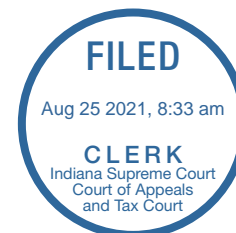


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of S.G. and B.G.,
Children in Need of Services;
K.C. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

August 25, 2021

Court of Appeals Case No.
21A-JC-320

Appeal from the Shelby Superior
Court

The Honorable R. Kent Apsley,
Judge

Trial Court Cause Nos.
73D01-2011-JC-62
73D01-2011-JC-61

Brown, Judge.

- [1] K.C. (“Mother”) appeals the trial court’s order determining her two children are children in need of services (“CHINS”). We affirm.

Facts and Procedural History

- [2] In November 2020, the Indiana Department of Child Services (“DCS”) filed petitions alleging that S.G., who was born in 2004, and B.G., who was born in 2013, were CHINS. The petitions alleged Mother was unable to care for the children as she did not have stable housing and was unable to provide basic needs and that she failed to enroll them in school.
- [3] On November 16, 2020, the court held a hearing at which Mother was not present. Family Case Manager Amanda Grossi testified that she had been working on the case since August, that Mother indicated the school was requiring that B.G. see a doctor before it would admit him and she could not obtain an appointment to see the doctor, that a letter from B.G.’s healthcare provider listed Mother’s missed appointments for him,¹ that the school indicated that it would enroll B.G. regardless of whether he was behind on his vaccinations and work with Mother to ensure he was able to catch up on them, and that her understanding was that B.G. could be enrolled in school that day. She testified that S.G. was living with her father’s girlfriend, Melissa, in Indianapolis, DCS had been attempting to engage with Mother for several

¹ The letter stated that B.G. had not shown for two previously scheduled appointments, B.G. was in the emergency room on August 22, 2020, with a laceration to his foot, he was taken to the emergency room on September 7, 2020, due to abdominal pain, and Mother requested an appointment on October 29, 2020, to have B.G. tested for ADHD.

months, it was able to obtain information from another report to the hotline that S.G. was living with Melissa in Indianapolis, and Melissa was able to enroll S.G. in school. She indicated that Mother was living with her grandmother in Shelbyville and stated that DCS was requesting that B.G. remain in the home and be legally placed with his great-grandmother rather than Mother. The court issued a detention hearing order on November 18, 2020, stating that Mother had not enrolled B.G. in school or taken him to his medical appointments and that S.G. enrolled herself in school after moving in with her father's girlfriend. It ordered that B.G. be placed with his maternal great-grandmother and S.G. be placed with Melissa.

[4] On December 28, 2020, the court held a factfinding hearing. Mother testified that she had asked for help several months earlier, she “didn’t exactly have anywhere to live,” she was stranded in Shelbyville, she “was in a car wreck, and was in a pretty bad situation,” she went to the police with B.G. and they called DCS, and “I had requested help for a few months I did not get help.” Transcript Volume II at 56. When asked where she ended up living, she stated: “Well at that point in time I was kind of basically bouncing from place to place because I was stranded here and was in a bad car accident.” *Id.* at 57. She testified that she was in Shelbyville when the school year began, she tried to enroll her children in school, “due to me not having certain documentation, because of the accident that I was in and me losing everything in Illinois where we lived, they would not allow me to enroll him,” “[t]hey said that I needed . . . [v]accination records and photo id and things,” “[m]y photo id was stolen from

me,” and “vaccination records were gotten rid of with all of our other belongings in the house in Illinois when we were stranded.” *Id.* She testified: “I was told that I had [to] drive over there and get certain documents that I couldn’t get because I, over there they told me that I had to go over there in person and sign for these medical records and things and what not and I could . . . not do that . . . with no transportation and a broken back.” *Id.* at 59. She testified that, when she was served with the petitions, her daughter was enrolled in school, her son was in the process of being enrolled, and “I was living somewhere. We were no longer living in my van and my son never lived in my van. I did, here and there but he always had [a] place to stay, he always had food, he was never ever in a bad situation.” *Id.* at 61. She indicated S.G. was enrolled in school by the girlfriend of S.G.’s father. She indicated that she missed two appointments for B.G., the first because she did not have transportation and the second because she was more than fifteen minutes late, and the appointment was rescheduled for the day after the factfinding hearing. On cross-examination, Mother testified that she had an apartment in Greensburg, a DCS case manager had been to the apartment, she obtained the apartment through a rehousing program, and her rent was paid for the next twelve months. She indicated that both of the children were enrolled in school. She testified that she stays in contact with S.G., makes sure she has everything she needs, and buys her food. She also indicated that she agreed for S.G. to live with the girlfriend of S.G.’s father.

[5] DCS Family Case Manager Isabel Tinterra (“FCM Tinterra”) testified that, prior to the filing of the petitions, DCS referred Mother to Community Partners to meet her basic needs and enroll the children in school, Mother refused to cooperate, DCS then referred her to an education person with whom Mother refused to work, and Mother no showed or canceled several scheduled child family team meetings. FCM Tinterra testified that, after the petitions were filed and B.G. became a ward of the State, she and a supervisor enrolled B.G. in school. The court stated:

Obviously, the Court has to look at the evidence in the totality. I have to look at the big picture here. And with regard to any particular allegation, again I can see the argument where the child, or the children may not be [CHINS] but when you look at the entire global picture of, again, both of these children, where they are educationally, where they are with medical appointments, where they are with stability. I do find the children are [CHINS]. I do find [] they are not likely to continue the care, the treatment, the education that they need without the continued intervention of the court.

Id. at 86.

[6] On January 4, 2021, the court issued an order determining the children were CHINS and finding:

1) Father, [M.S.], admits the children are in need of services. He is currently in jail and unable to provide necessary care and supervision. Father also is unsure if he is in fact the father to [B.G.] and requests that this court order a paternity test.

2) DCS offered services in August when [M]other failed to enroll either child in school. Mother failed to accept the help from DCS and DCS providers and the children who are both school age and subject

to the compulsory school laws of the State of Indiana were not enrolled.

3) DCS filed this formal CHINS petition and the children were not enrolled until father's fiancée enrolled [S.G.] and DCS enrolled [B.G.] after the court detained the children.

4) [S.G.] remains placed with father's fiancée and it is father's request that the child remain in such placement and continue attending school.

5) Mother has missed several doctor appointments for [B.G.].

6) There is a preponderance of evidence that without the coercive intervention of this court the children would not receive necessary education, medical, and supervision.

Appellant's Appendix Volume II at 50-51. At the dispositional hearing, Family Case Manager Duane Tripp recommended that Mother have a mental health check due to her diagnosis of borderline personality disorder, and Mother stated she had been diagnosed years earlier with a severe panic disorder. Mother also stated she was stranded when she was in the accident which almost killed her, transportation was an issue for her, she was having a hard time obtaining her Indiana driver's license, and it had been quite a struggle not having reliable transportation and not having employment due to her disability. The court entered a dispositional order requiring Mother to maintain housing and a stable source of income, ensure the children are properly enrolled in and attend school or provide verification they are participating in an approved educational program, complete a psychological evaluation and any recommendations, meet the medical and mental health needs of the children including attending all

appointments, and complete a mental health evaluation and any recommendations. The order also stated that each child should have a primary care physician.

Discussion

[7] Mother argues that she had secured housing for at least one year and the children were enrolled in school by the time of the factfinding hearing, “the court’s primary basis for the CHINS adjudication was that, due to [her] tenuous relationship with DCS and her cancellation and rescheduling of several doctor’s appointments for B.G., [she] may in the future fail to meet the children’s needs,” and “[g]iven the potentially devastating consequences of the CHINS determination, and the fact that Mother had already met the children’s needs by the time of the hearing, the court erred in finding the children were still in need of services.” Appellant’s Brief at 12-13.

[8] The State must prove by a preponderance of the evidence that a child is a CHINS. *Matter of Eq. W.*, 124 N.E.3d 1201, 1208 (Ind. 2019). We do not reweigh the evidence or judge the credibility of witnesses and consider only the evidence which supports the trial court’s decision and reasonable inferences drawn therefrom. *In re S.D.*, 2 N.E.3d 1283, 1286-1287 (Ind. 2014), *reh’g denied*. We apply the two-tiered standard of whether the evidence supports the findings and whether the findings support the judgment. *Id.* We will reverse a CHINS determination only if it was clearly erroneous. *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017). 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. *Id.*

[9] Ind. Code § 31-34-1-1 provides:

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.

[10] The statute does not require a court to wait until a tragedy occurs to intervene. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is to protect children. *Id.*

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

[12] The trial court found that DCS offered services after Mother failed to enroll the children in school, she did not accept help or enroll the children in school, and she missed several doctor appointments for B.G. DCS presented evidence regarding when the children were enrolled in school, B.G.'s missed healthcare appointments, and Mother's housing and interactions with DCS including her failure to attend scheduled meetings or participate in services. The court was able to consider the testimony and evidence and Mother's actions, omissions, and ability to provide for and protect the children. We conclude the judgment reached by the trial court is not clearly erroneous.

[13] For the foregoing reasons, we affirm the trial court's order.

[14] Affirmed.

Najam, J., and Riley, J., concur.