

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of: W.J.F. (Minor
Child), and W.F. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

April 18, 2023

Court of Appeals Case No.
22A-JC-2518

Appeal from the Dearborn Circuit
Court

The Honorable James D.
Humphrey, Senior Judge

The Honorable Carl H. Taul,
Senior Judge

Trial Court Cause No.
15C01-2207-JC-67

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] W.F. (“Father”) appeals the determination that W.J.F. (“Child”) is a child in need of services (“CHINS”) and argues the juvenile court did not have jurisdiction and the Indiana Department of Child Services (“DCS”) did not present sufficient evidence. We affirm.

Facts and Procedural History

- [2] Father and S.T. (“Mother”) are the parents of Child, who was born in September 2020. In 2022, Father, Mother, and Child lived in Ohio, Father had not established paternity at that time, and there were no pending custody cases in Ohio. At some point following a disagreement between Father and Mother, and prior to May 8, 2022, Mother and Child moved to Aurora, Indiana. On July 25, 2022, DCS received a report that Mother had overdosed on fentanyl and cocaine, and it removed Child from her care and placed him with Father. In a discussion with DCS Case Worker Alexa Monroe, Father stated “that he had used while [Child] was not in his care as he had said [Mother] and . . . the baby had been gone for the last three months since Mother’s Day until that time and that she had been staying presumably down in Aurora that whole time.” Transcript Volume I at 28.
- [3] On July 27, 2022, the Dearborn Circuit Court held an initial hearing at which Father appeared and submitted to a drug screen. In its order on the initial hearing, the court stated that “[a]lleged father is granted temporary custody of the child while this matter is pending.” Appellant’s Appendix Volume II at 52. On August 5, 2022, Father’s drug screen from July 27th returned results

positive for cocaine and THC. On August 11, 2022, Father submitted to another drug screen, and the results were positive for methamphetamine, amphetamine, cocaine, and THC.

[4] On August 22, 2022, the court held a detention hearing at which Father appeared in person and by counsel, and the court removed Child from Father's care "based on the finding of probable cause, the allegations in the petition, and the Report of Preliminary Inquiry." *Id.* at 61. That same day, Father submitted to another drug screen that, on August 29, 2022, returned positive for cocaine and THC. On August 26, 2022, paternity testing established Father as the biological father of Child. On August 29, 2022, the court held a fact-finding hearing at which Father's counsel asked for a continuance and argued "that Indiana does not have jurisdiction over this case," and stating that Father, Mother, and Child did not live in Indiana. Transcript Volume I at 11. DCS's counsel responded that Father had "voluntarily submitted himself to the jurisdiction of the State of Indiana," and "[t]he child was in Indiana at the time that this occurred and the child was removed initially from the mother." *Id.* at 12. The court continued the fact-finding hearing with respect to Father and did not address his counsel's argument about jurisdiction. The court reviewed the basis of the CHINS petition with Mother. The allegations included that "no other custody proceeding concerning the child is pending in a court of this state or of any other state," DCS "was unable to provide efforts to prevent removal, as a result of the emergency nature of the situation," and DCS amended the petition to include "that the mother has substance abuse issues that require

treatment and services, and the child would benefit from services to be provided by” DCS, and Mother admitted to the allegations. *Id.* at 16.

[5] On August 31, 2022, the court held a fact-finding hearing with respect to the allegations against Father. Father’s counsel reiterated his argument alleging a lack of jurisdiction, and the court denied the motion to dismiss for lack of jurisdiction. DCS Case Worker Alexa Monroe testified that, when she first contacted Father, they discussed his prior drug usage and the possibility of him “taking placement” of Child, Father declined a drug screen because “[h]e had admitted to using marijuana as well as something along the lines of ecstasy,” and Father stated “he had used and would no longer use while he was caring for [Child].” *Id.* at 28-29. She testified that Father’s drug screen collected on July 27th “came back positive for cocaine, as well as the metabolite of cocaine, and THC.” *Id.* at 30. She stated that Father’s drug screen collected on August 11th “came back positive as well for cocaine and the metabolite of cocaine, as well as THC.” *Id.* She agreed that Child was removed from Father’s care “after the second failed drug screen” and was placed in foster care. *Id.* at 31. She did not believe placement of Child with Father was appropriate because “[h]e has continued to test positive for substances,” and “[h]e has denied using so we can’t ensure safety if we know that his story is not matching up as well with what the screens are saying.” *Id.* at 32. On redirect examination, she stated that a third drug screen had been collected on August 22nd and Father had not established paternity at the time of the filing of the CHINS case, but DCS had conducted paternity testing establishing him to be Child’s biological

father. The results of the third drug screen demonstrate that Father returned results positive for cocaine, the metabolite of cocaine, and THC.

[6] Father testified that Mother “had gone on Mother’s Day and pretty much we didn’t’ [sic] really get back in contact until the incident with our child,” but the plan was to return to Ohio. *Id.* at 37. He stated that he had never used cocaine or methamphetamine while Child was in his care and that he never used marijuana while Child was with him. On cross-examination, he agreed he was arrested and convicted in Ohio in his twenties for possession of cocaine, and he stated “[e]very possession charge I have on my record, it began as trafficking, and it was reduced.” *Id.* at 43. On September 22, 2022, the court held a dispositional hearing at which it adopted the recommendations of DCS, and Child remained in his foster home under DCS supervision.

[7] On November 4, 2022, the court entered an Order on Periodic Case Review which stated that “[t]he Hamilton County Ohio Juvenile Court assumed jurisdiction over this matter,” Child remained in foster care in Indiana, and the case was set “to be dismissed upon Hamilton County exercising personal jurisdiction over the child.” Appellant’s Appendix Volume II at 121.

Discussion

I.

[8] The first issue is whether the juvenile court erred in assuming jurisdiction. Father asserts that “DCS failed to establish the jurisdictional requirements for the trial court to make a CHINS determination,” and, under the Uniform Child

Custody and Jurisdiction Act (“UCCJA”), the juvenile court “improperly exercised jurisdiction.” Appellant’s Brief at 10-11. He argues Indiana is not the home state of Child, “the trial court made no finding that an emergency existed requiring the protection of the Child,” and the placement of Child with Father remedied any existing emergency. *Id.* at 11.

[9] To the extent Father asserts the court lacked subject matter jurisdiction, we note Indiana courts only have jurisdiction to the extent that jurisdiction has been granted to them by the constitution or by statute. *In re Custody of M.B.*, 51 N.E.3d 230, 234 (Ind. 2016). “Subject matter jurisdiction is the power to hear and determine cases of the general class to which any particular proceeding belongs.” *Id.* (citing *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006)).

[10] Ind. Code § 31-30-1-1 provides:

A juvenile court has exclusive original jurisdiction, except as provided in sections 9, 10, 12, and 13 of this chapter, in the following:

* * * * *

(2) Proceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services under IC 31-34.

(3) Proceedings concerning the paternity of a child under IC 31-14.

[11] Ind. Code § 31-21-5-4 provides:

(a) An Indiana court has temporary emergency jurisdiction if the child is present in Indiana and:

(1) the child has been abandoned; or

(2) it is necessary in an emergency to protect the child because:

(A) the child;

(B) the child's sibling; or

(C) the child's parent;

is subjected to or threatened with mistreatment or abuse.^[1]

[12] The record reveals that the court found probable cause existed to authorize DCS to file a petition, and “an emergency exist[ed] requiring immediate action by the Court.” Appellant’s Appendix Volume II at 39. In its order on the initial hearing, the court granted Father temporary custody while the matter was pending, later authorized the removal of Child “because detention is necessary to protect the child,” and it placed Child in foster care. *Id.* at 61. In its order on the fact-finding hearing, the court adjudicated Child a CHINS “as defined by 31-34-1-1” and made findings of fact that “Father has failed three (3) drug screens during the course of the CHINS case and refused another screen,” “[t]he drug screen results indicate that father is using methamphetamine,

¹ To the extent Father claims a juvenile court “only has jurisdiction over an initial child custody determination in limited circumstances,” argues Indiana is not the home state of the Child, and cites Ind. Code § 31-21-5-1, we note that statute provides in part: “*Except as otherwise provided in section 4 of this chapter, an Indiana court has jurisdiction to make an initial child custody determination only if one (1) of the following applies . . .*” (Emphasis added).

amphetamine, cocaine, and THC,” and “Father’s continued drug use does not provide a safe and nurturing home environment for the child.” *Id.* at 81. The court retained jurisdiction until it found Child was a CHINS and resolved the emergency which prompted its emergency jurisdiction. We cannot say the court lacked subject matter jurisdiction. *See In re K.B.*, 793 N.E.2d 1191, 1198 (Ind. Ct. App. 2003) (holding that the court had subject matter jurisdiction where the Office of Family and Children requested a CHINS petition and the court found probable cause to issue the petition).

[13] With respect to Father’s argument the court lacked personal jurisdiction, “[p]ersonal jurisdiction requires that appropriate process be effected over the parties.” *K.S.*, 849 N.E.2d at 540. Father challenges the juvenile court’s personal jurisdiction over Child because he asserts that the plan was not for Child and Mother to become residents of Indiana although Child had lived with Mother in Indiana for three months. Father did not raise the issue of personal jurisdiction before the court until his attorney stated at the August 31, 2022 fact-finding hearing that Mother and Father were “both basically residents of Ohio and [Father] feels that because he has no connection with Indiana whatsoever that Indiana should not have jurisdiction in this matter and this should be transferred to Ohio.” Transcript Volume I at 24-25. Father’s attorney previously filed an appearance on July 28, 2022, and Father previously appeared before the court including at the initial hearing on July 27, 2022. Accordingly, any argument regarding personal jurisdiction has been waived. *See Ellis v. M & I Bank*, 960 N.E.2d 187, 192 (Ind. Ct. App. 2011) (providing a

defendant can waive a lack of personal jurisdiction and submit to the jurisdiction of the court by responding or appearing and failing to raise the issue of lack of jurisdiction).

[14] To the extent Father argues the court improperly exercised jurisdiction under the UCCJA, in determining this issue, we apply an abuse of discretion standard. *Hays v. Hockett*, 94 N.E.3d 300, 304 (Ind. Ct. App. 2018). An abuse of discretion occurs when the court’s decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.* “The jurisdictional limitations imposed by the UCCJA are not equivalent to declarations of subject matter jurisdiction, but rather are refinements of the ancillary capacity of a trial court to exercise authority over a particular case.” *Williams v. Williams*, 555 N.E.2d 142, 145 (Ind. 1990). The UCCJA, Indiana Code § 31-21-5-1(a)(1) *et. seq.*, is a procedural framework to avoid having courts from different states issue contradictory child custody orders. *Matter of A.R.*, 110 N.E.3d 387, 398 (Ind. Ct. App. 2018), *trans. denied*. The UCCJA is the exclusive method of determining the jurisdiction of a court in a custody dispute with an interstate dimension. *In re Paternity of R.A.F.*, 766 N.E.2d 718, 723 (Ind. Ct. App. 2002), *trans. denied*. “Under the UCCJA, the court which first enters a custody decree on a matter gains exclusive jurisdiction only until the child and all parties have left the state.” *Id.* Although a CHINS case is not a custody dispute per se, we have held that when considering a CHINS case, a juvenile court must operate within the framework and policy considerations of the UCCJA. *Id.* at 724-

725 (citing and discussing *In the Matter of E.H.*, 612 N.E.2d 174 (Ind. Ct. App. 1993), *opinion adopted*, 624 N.E.2d 471 (Ind. 1993)). If an Indiana court operating under that section is informed that a child custody proceeding has been commenced in or a determination has been made by a court of another state, the Indiana court shall immediately communicate with the court of the other state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order. *Matter of A.R.*, 110 N.E.3d at 399-400 (citing Ind. Code § 31-21-5-4(g)). The record reveals that there were not two courts in two states issuing competing orders regarding placement of Child, and we cannot say the juvenile court improperly exercised its authority.

II.

[15] Father next argues that DCS failed to meet its burden that Child was a CHINS. He acknowledges his positive drug screens but states that he agreed to “immediately cease using illegal substances” when Child was placed with him and there was no evidence he used substances in the presence of Child or that he “had ever cared for the Child while under the influence of any illegal substance.” Appellant’s Brief at 14-15.

[16] The juvenile court entered findings of fact and conclusions thereon. As to the issues covered by the findings, we first consider whether the evidence supports the findings, and then 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 and will affirm the judgment “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)). When performing appellate review of a CHINS determination, “[w]e neither reweigh the evidence nor judge the credibility of the witnesses.” *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). Instead, “[w]e consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom.” *Id.*

[17] “[T]he purpose of a CHINS adjudication is to protect children, not punish parents.” *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010). “[A] CHINS adjudication is not a determination of parental fault but is simply a determination that a child is in need of services and is unlikely to receive those services without the court’s intervention.” *In re L.C.*, 23 N.E.3d 37, 39 (Ind. Ct. App. 2015), *trans. denied*. Because a CHINS adjudication is civil in nature, DCS “must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code.” *Id.* The element of coercive intervention “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.” *In re S.D.*, 2 N.E.3d at 1287 (quotation and alteration omitted). 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.

[18] 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.

[19] To the extent Father does not challenge the juvenile court’s findings of fact, the unchallenged findings stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[20] The record reveals that Mother overdosed on cocaine and fentanyl while Child was in her care, and at the fact-finding hearing, she admitted Child was a CHINS and that she had “substance abuse issues that require treatment and services, and the child would benefit from services to be provided by [DCS].” Transcript Volume I at 16. On July 27 and August 22, 2022, Father submitted to drug screens that returned positive for cocaine and THC, and on August 11,

2022, while Child was temporarily placed in his care, he submitted to a drug screen that returned positive for cocaine, methamphetamine, and THC. At the fact-finding hearing, Father agreed on cross-examination he was “arrested and convicted for possession of cocaine in the State of Ohio,” and “[e]very possession charge I have on my record, it began as trafficking, and it was reduced.” *Id.* at 43. DCS Case Worker Alexa Monroe testified that Father failed three prior drug screens. To the extent Father’s argument that the evidence was insufficient is a request to reweigh the evidence, we cannot do so. *See In re S.D.*, 2 N.E.3d at 1286. Based upon the record, we cannot say the court erred in its determination that Child was a CHINS.

[21] For the foregoing reasons, we affirm the juvenile court.

[22] Affirmed.

Bailey, J., and Weissmann, J., concur.