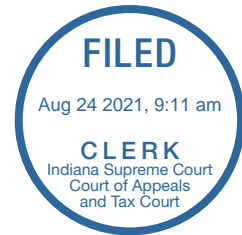


MEMORANDUM DECISION

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 R.S. and N.S.,
Children Alleged to be in Need
of Services,

M.Y. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

August 24, 2021

Court of Appeals Case No.
21A-JC-435

Appeal from the
Clark Circuit Court

The Honorable
Joni Grayson, Magistrate

Trial Court Cause Nos.
10C04-2008-JC-74
10C04-2008-JC-75

Vaidik, Judge.

Case Summary

- [1] M.Y. (“Mother”) appeals the trial court’s determination that two of her daughters, R.S. and N.S., are children in need of services (CHINS). We affirm.

Facts and Procedural History

- [2] Mother and T.S. (“Father”) are the parents of R.S., born in 2005, and N.S., born in 2008. Father has admitted that R.S. and N.S. are CHINS, and he is not involved in this appeal.
- [3] In 2012, four-year-old N.S. told Mother that Father had “tried to put his wee-wee in her bottom.” Tr. p. 146. DCS later substantiated N.S.’s report, but no charges were filed, and the children were not removed from the home because Mother agreed that Father would no longer stay there. Father eventually moved back in, and he and Mother married in 2014.
- [4] In 2019, fourteen-year-old R.S. reported that Father tried to “dry hump” her around the same time he allegedly molested N.S. *Id.* at 153. Mother made Father leave the home. At the beginning of the 2019-2020 school year, R.S. was assessed for depression and had a “really high score.” *Id.* at 116. A school counselor told Mother that R.S. was suicidal. That fall, R.S. went to stay with Mother’s older daughter from a previous relationship, D.Y.
- [5] Father returned to live with Mother in November 2019. Eventually, N.S. started spending time at D.Y.’s house because she was having various issues: she was depressed, not going to school, and not doing her online schooling.

Mother wanted her to come home but N.S. “started talking suicidal.” *Id.* at 117. In May 2020, N.S. joined R.S. at D.Y.’s house full time.

[6] On August 10, 2020, Mother went to D.Y.’s house accompanied by police officers, intending to bring the children home. The Department of Child Services (DCS) was called, and a family case manager (FCM) responded to the scene. Mother indicated that “this is basically a waste of everybody’s time” and “was adamant about the children coming home.” *Id.* at 95. Out of concern for the children’s safety, the FCM obtained permission to leave the children with D.Y. The next day, DCS filed petitions alleging R.S. and N.S. are CHINS.

[7] At the fact-finding hearing, DCS presented evidence, including from the children’s therapist, that both children suffered from depression and anxiety, had suicidal thoughts, and had been prescribed the anti-depressant Zoloft; they would not feel safe mentally, emotionally, or physically around Mother or Father; their mental health would decline if they were forced to go back home; and they “still have a long way to go to heal.” *Id.* at 105. In addition, the children “felt emotionally overwhelmed during and following” their last visit with Mother on October 30, 2020, *id.* at 112, and did not want to do any more visits. FCM Candace Orman testified she referred Mother for a psychological evaluation and individual therapy and that Mother hadn’t done either. The children’s court-appointed special advocate opined that the children are in need of services due to “the neglect of their mental health” and “the fact that the parents deny any issues at home but the girls threaten suicide if they’re forced to return home[.]” *Id.* at 157-58. Mother, on the other hand, testified she doesn’t

believe Father sexually abused the children and “everything is fine.” *Id.* at 149, 156.

[8] At the end of the hearing, the court found the children to be CHINS:

Based on the evidence presented the Court is going to find that the children [N.S.] and [R.S.] are children in need of services as defined by Indiana code [31-34-1-1] with respect to [Mother]. In support of that conclusion the Court is going to find that over the course of time the children’s mental health seems to have deteriorated. I have heard various explanations as to why that has happened but the bottom line is that we got to the point that the children have indicated that they are suicidal. And they have, they are each in counseling and have been receiving mental health treatment. I am gravely concerned that there appears to be an issue in this family that we still kind of took today to talk all the way around as to the relationship between these 2 children and their father and whether or not their mother believes them with the allegations that they’ve brought forward. Coupled with the fact that [Father] was asked to leave the home for a period of time but then returned and these children . . . had been in and out of the home and back and forth with the current placement over the last 2 and a half years or so. And the majority of that seems to be, essentially, by agreement. I will also note that [Father] has already admitted that the children are children in need of services and so the children were and are CHINS anyway with regard to him. I am finding that the children are CHINS with regard to [Mother] as well.

Id. at 158-59. In a subsequent written order, the court made the following findings of fact:

A) The children’s respective mental health declined over time as a result of being in the home of Respondent Parents.

B) At least one of the subject children is known to have a history of suicidal ideation.

C) Despite serious allegations of a history of abuse on behalf of the Respondent Father, and despite the effects of same on the children, Respondent Mother has provided no assurances that Respondent Father has been appropriately separated from the presence of the children in the home at all relevant times prior to the Fact Finding, nor assurances that, should the children return to the home at the time of the Fact Finding, that the Respondent Father would be appropriately separated from the children on an ongoing basis.

D) A visit between the children and the Respondent Mother on or about October 30, 2020, proved to be a traumatic episode for the children.

Appellant's App. Vol. II pp. 62-63. The court then held a dispositional hearing and issued a dispositional order.

[9] Mother now appeals.

Discussion and Decision

[10] Mother contends the trial court erred by determining that R.S. and N.S. are CHINS. We will reverse such a determination only if it was clearly erroneous, that is, if the record facts do not support the findings or the trial court applied the wrong legal standard to properly found facts. *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017). We will not reweigh evidence or judge witness credibility, and we

consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. *Id.* at 577-78.

[11] The trial court found R.S. and N.S. to be CHINS under Indiana Code section 31-34-1-1, which 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.

Our Supreme Court has explained that this statute "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." *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014), *reh'g denied*.

[12] Mother argues (1) the reason the trial court found R.S. and N.S. to be CHINS was that Mother did not believe their allegations of sexual abuse and (2) this reason was invalid because the court did not find "that these accusations were credible or that either of the children were in fact abused." Appellant's Br. p. 12. More specifically, Mother asserts that, absent a finding "that the girls' accusations were credible or that Father had indeed abused the children," her "disbelief of unproven allegations of sexual misconduct by Father cannot be a failure to protect or supervise the children." *Id.* at 13. She asks us to either reverse the CHINS adjudication outright or "remand to the trial court to make findings based upon the record as to whether Father abused the children." *Id.* at 15.

[13] Mother's argument fails at the outset. The primary basis for the trial court's decision was not Mother's disbelief of the children's accusations. Rather, it was the children's significant mental-health issues and Mother's failure to take those issues seriously and address them. The court found, among other things, that the children's mental health was in decline as a result of being in a home with Mother and Father, things have gotten to the point where the children have indicated they are suicidal, and a visit between the children and Mother in October 2020 was traumatic for the children. Mother does not challenge any of these findings or contend that they are insufficient, standing alone, to support

the trial court's decision. Instead, Mother focuses on the trial court faulting her for not keeping Father "appropriately separated" from the children. But such separation is appropriate regardless of whether Father actually abused the children, since it is undisputed that being around Father is currently very traumatic for the children (which is presumably why Father himself admitted the children are CHINS). We see nothing in the record supporting Mother's claim that the court ruled against her because she doesn't believe the children's allegations. Mother has failed to show the trial court's decision was clearly erroneous.

[14] Affirmed.

Kirsch, J., and May, J., concur.