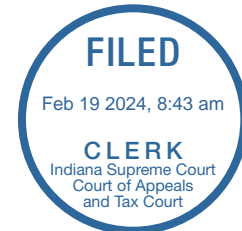


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

In the Matter of L.O., M.O., and R.O., Children in Need of
Services,

and

B.O. (Mother) and S.O. (Father),

Appellants-Petitioners

v.

Indiana Department of Child Services,

Appellee-Respondent

February 19, 2024

Court of Appeals Case No.

23A-JC-1388

Appeal from the Spencer Circuit Court

The Honorable Jonathan A. Dartt, Judge

The Honorable Thomas Pulley, Referee

Trial Court Cause Nos.

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

- [1] B.O. (“Mother”) and S.O. (“Father”) (collectively, “Parents”) are the biological parents of three children. After the children were removed from their care and child in need of services (“CHINS”) proceedings were initiated, Parents voluntarily entered an inpatient program for substance use and mental health treatment. After ninety days, Parents were discharged with the recommendation they continue treatment on an outpatient basis. Soon after, the trial court held a fact-finding hearing and adjudicated the children as CHINS. Parents appeal, alleging there was insufficient evidence the children had needs that were unlikely to be met without State intervention. We conclude the evidence supports the trial court’s judgment and affirm.

Facts and Procedural History

- [2] M.O. was born to Parents in August 2017. The Indiana Department of Child Services (“DCS”) became involved with the family in June 2019 when DCS received a report of substance abuse by Mother. At that time, Mother tested positive for heroin, amphetamine, morphine, oxymorphone, oxycodone,

norfentanyl, and fentanyl. In July, DCS filed a petition alleging M.O. was a CHINS, but in September—before a fact-finding hearing was held—the petition was dismissed because of Parents’ “perceived compliance.” *Appellant’s App. Vol. 2* at 62.

- [3] L.O. was born in March 2020 and R.O. was born in December 2021. M.O. was diagnosed with Autism Spectrum Disorder, Severity Level 2, with Language Impairment in 2022. M.O. has a serious speech delay; at five years old, he did not speak in full sentences. He attends an eight-hour therapeutic program Monday through Friday. L.O. is being tested for autism.
- [4] In November 2022, Father was involved in an automobile accident in Kentucky and was charged with operating while intoxicated. As a result, Father was required to go to drug and alcohol classes, but he had not started those classes by the time the current CHINS case began.
- [5] On December 17, 2022, Mother—with Father and all three children in the car—drove to a friend’s house to buy pain pills. Around 6:00 p.m. that evening, the Spencer County Sheriff’s Department received a report of a reckless driver. Deputy Benjamin Nanney located the car and stopped Mother for failing to use a turn signal. Mother explained she was driving erratically because Father was brushing her hair while she drove. But Deputy Nanney observed Mother’s eyes “were bloodshot-glossy” and her pupils were “super pin-point.” *Tr. Vol. 3* at 12. Mother’s motor skills also seemed impaired.

[6] Deputy Nanney asked Mother to step out of the car, and he retrieved her jacket from the car because it was a chilly evening. Deputy Nanney patted down the jacket before handing it to Mother and saw a pill bottle in the pocket. There was a white powder inside the bottle that field tested positive for cocaine. Mother failed two of three field sobriety tests, so Deputy Nanney arrested her. Before transporting Mother, Deputy Nanney told another deputy on scene not to let Father leave with the children, instructing the deputy “to have them find a ride” because he had observed Father to also have bloodshot and glossy eyes and pinpoint pupils. *Id.* at 26. Deputy Nanney said the other deputy stayed with the family until a friend came to pick them up.

[7] Because he had found children in a car with a potentially impaired driver, Deputy Nanney contacted DCS. He accompanied assessment worker Jeanette Curiel to the family home around 11:30 p.m. that evening. Father and the children were there; no other adults were present. Deputy Nanney and Curiel saw five-year-old M.O. asleep on the couch, two-year-old L.O. awake and running around the house, and one-year-old R.O. in an unsafe sleep situation on a full-size bed. Curiel advised Father that R.O. should be in a crib, on her back, with no blankets or other items nearby. Father said they had a crib but did not move R.O.¹

¹ Curiel testified she was not permitted to move R.O. herself because R.O. was not yet in DCS custody.

[8] Father exhibited signs of impairment—Curiel said he had slurred speech and stumbled backwards when opening the door. His eyes were glassy, he had trouble maintaining eye contact, and he struggled with conversation and responding to simple requests. For instance, Curiel asked Father three times to call another adult to come supervise the children, but Father was unable to operate his phone well enough to complete a call. Father told Curiel he was on medication and showed her the bottles, but he could not tell her why he took the medication. Father refused a drug screen.

[9] For all these reasons, Curiel believed Father was not able to appropriately care for the children at that time. She contacted a judge and obtained permission to detain the children. DCS placed the children with their paternal grandparents. Curiel spoke with Mother the next day. Mother admitted “she had a problem with substances for a while” and had been using “[a]nything and everything under the sun.” *Id.* at 60–61. She said she would “probably fail for everything” if she submitted to a hair follicle test. *Id.* at 61. As for her arrest, Mother told Curiel she went to a friend’s house to buy pain pills “and didn’t realize that she was purchasing cocaine.” *Id.* Curiel advised Mother that DCS could provide services to help and “going into like a substance abuse treatment program would probably be very beneficial” to Parents. *Id.*

[10] DCS substantiated neglect as to all three children and filed a CHINS petition on December 19. Shortly after, Parents flew to California to participate in an intensive ninety-day inpatient treatment program. Asia Doyle, a DCS family case manager (“FCM”), was assigned as the permanency worker at end of

December. Doyle was unable to make service referrals because parents were in California, so her immediate goal was to establish contact with Parents and meet with the children and grandparents. Doyle was only able to speak with Mother while Parents were out of state.

[11] In the meantime, the State charged Mother with several counts arising from the December 17 traffic stop: Level 6 felony possession of cocaine; Level 6 felony neglect of a dependent; Level 6 felony operating a vehicle with a controlled substance in the blood; Class A misdemeanor operating while intoxicated causing endangerment; Class C operating a vehicle with a controlled substance in the blood; and Class C misdemeanor operating while intoxicated. The State charged Father with one count of Level 6 felony neglect of a dependent. These charges were still pending at the time of the CHINS fact-finding hearing.

[12] Parents completed treatment in California on March 11, 2023. Their treatment program was six days a week, consisting of cognitive behavior therapy, criminal and addictive thinking group, relapse prevention group, recovery groups, and parenting group, among others. Parents also participated in treatment focused on their relationship three times a week. Father was diagnosed with opioid dependence, nicotine dependence, generalized anxiety disorder, and bipolar disorder. Mother was diagnosed with opioid dependence, nicotine dependence, ADHD, generalized anxiety disorder, major depressive disorder, and PTSD. When they were discharged, the program recommended they participate in out-patient treatment for substance use and mental health disorders for the

“continuance of recovery.” *Ex. Vol. 1* at 54 (Mother’s discharge letter); *Ex. Vol. 2* at 2 (Father’s discharge letter).

[13] Upon Parents’ return to Indiana in mid-March, DCS offered parent aide services, home-based therapy, supervised visitation, drug screens, regular meetings with service providers, and child and family team meetings. The fact-finding hearing began on March 20, at which time Deputy Nanney and paternal grandmother testified.

[14] Paternal grandmother testified she had spoken with Father about his sobriety multiple times in the last “couple of years” upon noticing his “lack of response to family, lack of interest, depression, his personality,” but he told her very little about his substance use. *Tr. Vol. 2* at 39. Neither Father nor Mother “would ever admit that they have substance abuse outwardly[.] It was just visually apparent to the family.” *Id.* at 40. Grandmother said Parents love their children and are good parents when depression and substance abuse “is taken out of the picture” and she believes they will work very hard to get help. *Id.* at 41. But until they get therapy in place to “make sure that [sobriety] happens,” she is “here for the kids” and “can continue to help.” *Id.*

[15] The fact-finding hearing concluded on May 1, 2023, with the testimony of FCM Doyle, DCS service providers, and Mother and Father.

[16] As of May 1, Parents had been out of in-patient treatment and back from California for about six weeks. Doyle testified that since Parents’ return, their communication with her had been good and they had been open and honest

about their substance abuse and need for help. Parents were participating in the services Doyle referred—home-based therapy, parent aide services, and supervised visitation. Parents were taking drug screens as requested and no screens had been positive for substances. Doyle said the treatment in California was a “great start” but “both of them kind of came to some realizations of some underlying issues and needs that they both had so . . . they definitely need to continue” with home-based services and therapy. *Id.* at 78. Doyle’s concern was that Parents could be overwhelmed and relapse as the children transitioned home. She noted that transitions are hard, especially with high needs kids, and DCS wants Parents to have “a safety net and a support system in place . . . to make sure that it’s not going to rock their sobriety in any way.” *Id.* at 79. For that reason, DCS planned to have the children transitioned back one at a time and believed it was important to continue monitoring the family and providing support to make sure “everybody is . . . okay as that transition happens.” *Id.* at 80.

[17] The service providers all testified that Parents were cooperative, open to services, and generally doing well. Parent aide Arrielle Robertson made no formal referrals because Parents had sought services on their own. But she emphasized Parents needed to continue outpatient therapy, continue with their community-based therapist, and maintain their relapse prevention plan. Home-based therapist Kaitlyn Mendoza had met with Parents three times and completed parenting and substance abuse assessments. She recommended Parents continue therapy and substance abuse counseling, do medication

management through their doctor, and consider a long-term recovery program. Mendoza's recommendations were intended to ensure Parents remained consistent and had the best chance to stay sober. Visit supervisor Rachel Gatwood supervised five positive in-home visits between Parents and the children.

[18] Parents admitted they had struggled with addiction for many years. Mother began using prescription pain medication for a sports-related back injury when she was fourteen years old. She kept using the pain medication throughout high school. Mother considers her struggle with substance abuse to have begun when she started using opiates after a back surgery when she was twenty-four. Opiates are Mother's substance of choice; she believes they relieve her depression, stop PTSD flashbacks, and make it "easier to just go about [the] day." *Id.* at 132. Mother did not use substances while she was pregnant except for a ten-day course of oxycodone prescribed because of a dog bite while she was pregnant with R.O.² Mother had never sought treatment before but considered her arrest the opportunity to open up to her family and get into treatment like she "really had been wanting to [do] for a while." *Id.* at 133. Mother admitted taking the children with her to buy drugs was inappropriate in hindsight and acknowledged she cannot make clear-headed decisions when using drugs.

² DCS investigated when R.O. was born with oxycodone in her system. Mother provided her prescription, and a CHINS case was never filed.

[19] Father has a history of drug use from the time he was twelve, starting with marijuana and alcohol and progressing to opiates for the last thirteen years. As an adult, he stopped using substances while Mother was pregnant but fell back into substance use after each child was born. He believed opiates gave him energy and admitted he took drugs to alleviate his depression, anxiety, and thoughts about past trauma. He believes now that he has been through the treatment program and is on proper medication for depression and anxiety, “[I] have gained my own mental tools to be able to deal with it as well and I feel that I don’t have any more substance abuse problems any more.” *Id.* at 142.

[20] Both Parents said they had no problem with DCS coming into their home or with continuing services.

[21] The trial court adjudicated the children as CHINS, finding that Parents’ long-term substance use had seriously endangered the children and their pattern of relapsing following periods of sobriety and mental health issues made the coercive intervention of the court for continuing oversight necessary:

3. Mother transporting Children to obtain substances while impaired seriously endangered the Children.

4. Father being under the influence and not arranging for a sober caregiver seriously endangered the children.

5. The Children’s basic needs and safety were not tended to when Mother and Father were under the influence of controlled substances.

* * *

9. The Court commends the efforts Mother and Father have made to obtain and maintain sobriety.

10. The impetus and final push to take those steps did not arise until Mother was arrested and the Children were removed from Mother and Father's care.

11. Both Mother and Father have struggled with addiction for years.

12. Both indicated periods of sobriety during Mother's pregnancies followed by relapse.

* * *

15. The nature of long-term addiction is that the struggle will be ongoing for an extended period of time and [Parents] have only been out of in-patient [treatment] since March.

16. Coercive intervention of the Court was necessary to prompt the change and to provide the necessary oversight to maintain the good progress that has been made.

17. Ongoing intervention is needed to continue to ensure services are provided and accepted to ensure sobriety, to ensure the mental health needs of Parents are addressed and that the special needs of [M.O] are properly attended.

18. Court intervention is further needed to ensure proper supervision and safe sleep environments.

Appellant's App. Vol. 2 at 61–62. Parents now appeal the CHINS determination.

Standard of Review

[22] The trial court here issued findings of fact and conclusions thereon at Parents' request. When we review judgments with findings of fact, we consider first whether the evidence supports the findings and second whether the findings support the judgment. *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017). We “shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Ind. Trial Rule 52(A). “A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment.” *In re Paternity of K.I.*, 903 N.E.2d 453, 457 (Ind. 2009).

[23] In assessing whether a judgment is clearly erroneous, we do not reweigh the evidence or judge the credibility of witnesses, instead considering only the evidence and reasonable inferences supporting the trial court's decision. *In re S.D.*, 2 N.E.3d 1283, 1286–87 (Ind. 2014). Clear error is “that which leaves us with a definite and firm conviction that a mistake has been made.” *Masters v. Masters*, 43 N.E.3d 570, 575 (Ind. 2015) (quoting *Egley v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)).

Evidence Supports the Need for Court Intervention

[24] The trial court adjudicated the children as CHINS under Indiana Code Section 31-34-1-1. Under this statute, DCS must have proved by a preponderance of the evidence that:

(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; or

(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.

Ind. Code § 31-34-1-1 (2019); *see* I.C. 31-34-12-3 (1997) (imposing preponderance standard).

[25] Thus, a CHINS adjudication requires proof of “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.” *S.D.*, 2 N.E.3d at 1287. That final element guards against unwarranted State interference in family life, reserving such an 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.” *Id.* (quoting *Lake Cnty. Div. of Fam. & Child. Servs. v. Charlton*, 631

N.E.2d 526, 528 (Ind. Ct. App. 1994)). When determining whether a child is a CHINS under section 31-34-1-1, and particularly when determining whether the coercive intervention of the court is necessary, the court “should consider the family’s condition not just when the case was filed, but also when it is heard.” *Id.* at 1290.

[26] Parents do not challenge any of the trial court’s findings of fact. They challenge only the trial court’s determination that the ongoing coercive intervention of the court is needed to assure the children get the care, treatment, or rehabilitation they need. Specifically, Parents argue the evidence does not show the coercive intervention of the court was needed by the time of the fact-finding hearing because they had voluntarily sought treatment, were cooperating with service providers, provided negative drug screens, and “not one piece of evidence presented shows that the Parents will not follow through with the services they have voluntarily been participating with.” *Appellant’s Br.* at 12.

[27] The Indiana Supreme Court has reversed several CHINS adjudications upon determining the evidence did not show the necessity of court intervention. The Court described the CHINS case in *S.D.* as stemming “from [m]other’s struggles in abruptly relocating to a new city to meet the challenges of [S.D.’s] serious medical crisis, while still providing for four other children.” 2 N.E.3d at 1285. In the immediate aftermath of the move, the family’s housing was transient, and mother became overwhelmed with trying to meet the needs of the whole family with limited time and resources. Mother consented to DCS removing her four other children so she could focus on S.D.’s medical needs,

and DCS initiated CHINS proceedings over all five children. By the time of the fact-finding hearing, mother had obtained housing, S.D.'s medical needs had somewhat abated, and S.D.'s siblings had been returned to mother's care. S.D. was still hospitalized, however, because hospital policy prohibited releasing her until mother and a second caregiver participated in several phases of medical training. The mother struggled to find a DCS-approved second caregiver until shortly before the fact-finding hearing and had completed all necessary training but a twenty-four-hour home-care simulation. The trial court recognized mother had obtained housing and was providing for S.D.'s siblings and closed their CHINS cases. But the trial court found S.D. was a CHINS because mother had not completed the medical training necessary to care for her special medical needs. The Court reversed, noting the evidence showed mother had difficulty completing the last step of the medical training, not that she was unwilling or unable to do so without the court's intervention. *Id.* at 1290.

[28] Subsequently, the Court in *D.J.* reversed a CHINS adjudication for lack of evidence that the coercive intervention of the court was necessary to compel parents to provide for their children's needs. 68 N.E.3d at 576. The CHINS case arose from an incident where mother briefly left her two young sons unattended in a bathtub and the assistance of emergency personnel was required. After a home inspection, DCS removed the children based on "the bathtub incident, the messy condition of the family home, and the family's co-sleeping practice." *Id.* at 577. Evidence was offered at the fact-finding hearing that parents had cleaned the house, completed a parenting curriculum, met

their therapeutic goals, and completed or were in the process of completing all other services DCS required. Yet the trial court adjudicated the children as CHINS. The Court held that although the findings supported a conclusion that parents required the coercive intervention of the court early in the CHINS process, the findings “did not show that [p]arents needed such intervention by the time of the fact-finding hearing” because they had met their goals and satisfactorily completed all services by then. *Id.* at 581; *see also In re E.K.*, 83 N.E.3d 1256, 1262–63 (Ind. Ct. App. 2017) (reversing CHINS adjudication because DCS’ initial intervention was based on one incident of excessive discipline but parents had fully cooperated with DCS, signed a safety plan they never violated, and engaged with counseling and treatment programs— “[o]ne lapse in judgment by [f]ather is not enough to warrant a CHINS finding . . . where the parents have been fully cooperative in addressing that lapse”), *trans. denied.*

[29] This case is similar to *S.D.*, *D.J.*, and *E.K.* in that Parents voluntarily sought treatment and took advantage of services provided by DCS during the CHINS process to address the issues endangering their children. But there are also important differences between those earlier cases and this one. First, there was no evidence in those cases of prior DCS involvement, unlike here. Second, there was no evidence in those cases that parents faced criminal charges; here, both Mother and Father were charged with felony neglect of a dependent due to the grave danger they placed children in when they chose to drive the children to a drug transaction while intoxicated. Those charges were pending at the

time of the fact-finding hearing and incarceration of one or both parents was a possibility. Last, in *D.J.*, and *E.K.*, parents had already remedied the single event precipitating DCS involvement by the time of fact-finding hearing; in *S.D.*, mother was one step from completing the last concrete thing asked of her. The same is not true here: addiction is not a singular event, and Parents have recently taken only the first step in the ongoing process of recovery. They have a decades-long history of substance use and a pattern of getting sober for a brief time and then relapsing, including the last time DCS was involved with the family. To the extent Parents rely on *S.D.* or *D.J.* as support for reversal, this case is distinguishable.

[30] By all accounts, Parents were doing well at the time of the fact-finding hearing.³ But that hearing was completed only six weeks after Parents were discharged from inpatient treatment with multiple mental health diagnoses and a recommendation for ongoing outpatient substance use treatment. And Parents only sought that treatment at all because of DCS intervention. The family's condition may have improved since this CHINS case was filed, but Parents have not yet remedied their complex issues. *Cf. D.J.*, 68 N.E.3d at 580-81 (considering the family's condition not just when the case is filed but also when it is heard "avoids punishing parents for past mistakes when they have already corrected them").

³ We, like the trial court, commend Parents for admitting they have struggled with addiction for a long time and seeking help to address it, and we encourage them to continue on the path toward sobriety.

[31] Trial court judges are “faced with the challenge of balancing multiple factors and multiple voices in a CHINS case.” *In re K.D.*, 962 N.E.2d 1249, 1255 (Ind. 2012). The trial court here, having the opportunity to view Mother’s and Father’s testimonies and judge their credibility firsthand, found Parents required the coercive intervention of the court to ensure the children had stable, sober parents capable of providing safety and making good decisions for them. Given Parents’ decades-long pattern of behavior, we cannot say the court erred.

Conclusion

[32] The trial court’s judgment that children are CHINS is supported by the evidence and findings and is not clearly erroneous.

[33] Affirmed.

Altice, C.J, and Weissmann, J., concur.

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