health issues and/or substance abuse have already endangered the Children for quite some time (e.g., unstable housing and her refusal to

provide medical care), even though there may be no evidence of direct harm as yet. Because I believe that the record supports the trial court's determination that the Children are CHINS, I respectfully dissent.⁸

⁸ Although I would affirm the trial court's judgment, I am concerned that supervised visitation has not been ordered in this case. While I acknowledge that it has been offered and that Mother's refusal to cooperate has contributed to this situation, I believe that further efforts should have been made in this direction.