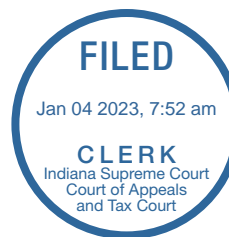


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited 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:
A.T. (Minor Child)
B.T. (Mother),
Appellant-Respondent,

v.

Indiana Department of
Child Services,
Appellee-Petitioner.

January 4, 2023

Court of Appeals Case No.
22A-JC-1683

Appeal from the Monroe Circuit
Court

The Honorable Holly M. Harvey,
Judge

Trial Court Cause No.
53C06-2112-JC-601

Weissmann, Judge.

[1] B.T. (Mother) and her boyfriend were embroiled in a domestic dispute to which police responded. After Boyfriend showed police a methamphetamine pipe allegedly belonging to Mother, police called the Indiana Department of Child Services (DCS), who ultimately took Mother's two-month-old child, A.T. (Child) into emergency custody. DCS then successfully petitioned to find Child to be a child in need of services (CHINS). Mother appeals that determination, claiming the trial court's factual findings are erroneous and insufficient evidence supports the court's conclusion that Child is a CHINS. We find no error and affirm.

Facts

[2] When police responded to a domestic dispute, Mother and Boyfriend each pointed to the other as the aggressor.¹ Child, who was being held by one of them during the altercation, was uninjured. Mother suffered a bloodied lip.

[3] Boyfriend was yelling and screaming when police approached him just after the altercation. He claimed Mother was attempting to leave with Child, rather than attend a doctor's appointment that afternoon. DCS had arranged the appointment as part of an unrelated investigation into a report that Child was neglected.

¹ Boyfriend was thought to be Child's father, but DNA testing months later showed he was not.

- [4] Boyfriend reached under a mattress and pulled out what he identified as Mother's methamphetamine pipe. Police arrested only Boyfriend and contacted DCS. DCS responded but could not locate Mother and Child for another three days. Once they were found, DCS took Child into emergency custody. DCS petitioned to find Child to be a CHINS based on domestic violence and drug use in Mother's home. The trial court ordered Child removed from Mother's home and placed with Child's maternal uncle.
- [5] At the CHINS factfinding hearing, Boyfriend testified that Mother routinely used drugs, including methamphetamine. Boyfriend also testified that Mother physically abused him and prompted other people to physically harm him as well. Boyfriend's mother testified that Mother usually left care of Child to others so Mother could sleep or use drugs.
- [6] The trial court determined Child to be a CHINS, finding “an inability, refusal or neglect of the parents to provide shelter, care, and/or supervision at the present time” and that “[Child] needs protection that cannot be provided in the home.” App. Vol. II, p. 22. After a dispositional hearing, the court ordered Mother to undergo psychiatric, psychological, parenting, and substance abuse evaluations. Mother appeals this determination.

Discussion and Decision

- [7] Mother challenges some of the trial court's factual findings as well as its conclusion that Child is a CHINS. We find no material error in the findings and conclude that sufficient evidence supports the CHINS determination.

I. Standard of Review and Applicable Law

[8] DCS bore the burden of proving by a preponderance of the evidence that Child was a CHINS, as alleged, under Indiana Code § 31-34-1-1. *In re M.W.*, 869 N.E.2d 1267, 1270 (Ind. Ct. App. 2007). That statute specifies:

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.

Ind. Code § 31-34-1-1.

[9] When analyzing Mother's claim of insufficient evidence, we consider only the evidence, and any reasonable inferences drawn from it, in favor of the trial court's judgment. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). We do not reweigh evidence or assess witness credibility. *Id.*

[10] As to the issues covered by the trial court's sua sponte findings, we determine first whether the evidence supports the findings and second whether the findings support the judgment. *In the Matter of S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). We review the remaining issues under the general standard judgment and affirm if the judgment can be sustained on any legal theory supported by the evidence. *Id.* We will reverse a CHINS determination only if it is clearly erroneous. *K.D.*, 962 N.E.2d at 1253.

II. Trial Court's Findings

[11] Mother challenges three findings as incorrect. She also alleges other findings should be rejected because they lack dates essential to determining their relevancy. We conclude the challenged findings are either correct or harmless error.

[12] First, Mother contends the trial court erred in finding that Boyfriend "reported to Centerstone staff on November 9, 2021, that [Mother] had been smoking methamphetamine all day and was 'whacked.'" App. Vol. II, p. 10. Mother asserts that Boyfriend never specifically admitted making the Centerstone report. While that may be true, his testimony revealed an implicit admission. DCS counsel asked Boyfriend to "tell us a little about" the allegation of his report to Centerstone. Tr. Vol. II, p. 15. Boyfriend proceeded to testify about the impact that Mother's drug use on November 9, 2021, had on her behavior, inducing paranoia, belligerence, and critical remarks. *Id.* at 15-16. Boyfriend never disputed that he made the Centerstone report.

[13] Even if the trial court erred in its finding on the Centerstone report, the error would be harmless. The Centerstone report was offered to prove that Mother was using illegal drugs. In unchallenged testimony, Boyfriend stated that he observed Mother using drugs daily for several months after the date of the Centerstone report. Other testimony revealed Mother was a regular drug abuser. Therefore, any error in who made the Centerstone report did not impact the trial court's ultimate determination that Child is a CHINS. *See* Ind. Trial Rule 61 (“The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”),

[14] Mother next challenges the trial court's finding that Boyfriend's mother “reported to DCS that she ha[d] found two pipes in [Mother's] possession, one over the summer of 2021 and one found in [Child's] diaper bag the week prior to December 3, 2021.” App. Vol. II, p. 21. Mother is correct that this finding is inaccurate to the extent that it specifies the pipes were in Mother's direct possession when discovered.

[15] Boyfriend's mother testified that she found a pipe under the bed where Mother slept and that a relative found another pipe in Child's diaper bag. But Mother's alleged error concerning whether she directly possessed the pipes is harmless because Mother admitted the pipes belonged to her. Tr. Vol. II, pp. 30, 34. The essence of the trial court's finding—that Mother kept drug paraphernalia in her home and among Child's clothing—is accurate.

- [16] Mother further contends the record contains no evidence to support the trial court's finding that she "has a conviction for Aggravated Battery, B Felony, from 2006." App. Vol. II, p. 21. DCS concedes that the record contains no evidence supporting that finding. The error in this finding is harmless, as well. *See* T.R. 61. The trial court relied on the 2006 conviction as evidence of Mother's history of domestic violence. But that history was established through evidence of more recent violence in Mother's life, including Boyfriend's two convictions for battering Mother and testimony from Boyfriend and his mother revealing Mother's physical attacks on Boyfriend.
- [17] Finally, Mother claims some of the trial court's findings are defective because they lack specific dates. For instance, the trial court's finding "d" relates to a video call in which Boyfriend's mother witnessed Mother attacking Boyfriend while he was holding Child. Given that Child was removed from Mother two months after her birth and did not return before the CHINS hearing, the incident must have occurred during those two months. The other findings that Mother challenges for lack of time specification similarly point to events that must have occurred after Child's birth but before Child's removal from Mother.
- [18] The relevance of these findings is clear. Although these findings lack specific dates, they are adequate to establish recent drug use by Mother and recent domestic violence in Child's presence. We conclude that the trial court committed no prejudicial error in its findings.

III. Trial Court's Conclusion

[19] Mother next claims the evidence does not support the trial court's conclusion that Child is a CHINS. When DCS alleges that a child is a CHINS under Indiana Code § 31-34-1-1, DCS must prove three basic elements: "that the parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and . . . that those needs are unlikely to be met without State coercion." *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2016). Mother contends DCS failed to prove all three elements.

A. Serious Endangerment

[20] Mother asserts the evidence fails to establish Child was seriously endangered. But DCS presented significant evidence showing Mother's history of domestic violence, including incidents in which either Mother or Boyfriend was holding Child during a physical altercation. The evidence of repeated domestic violence within Child's home was enough to prove by a preponderance of the evidence that Child was seriously endangered. *See K.B. v. Ind. Dep't of Child Servs.*, 24 N.E.3d 997, 1004 (Ind. Ct. App. 2015) (finding children endangered when exposed to domestic violence).

[21] Mother claims she is free of domestic violence because she has severed her relationship to Boyfriend and he is not Child's father. *See generally In re R.S.*, 987 N.E.2d 155, 159 (Ind. Ct. App. 2013) (ruling that "a CHINS adjudication may not be based solely on conditions that no longer exist"). But Mother ignores the evidence showing her own propensity to initiate violence. Boyfriend and his

mother both testified to Mother's physical attacks on Boyfriend. And Mother does not challenge the trial court's finding that:

[Boyfriend] claims that [Mother] had an acquaintance, allegedly a drug dealer, beat him with a gun, has had him shot at, and had him hung by chains used to install car engines. This testimony was unrefuted. [Boyfriend] was visibly afraid of [Mother] while testifying during the hearing.

[22] App. Vol. II, p. 21.

[23] The record also contains substantial evidence suggesting Child is endangered by Mother's drug use. As DCS notes, the exposure of a child to illegal drug use poses an actual and appreciable danger to the child. *In re J.L.*, 919 N.E.2d 561. 563 (Ind. Ct. App. 2009) (quoting *White v. State*, 547 N.E.2d 831, 836 (Ind. 1989)). The threat is two-fold: the child may see the parent using the drugs, and the parent who is responsible for the child's care and custody may be impaired. *Id.* In the latter circumstance, the parent “essentially abandon[s]” the child, “without any reasonable supervision.” *Id.*

[24] This is the exact type of danger that the trial court found that Child faced. The evidence showed Mother abused drugs regularly. Boyfriend's mother testified that Mother left Child's primary care to others because she preferred to use drugs or sleep. Mother left drug paraphernalia in Child's diaper bag and submitted to only a few of the weekly drug screens scheduled during the four months between Child's removal and the factfinding hearing.

[25] Mother refused to provide an address in Indianapolis where she was staying before the factfinding hearing. She also failed to appear for a substance abuse assessment two months before the hearing and halted all contact with DCS one month later. The trial court correctly determined that DCS proved Child's serious endangerment.

B. Unmet Needs

[26] Mother claims that Child's needs were never unmet. But Mother ignores the substantial evidence of drug use and domestic violence within their home. That evidence showed Mother had failed to meet at least one of Child's essential needs: a safe home free of drug abuse and violence. Before Child's removal, Child was in the middle of at least two physical altercations between Mother and Boyfriend. The evidence also showed Mother had used illegal drugs daily for five months shortly before the factfinding hearing including during the entire period between Child's birth and removal. We find no error in the trial court's order concerning the needs of the Child. *See In re A.M.*, 121 N.E.3d 556, 563 (Ind. Ct. App. 2019) (affirming trial court's determination that child was a CHINS due to parents' failure to satisfy child's need for a safe home).

C. Coercive Intervention

[27] Mother claims that the State's coercive intervention was unnecessary is premised solely on her argument that she already had voluntarily met all of Child's needs. As we have found adequate evidence showing that Child's needs

were unmet, Mother has failed to establish that the trial court erred in finding the State's coercive intervention was necessary.

[28] In any case, Mother's actions during the two months before the factfinding hearing show the need for continued State intervention to protect Child. That evidence revealed that Mother continued to engage in illegal substance abuse daily even after Child's removal. She also continued to have contact for months with Boyfriend, although he was accused, and later convicted, of abusing her in the presence of Child. After Child's removal, Mother chose to avoid most drug screens and failed to complete a substance abuse assessment aimed at addressing her drug use. And her halting of contact with DCS impaired her ability to receive services designed to help her overcome the domestic violence and drug issues that prompted Child's removal. Given Mother's inability to improve her fitness to meet Child's needs even *with* State intervention, the trial court properly determined that Child's unmet needs would not be addressed without it.

[29] The trial court's findings either were correct or harmless error, and those findings and supporting evidence were sufficient to justify the trial court's conclusion that Child was a CHINS. We therefore affirm the trial court's judgment.

May, J., and Crone, J., concur.