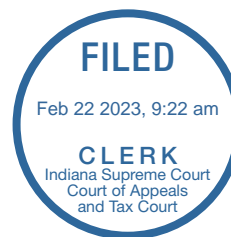


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of: Ja.P., Jl.P.,
Jy.P., Jo.P. (Minor Children)
J.C.P. (Father),
Appellant-Respondent,

v.

Indiana Department of
Child Services,
Appellee-Petitioner.

February 22, 2023

Court of Appeals Case No.
22A-JC-2235

Appeal from the Howard Circuit
Court

The Honorable Lynn Murray,
Judge

Trial Court Cause Nos.
34C01-2205-JC-198
34C01-2205-JC-200
34C01-2205-JC-201
34C01-2205-JC-202

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

- [1] J.C.P. (Father) challenges the trial court's determination that his four children are children in need of services (CHINS) as a result of abuse and illegal drug use by Father and his wife. He contends the evidence does not support the CHINS determination. We disagree and affirm the trial court's judgment.

Facts

- [2] Father has four children: 17-year-old Ja., 13-year-old Jy., 12-year-old Jl., and 8-year-old Jo. (Children). Father's wife, D.P. (Mother), is the stepmother of Ja. and the mother of the three younger children. The family has a long history of investigative visits by the Indiana Department of Child Services (DCS). One such visit resulted in a 2016 informal adjustment due to Father bruising one of the children by spanking him with a belt. In 2022, DCS received a report of physical abuse, sexual abuse, substance abuse, and unsanitary conditions within the family's home.
- [3] DCS investigators interviewed Children alone before speaking to Father and Mother (Parents). The oldest child reported that Children had been hit with a belt for their previous revelations to DCS and instructed to lie to DCS investigators. As a result, the oldest child believed her siblings would be frightened to speak to the investigators. However, the second oldest child later corroborated his older sibling's allegation, reporting that Father would ask the children, "Do you want to be the reason I go to jail?" Tr. Vol. II, p. 14.

- [4] The oldest child also revealed that Father had asked to compare her breasts to those of her younger sister and that Father had made a similar request to her adult sister. The other children did not report any sexual abuse at that time, but the second oldest child confirmed physical abuse. He also reported that Father was under the influence of Xanax when the DCS workers arrived. The oldest child told investigators that she believed Father and Mother took Xanax, had used methamphetamine in the past, and had marijuana in the house. Both Father and Mother would lock themselves in their bedroom for as much as a day at a time while under the influence, according to the two oldest children, leaving all the siblings to fend for themselves.
- [5] Father and Mother denied the allegations, but Mother noted that the couple had been taking suboxone by prescription for six years. Father, who appeared to be under the influence of some substance during the investigation, was slurring his words and walking “a little bit sideways.” *Id.* at 7. Both Father and Mother refused drug tests. DCS removed Children from Parents’s home and placed them in foster care.
- [6] The trial court conducted a detention hearing and approved Children’s removal. The second oldest child later told his foster mother that Father had asked to look at his “private parts.” *Id.* at 10. Additionally, the oldest child reported feeling very depressed and hearing voices in her head.

- [7] Just after the detention hearing, Father and Mother submitted to drug tests. Father tested positive for methamphetamine and amphetamine. Both Mother and Father tested positive for THC then and in later drug screens.
- [8] DCS petitioned to find Children to be CHINS. At the scheduled factfinding hearing, the oldest child's mother and Mother stipulated that Children were CHINS. Father denied the CHINS allegations. The factfinding hearing proceeded, with DCS presenting the drug screens and Children's reports of physical and sexual abuse and of Parents's substance abuse. The trial court determined that Children were CHINS due to abuse and drug use within the home. Father appeals that judgment.

Discussion and Decision

- [9] Father contends DCS did not prove that Children were CHINS. DCS had the burden of proving by a preponderance of the evidence three elements: (1) Children were under the age of eighteen; (2) at least one of eleven different statutory circumstances that would make Children CHINS exists; and (3) Children need care, treatment, or rehabilitation that they are not receiving and are unlikely to receive without the coercive intervention of the Court. *See In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012).
- [10] The trial court found DCS proved all three elements, including the existence of two different statutory circumstances. First, the court found that Children were CHINS under Indiana Code § 31-34-1-1, which applies when

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 . . . medical care . . . 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

Second, the court found Children were CHINS under Indiana Code § 31-34-1-2, which applies when “the child’s physical or mental health is seriously endangered due to injury by the act or omission of the child’s parent”

[11] When reviewing a CHINS judgment, we will not reweigh the evidence or judge witness credibility. *In re K.D.*, 962 N.E.2d at 1253. Instead, we consider only the evidence and reasonable inferences most favorable to the trial court’s decision. *Id.* We reverse only upon a showing that the court’s decision was clearly erroneous. *Id.*

[12] Father contends DCS proved no statutory circumstances and that the court’s coercive intervention was necessary. We disagree and affirm the trial court’s judgment.

I. Statutory Circumstances

[13] Father first claims that DCS failed to establish that Parents contributed to any serious impairment or endangerment of or injury to Children. *See* Ind. Code §§ 31-34-1-1, -2. Father points to his testimony that he had not used drugs in four years and that he was in substance abuse treatment. He also points to evidence showing that Children had no visible injuries at the time of removal and that

three of the four children denied physical abuse when DCS first approached them. Additionally, Father contends he gave a plausible, exculpatory explanation for his comparison of his daughter's breasts.

[14] Father's argument is merely an improper request to reweigh the evidence. *See In re K.D.*, 962 N.E.2d at 1253. DCS presented evidence that Father tested positive for illegal drugs several times shortly before the factfinding hearing and that several children reported substance abuse within their home. At least two children reported physical abuse, and one reported sexual abuse. All the children appeared traumatized by Father's use of his belt on them.

[15] Children's therapist referred the oldest child to a psychiatrist for evaluation in response to her reports of hearing voices in her head. During the second youngest child's therapy session, she appeared anxious and applied hand sanitizer all over her hands, arms, and legs at least seven times, ultimately emptying an entire bottle. The therapist diagnosed her, as well as her younger sister, with post-traumatic stress disorder (PTSD). The second oldest child told the therapist that he had been abused but did not detail it. He reported feeling depressed, flunking his classes, and stealing. The youngest child echoed her siblings's reports of physical abuse in the home.

[16] The trial court had the discretion to credit DCS's evidence and not Father's testimony. *See In re Des.B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014) (citing Ind. Trial Rule 52(A), which provides that "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). DCS's

evidence was sufficient to establish by a preponderance of the evidence that Parents's inadequate care and supervision seriously endangered or impaired Children's physical or mental condition and that Children's physical or mental health is seriously endangered due to Parents's injuries to them.

II. Coercive Court Intervention

[17] We also reject Father's second claim—that the trial court improperly determined that DCS proved Children need care, treatment, or rehabilitation that they were not receiving and are unlikely to receive without the court's coercive intervention. Father contends he already is addressing substance abuse in the home through his treatment at the methadone clinic and by abstaining from illegal drugs. *See generally In re R.S.*, 987 N.E.2d 155, 159 (Ind. Ct. App. 2013) (“[A] CHINS adjudication may not be based solely on conditions that no longer exist.”). He also argues that the court's coercive intervention is unnecessary to address Children's alleged abuse because it did not occur.

[18] As we have noted, DCS established Father was a continuing drug user who abused Children. Although the oldest child needed psychiatric evaluation and two of her siblings suffered from PTSD, the record contains no evidence that Parents had ever sought treatment for any of the children. Moreover, Father and Mother first told the DCS investigators that they would not submit to drug tests or participate in services aimed at improving the family's situation. Although they later changed their minds, both Father and Mother continued to use illegal drugs.

[19] Father denied his drug use in the face of multiple positive tests and refused to acknowledge the abuse that had traumatized Children. He so frightened or intimidated Children that they were reluctant at first to reveal his abuse to DCS. The record makes clear that Children would not receive the care, treatment, or rehabilitation they needed absent court intervention.

[20] We affirm the trial court's judgment finding Children to be CHINS.

Bailey, J., and Brown, J., concur.