

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:
Ka.Z. and Ki.Z. (Minor
Children), and
C.Z. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

October 29, 2021
Court of Appeals Case No.
21A-JC-973
Appeal from the Bartholomew
Circuit Court
The Honorable David Nowak,
Magistrate
Trial Court Cause No.
03C01-2012-JC-5992
03C01-2012-JC-5993

Bailey, Judge.

Case Summary

- [1] C.Z. (“Father”) appeals an order adjudicating Ki.Z. and Ka.Z. (“Children”) to be Children in Need of Services (“CHINS”). Father presents the issue of whether the adjudication order is clearly erroneous. We affirm.

Facts and Procedural History

- [2] On December 11, 2020, Bartholomew County Department of Child Services (“DCS”) Family Case Manager Amanda Myers (“Myers”) received a report that thirteen-year-old Ki.Z. and eleven-year-old Ka.Z., who had been placed in Father’s sole custody, were victims of parental neglect.¹ Myers reviewed audio recordings of Father berating and name-calling Children at length. Myers also interviewed representatives from the local elementary school and Sheriff’s Department. Myers received information that Children had reported their alleged mistreatment to school personnel and had run away from home on multiple occasions.
- [3] On December 14, 2020, Myers visited Father’s and Children’s residence, a camper of approximately 300 square feet. Myers expressed concern that Children’s sleeping area had no curtain providing for some privacy and Father responded that the family “doesn’t make a big deal out of nakedness.” (Tr. Vol.

¹ Children had previously been involved in CHINS proceedings and their mother, K.Z. (“Mother”), had been ordered to participate in services to address substance abuse. When Mother was deemed non-compliant, Father was awarded the sole physical and legal custody of Children.

II, pg. 41.) Father admitted to berating Children, for example, calling them “little m----- f-----s” and directing them to get their things and leave. (*Id.* at 45.) Father expressed to Myers that it was his prerogative to speak to his children however he wanted and he defended his actions on the basis that Children were disrespectful to him. Father described Children as liars manipulated by Mother. Additionally, Father reported to Myers that Father’s physician had expressed concern that Father would harm himself or Children.

[4] Myers interviewed Children, one of whom reported a preference for residential care over Father’s custody, and one of whom reported having suicidal ideations. Among Children’s disclosures to Myers were that: Children had sustained periods of time without reliable electricity, heat, or running water; Children lacked privacy; Children saw Father smoking a pipe (not readily identifiable as a tobacco pipe); and Father would strike a child in the back sufficient to take her breath away. Father declined the offer of a drug screen and told Myers that she could take Children away. Myers opined that Father was not cooperative enough for the initiation of an informal adjustment with DCS. She reported to DCS that she had substantiated a lack of food, shelter, and clothing, and that Children’s environment endangered them. Children were placed in the custody of an extended family member.

[5] On December 16, 2020, DCS petitioned to have Children declared CHINS. The juvenile court held a fact-finding hearing on February 1 and February 22, 2021. Mother appeared and admitted that she needed services to address her substance abuse; she further admitted that Children were CHINS. Mother

expressed concern that Father might have relapsed to substance abuse, testifying that he had “erratic behavior” and “went overboard on small incidents.” (*Id.* at 19.) Father testified and opined that Children were “not ready to come back,” and he would not force them to do so, but their therapy would continue without State intrusion into the family. (*Id.* at 135.)

[6] At the conclusion of the hearing, the juvenile court declared Children to be CHINS, explaining that the decision was not based on inadequate housing. On March 3, 2021, the court entered a written order declaring Children to be CHINS, with supporting factual findings addressing mental abuse, physical abuse, parental lack of participation in services, and inadequate housing. Father now appeals.

Discussion and Decision

[7] A CHINS proceeding is a civil action, and thus the State must prove by a preponderance of the evidence that a child is a CHINS. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). In reviewing a CHINS adjudication, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). We consider only the evidence that supports the court’s decision and the reasonable inferences drawn therefrom. *Id.* We will reverse only upon a showing that the trial court’s decision was clearly erroneous. *Id.* “A decision is clearly erroneous if the record facts do not support the findings or if it applies the wrong legal standard to properly found facts.” *In re D.J. v. Ind. Dep’t of Child Servs.*, 68 N.E.3d 574, 578 (Ind. Ct. App. 2017).

[8] In this case, the juvenile court sua sponte entered findings of fact and conclusions thereon, and thus our review is governed by Indiana Trial Rule 52(A).² *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). As to issues covered by the findings, we apply a two-tiered standard of review: first we consider whether the evidence supports the factual findings, and then whether those findings support the court’s judgment. *Id.* We review the remaining issues under the general judgment standard where we will affirm the judgment if it can be sustained on any legal theory supported by the evidence. T.R. 52(D).

[9] DCS alleged that Children were CHINS under Section 31-34-1-1, the general neglect provision, which states:

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

² Unlike CHINS dispositional decrees, *see* Ind. Code § 31-34-19-10 (2008), no statute expressly requires formal findings in a CHINS fact-finding order; nor did either party request them under Indiana Trial Rule 52(A).

(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.

I.C. § 31-34-1-1.

[10] Not every endangered child is a CHINS, permitting the State’s *parens patriae* intrusion into private family life. *In re S.D.*, 2 N.E.3d at 1287. The proper focus is upon the best interests of the child and whether the child needs help that the parent will not be willing or able to provide—not whether the parent is guilty or deserving of a CHINS adjudication. *Id.* at 1285. A CHINS adjudication under the general neglect provision “requires 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.” *Id.* at 1287. The coercive intervention prong exists to protect families from unnecessary state intrusion. *Id.* A CHINS adjudication should consider the family’s condition when the case was filed, but also when the case is heard. *Id.* at 1290.

[11] DCS presented evidence that Children had been traumatized by Father’s pervasive aggression toward them, manifested both verbally and physically.

Too, there was evidence that Father failed to consistently meet Children's needs for basic amenities and privacy. Mother expressed her fear that Father was unreasonably demanding of Children and overly reactive when chores were not performed, in Father's view, quickly or properly. Myers testified that, when she interviewed Ka.Z., the child appeared timid, nervous, and fearful. Myers discussed with Father instances such as his telling Children they were "f-----g retarded like your mother," and Father insisted it was his right to do so. (Tr. Vol. II, pg. 45.) School counselor Karmen Riley ("Riley") testified that Ki.Z. sometimes engaged in behaviors at school such as hiding under a desk, huddling with a blanket, or rocking back and forth. According to Riley, Children had reported that Father was "mean" and they described being subjected to yelling and having their wrists squeezed. (*Id.* at 60.) Ka.Z. had been attending school only 75% of the scheduled class days. Family case manager Hilary Fields ("Fields") testified that Children's demeanor changed when Father's name was mentioned and they would appear to "immediately shut down." (*Id.* at 106.)

[12] Ka.Z. testified that there was "heat most of the time" but that Children got cold when Father was gone because they did not know how to use the wood stove. (*Id.* at 74.) She further testified that the water line had frozen and so there was no running water in the mornings; moreover, no barrier provided Children with privacy for changing clothes. According to Ka.Z., Father was "mad every day at some point" because of Children's perceived mistakes and he was "scary and aggressive looking." (*Id.* at 77.) Ka.Z. testified that Father addressed her and

her sister using bad words that she did not want to repeat in court and “nobody can calm him down.” (*Id.* at 79.) Ka.Z. testified that Father grabbed and shoved Children; she stated that she had been hit in the face and on the back, bottom, and legs. A blow to the back was described as: “sometimes it like knocks the wind out of you.” (*Id.* at 84.) She estimated that she was hit in some manner once or twice per week. She had also observed marks on her sister. Ka.Z. claimed that she did not feel safe with Father, that he had often told her not to talk to DCS, and he had threatened that she would go to a group home if she complained to authorities. Ka.Z. testified that she had run away from Father’s home seven times.

[13] Ki.Z. described the camper as “cold a lot,” “smelly,” “small,” and presenting “a problem with showers.” (*Id.* at 90.) She testified that Father would call Children “useless” and “a piece of sh**” and strike them if he got mad or Children did something wrong. (*Id.* at 91.) She provided an example: when she did not stack wood to Father’s satisfaction, he kicked her in the back of her knee, while his boots were on. Ki.Z. claimed to be afraid of Father. She testified that she once told Father that she wanted to kill herself and he responded with, “well, go ahead.” (*Id.* at 92.) She testified that there were “quite a few times” when there was “really nothing” to eat. (*Id.* at 93.) Both Ki.Z. and Ka.Z. testified that they had repeatedly reported Father’s conduct at school or to law enforcement upon occasions of running away.

[14] There was also evidence that Father desired therapy for Children, but he focused upon Children’s perceived shortcomings as opposed to his own. He

testified that he “would set up therapy for the girls” but his parenting was “fine” and he just needed to calm himself. (*Id.* at 30.) When asked if he needed anger management, Father responded in part:

There’s nothing any individual can make me say or do that I can say or do. There’s nothing anyone can say or do that can make me say or do anything that I know in my conscience is wrong. Okay? It’s a blatant choice to lose my cool. It’s not automatic. I’m not a mean person. I’m not a hateful person. If I choose to lose my cool with my children, as you’re implying, then there’s a reason. There’s a good reason, and it’s an educational reason. If they don’t wish to have me raising Cain with them, then they need to quit raising Cain with me.

(*Id.* at 30.) DCS presented evidence that Father had been generally uncooperative with any services offered to him, including refusal of drug screening and visitation. Fields testified that Father had refused to agree to the case plan and had vacillated as to whether services were needed. Indeed, Father’s own testimony at the hearings indicated his ambivalence toward reunification services.

[15] Father contends that DCS failed to establish any of the three requisite elements of serious endangerment, unmet needs, and need for State coercion. He admits to verbally abusing Children but denies that his conduct endangered Children. According to Father, he had stopped any name-calling months before Children’s removal, and he provided adequate housing and should not be penalized for lack of greater financial resources. He denies any physical abuse took place. He argues that Children were coached and suggests that their

testimony should be disregarded. He claims to have remedied any adverse conditions by agreeing that Children need not return home abruptly. Finally, he points to his testimony that he would “keep Children involved in therapy.” Appellant’s Brief at 12; Tr. Vol. II, pg. 123. In short, Father asks that we reweigh the evidence, credit his testimony, and find Children’s testimony lacking in credibility. We cannot do so. *See In re K.D.*, 962 N.E.2d at 1253.

Conclusion

[16] Father has not shown that the order adjudicating Children to be CHINS is clearly erroneous.

[17] Affirmed.

Crone, J., and Pyle, J., concur.