

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

A.A. (Minor Child),
Child in Need of Services,

and

W.A. (Mother),
Appellant-Respondent,

v.

April 8, 2022

Court of Appeals Case No.
21A-JC-2215

Appeal from the Orange Circuit
Court

The Honorable Steven L. Owen,
Judge

Trial Court Cause No.
59C01-2105-JC-85

Indiana Department of Child
Services,
Appellee-Petitioner.

Altice, Judge.

Case Summary

- [1] W.A. (Mother) appeals the trial court’s adjudication of her eight-year-old daughter, A.A. (Child), as a child in need of services (CHINS).¹ Mother raises a single issue for review, which we restate as follows: Whether the trial court clearly erred when it determined that the coercive intervention of the court was required to protect Child.
- [2] We affirm.

Facts & Procedural History

- [3] Mother has three minor children, the oldest of whom is Child. The other two are not school age and have different fathers than Child. Mother and Child have a prior history with the Indiana Department of Child Services (DCS), and

¹ Child’s father, L.M. (Father), appeared below but does not participate in this appeal. He was incarcerated throughout the CHINS proceedings.

Mother was a minor herself when she gave birth to Child in February 2013 at the age of fourteen.

[4] At the end of December 2020, DCS became involved with the family again when a shooting occurred outside their residence. Mother and the children were inside the home when the youngest child's father, D.Y., went outside after a disturbance and shot another individual, apparently the ex-boyfriend of Mother's mother. D.Y. was arrested for attempted murder and aggravated battery. Kimberly Byrum, an assessment caseworker with DCS, investigated reports of neglect that were made as a result of this incident. During the investigation, Mother tested positive for THC and acknowledged that she regularly used the drug. Byrum created a safety plan with Mother to address substance use and exposure to violence. Additionally, after the reports were substantiated, DCS planned to initiate an informal adjustment (IA).

[5] In the meantime, on January 21, 2021, DCS received a report from Child's school regarding educational neglect. The school indicated that Child, who was in second grade, had missed several days and had not been completing her online schooling when at home. Byrum substantiated this report and discussed an IA with Mother, who indicated that she would comply with whatever she needed to do. The IA was approved on March 9, 2021, after which Byrum transferred the case to DCS family case manager Dina Dorsett (FCM Dorsett).

[6] Pursuant to the IA, family preservation services were referred for Mother and Child. Specifically, Tiffany Evans, a homebased services parent aid, was

referred in March 2021 to meet at least weekly with the family to help identify needed resources in the area and provide parenting education and safety checks. Evans made some initial progress with Mother, such as applying for food stamps, childcare vouchers, and health insurance, but Mother often rescheduled or cancelled the weekly meetings and sometimes was a no-show. This inconsistency resulted in a lack of follow through on her goals.

[7] DCS also made a referral for weekly therapy with Daniel Spurlock. Mother, however, only met with Spurlock once, which did not provide him with enough time to develop an appropriate treatment plan. After Mother canceled with Spurlock various times, the sessions were put on hold until she could show consistency with homebased services through Evans, which did not occur.

[8] At a subsequent child and family team meeting that Mother attended,² FCM Dorsett addressed with her reports from the school that Child might need to be retained in second grade and Child's continued attendance issues. FCM Dorsett explained that her discussions with Mother were "kind of like begging for her to work with Family Preservation, create a schedule in which she could manage the things in her life that would not create a situation in the morning, that she couldn't get the child to school during COVID." *Transcript* at 60. Mother did not deny Child's poor attendance record, but she never accepted responsibility for the absences or worked to address the problem. The absences

² Mother canceled or did not show up for two other team meetings.

had continued “over and over” despite efforts by FCM Dorsett and services providers to encourage attendance. *Id.* at 62. Child told FCM Dorsett, “well it’s because I don’t want to get up in the morning. Sometimes Mom doesn’t wake me up in the morning.” *Id.* Additionally, Mother expressed to FCM Dorsett her own feelings of being overwhelmed and shutting down at times.

[9] In light of Mother’s minimal compliance with the IA and her continued educational neglect, DCS filed the instant CHINS petition on May 10, 2021. The petition alleged, in part, as follows:

d. Mother agreed to enter an IA with DCS to help Mother cope with the increased stress of being a single mother and to provide Child services as she was struggling with D.Y.’s arrest and absence.

e. ... As of January 26, 2021, Child had 6 unexcused absences and 8 excused absences from the Spring 2021 semester.

f. As of 4/21/2021 Child had 28 unexcused absences and is failing several subjects.

g. Child’s school has been unable to get Mother to meet to discuss Child’s significant truancy issues and their recommendation that she be held back.

h. Child has been in quarantine several times this Spring due to Coronavirus exposure, however she could complete coursework at home during this time, but Mother is not ensuring such work is completed.

i. Mother has also not taken Child for rapid Coronavirus tests, which if negative would allow her to return to school faster.

k. Mother has not been compliant with the family preservation services in place through the IA, including therapy and parent aide, nor has she been in regular communication with the FCM.

l. Mother has sporadically tested positive for THC since 2/25/21.

Appendix at 25 (cleaned up).

[10] The trial court held a CHINS factfinding hearing on August 16, 2021. Byrum testified regarding her assessment and substantiation of the neglect reports filed in December 2020 and January 2021 and the initiation of the IA. Evans, Spurlock, and FCM Dorsett then provided testimony establishing Mother's lack of compliance with the IA, which included keeping "very few" appointments and Child continuing to miss school and not complete work when at home. *Transcript at 67.*

[11] Child's second grade teacher from the 2020/2021 school year also testified. She explained that Child started the year "pretty strong" as an average student without attendance issues. *Id.* at 35. By the beginning of November, Child started missing several days of school and "often times" Mother would not respond to inquiries from the school. *Id.* When the school could reach Mother, she would give various excuses for the absences. The teacher noted that the absences increasingly became worse throughout the spring semester, including

one instance where Child missed sixteen days in a row due to COVID-19 exposure. During that time, Child did not complete her at-home work and only twice participated in synchronous learning through Google Meets. Eventually, the teacher and the principal were able to speak with Mother about Child's poor academic progress and potential retention in second grade. They made a "game plan" with Mother to address the academic gaps with "intensive phonics" and punctual daily attendance. *Id.* at 39. While Mother appeared to be receptive to the plan, she did not follow through and Child was absent from school as soon as the next day. The official paperwork for Child's retention was executed by Mother, after several failed attempts, on May 11, 2021. The teacher testified that in her opinion Child's academic performance would have definitely improved without the excessive absences, which totaled over sixty days.

[12] At the hearing, FCM Dorsett acknowledged that the new school year had recently started and Child had been in attendance each day. FCM Dorsett explained, however, that she still had concerns of educational neglect "because it's only been two (2) weeks of school. I don't see any pattern that changed over the course of the summer that showed me that this ability to get up every morning and do something consistently is there." *Id.* at 63. FCM Dorsett clarified that these concerns would have been alleviated had Mother complied with service providers and "[s]how[n] the ability to be responsible and keep an appointment." *Id.* at 64. Further, FCM Dorsett testified that, on more than

one occasion, Mother told her, “I have no intention of doing Parent-Aid, I don’t need it.” *Id.* at 67.

[13] At the conclusion of the hearing, the trial court adjudicated Child a CHINS. The court recognized Child’s recent attendance during the new school year but emphasized that she missed sixty days the prior year, which was “obviously a problem.” *Id.* at 76. The court indicated that it could not be certain that Mother had corrected the problem in light of her reluctance to participate in the services provided through the IA. Ultimately, the trial court determined that court-ordered services were necessary in order to ensure that Child attends school this year.

[14] In its written order, issued the following day, the trial court made the following findings in support of the CHINS adjudication:

- 1) Child missed approximately 60 days of school during the 2020-2021 school year.
- 2) Child’s academic performance was negatively affected by her excessive attendance (sic).
- 3) One of the reasons given for Child’s attendance issues was the COVID-19 pandemic, which is not over, giving rise to the concerns that attendance will not continue to be improved this year.
- 4) Mother entered a Program of Informal Adjustment with the Department to remedy the attendance issues, however she did not engage in services consistently.

Appendix at 77-78 (cleaned up).

- [15] On September 7, 2021, the trial court held a dispositional hearing. The dispositional order was issued a few days later, requiring Mother to, among other things, participate in services designed to remedy issues causing the educational neglect of Child.
- [16] Mother now appeals, challenging the sufficiency of the evidence supporting the CHINS adjudication.

Discussion & Decision

- [17] A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). On review, we neither reweigh the evidence nor judge the credibility of the witnesses and will consider only the evidence and reasonable inferences that support the trial court's decision. *Id.* We will reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.* Further, in family law matters, we generally grant latitude and deference to trial courts in recognition of the trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied.*
- [18] There are three elements DCS must prove by a preponderance of the evidence for a child to be adjudicated a CHINS.

DCS must first prove the child is under the age of eighteen; DCS must prove one of eleven different statutory circumstances exist that would make the child a CHINS; and finally, in all cases, DCS must prove the child needs care, treatment, or rehabilitation that he or she is not receiving and that he or she is unlikely to be provided or accepted without the coercive intervention of the court.

Id. (footnote omitted); *see also* Ind. Code § 31-34-1-1 (CHINS statute applied in this case where “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”).

[19] It is well established that the purpose of a CHINS adjudication is to protect the child, not punish the parents. *K.D.*, 962 N.E.2d at 1255. The focus of a CHINS proceeding is on “the best interests of the child, rather than guilt or innocence as in a criminal proceeding.” *Id.* (quoting *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010)). Further, when determining CHINS status, particularly the coercive intervention element at issue in this case, courts should consider the family’s condition not just when the case was filed, but also when it is heard so as to avoid punishing parents for past mistakes when they have already corrected them. *In re D.J.*, 68 N.E.3d 574, 580-81 (Ind. 2017). This 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.’’ *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[20] Here, Mother argues that the educational neglect that occurred during the 2020-2021 school year had since been addressed by her. The sole basis for this assertion is that Child had not missed any days of school during the first two weeks of the new school year, which immediately preceded the factfinding hearing. In light of Child’s recent perfect attendance, Mother argues that the CHINS adjudication was “an improper attempt to punish [her] for past failures.” *Appellant’s Brief* at 4. We do not agree.

[21] As set forth above, when considering the coercive intervention element, courts should consider the family’s condition both at the time the CHINS case was filed and when it is heard to account for changed circumstances. *See D.J.*, 68 N.E.3d at 580-81. In other words, a child cannot be adjudicated a CHINS based solely on conditions that no longer exist. *See In re C.W.*, 172 N.E.3d 1239, 1245 (Ind. Ct. App. 2021).

[22] Upon review of the trial court’s written findings and oral statements at the conclusion of the hearing, it is apparent to us that the trial court considered both Child’s recent attendance and the sustained and serious pattern of educational neglect from the previous school year, which resulted in Child being retained in the second grade. The trial court also considered that the COVID-19 pandemic, one of the reasons used by Mother for the attendance issues, would likely continue to affect this new school year. Finally, in

determining whether the educational neglect had been corrected by the time of the hearing, the court considered Mother's response to services offered through the IA, a program that Mother entered into with DCS more than five months before the hearing. The trial court characterized Mother's participation in services as both reluctant and inconsistent. *Cf. D.J.*, 68 N.E.3d at 581 (reversing CHINS adjudication and holding that coercive intervention was not needed at the time of the factfinding hearing where parents "eventually cooperated with the Department's services and had satisfactorily completed all services (except those deferred by the Department or the court) by the time of the fact-finding hearing"); *Matter of A.R. v. Indiana Dep't of Child Servs.*, 121 N.E.3d 598, 605 (Ind. Ct. App. 2019) (reversing where "by the time of the fact-finding hearing, Mother had secured employment, created a budget, rented a new condo that was appropriate for the Children, actively and successfully participated in the services DCS had authorized, and sought out, again, with success, counseling on her own in order to stay sober" and "had not tested positive for controlled substances since the start of the case").

[23] The trial court's ultimate conclusion that court-ordered services were necessary in order to protect Child from educational neglect during the current school year was not clearly erroneous. Indeed, DCS established by a preponderance of the evidence that Child was still in need of services at the time of the hearing and that Child would not likely receive the needed services without court intervention.

[24] Judgment affirmed.

Bailey, J. and Mathias, J., concur.