

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.



ATTORNEY FOR APPELLANT

Matthew J. McGovern
Fishers, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Frances H. Barrow
Robert J. Henke
Deputy Attorneys General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of L.H., a Child
Alleged to Be a Child in Need of
Services

A.H.,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

September 30, 2022

Court of Appeals Case No.
22A-JC-730

Appeal from the Orange Circuit
Court

The Honorable Steven L. Owen,
Judge

Trial Court Cause No.
59C01-2111-JC-163

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, A.H. (Mother), appeals the trial court's Order, adjudicating L.H. (Child) to be a Child in Need of Services (CHINS).
- [2] We affirm.

ISSUE

- [3] Mother presents this court with one issue on appeal, which we restate as:
Whether the trial court erred in adjudicating Child to be a CHINS.

FACTS AND PROCEDURAL HISTORY

- [4] Mother and G.H. (Father)¹ (collectively, Parents) are the biological Parents of Child, born on October 25, 2021. On November 2, 2021, the Indiana Department of Child Services (DCS) received a report alleging that Child's umbilical cord had tested positive for cannabinoids and THC. That same day, DCS's Family Case Manager (FCM) followed up on the allegations by visiting the family at their residence in Paoli, Indiana. During the visit, Mother admitted to ongoing illegal substance abuse and informed FCM that her continued marijuana use was for medicinal purposes, related to her brain tumor, which she had been diagnosed with at a younger age and of which she had been cured. Because Child was "really tiny," FCM questioned his birthweight. (Transcript p. 137). Mother advised FCM that she had missed

¹ Father does not participate in this appeal.

some pediatrician appointments for Child since his birth “due to scheduling conflicts.” (Appellant’s App. Vol. II, p. 16). Mother appeared to be “very nonchalant, kind of disconnected.” (Tr. p. 137). Due to FCM’s concerns about Child’s weight, Mother agreed to make an appointment with the pediatrician and a written safety plan was created accordingly.

[5] On November 5, 2021, FCM received a message from Child’s pediatrician that Child had been admitted to IU Health Bloomington for treatment. Upon admission of Child to the hospital, hospital staff noted that “[t]he baby had folds of skin. [] [T]here was no baby fat. The lips were dry. [] [T]he baby didn’t cry tears. [] [W]hen I put my finger in the mouth, when we tried to give the baby some glucose it barely sucked. [] [I]t was just, it was weak.” (Tr. p. 66). On November 8, 2021, FCM was alerted to several concerns by the Registered Nurse (RN) caring for Child. RN notified FCM that while Mother was supposed to care for Child during his hospitalization, Mother was not responsive to Child’s needs. Mother would not wake up to the Child’s cries at night for feedings and the nurses were unable to get her to respond either, resulting in the nurses feeding Child. RN stated that Child “was within 6 hours of death” when he was admitted. (Appellant’s App. Vol. II, p. 17).

[6] On November 9, 2021, FCM visited the family at the hospital. In speaking with RN, FCM was informed that Parents were not able to independently feed Child. Mother failed to set alarms to wake up for feedings, as she was instructed to do. Mother had to be awakened by the nurse on duty and prompted to wash Child’s bottles and change his diaper. The attending

pediatrician was concerned with Parents' ability to meet Child's needs.

According to the pediatrician, Child was eating and gaining weight while in the hospital "and the only problem was that he was not being fed." (Appellant's App. Vol. II, p. 17). Again, the nurse notes revealed that nurses had to awaken Mother to feed Child. While Mother was alerted, she "did not get out of bed." (Appellant's App. Vol. II, p. 18). "After 20 minutes of attempting to awaken [M]other," a nurse would feed Child. (Appellant's App. Vol. II, p. 18). Even during the daytime, Mother had to be reminded to feed Child and often nurses would step in to attend to Child's needs.

- [7] On November 10, 2021, DCS filed a petition alleging Child to be a CHINS and removed Child from Parents' care. On February 2, 2022, the trial court conducted a factfinding hearing on DCS's petition. During the hearing, Child's pediatrician testified that, at the time of admission, Child was severely dehydrated, "very lethargic," and had lost about twenty-one percent of his birth weight. (Tr. p. 64). Mother testified that she was aware of the well-child follow-up appointments but had "scheduling problems." (Tr. p. 72). She admitted to using marijuana during her pregnancy and while breastfeeding Child. While there was conflicting testimony as to whether Mother was still using marijuana at the time of the factfinding hearing, Mother did not think using marijuana on a daily basis hindered her ability to be a good mother. Mother testified that she did not have a job and her only source of income was social security disability and SSI. Her disability was due to epilepsy and a brain tumor at a younger age.

[8] Tiffany Evans (Evans), family preservation specialist at Maglinger Home Base Services, supervised nine visits between Mother and Child. Evans testified that Mother needed help during each visit, with Evans prompting Mother when “the ounces [of formula] had been changed due to [Child’s] development,” when Child needed “tummy time,” and, at the end of the visit, when “changing his diaper if needed.” (Tr. p. 120). Evans was also the parent aid to Mother, helping her take care of the residence, and “educating her on what needs to be accomplished at the home.” (Tr. pp. 122-23). Evans opined that Mother “needs education on how to care and follow through with care for Child” for his “basic needs.” (Tr. p. 132).

[9] On February 16, 2022, the trial court issued its written Order, declaring Child to be a CHINS, and finding that:

- 1) [Child] was born on 10/25/2021.
- 2) [Child] was born drug exposed, with marijuana in his system, due to Mother using drugs every day.
- 3) [Child] resided in Orange County, IN with his Mother after he was born.
- 4) Mother continued smoking marijuana after [Child’s] birth and was breastfeeding [Child].
- 5) [Child’s] Father was aware of Mother’s drug use.
- 6) After [Child’s] birth, Father noticed [Child] had difficulties, looked sick, and Father could tell there was something wrong.
- 7) [FCM] noticed there was something wrong with [Child].
- 8) Father did not take [Child] for medical attention.

9) Mother did not take initiative to take [Child] for medical attention.

10) [Child] was finally taken for medical attention due to DCS's intervention.

11) Dr. Freese, pediatrician, upon observation could immediately see that [Child] was in a bad condition.

12) [Child] had lost 21% of his birth weight and was on the verge of death.

13) [Child's] condition was not a hidden medical condition, it was obvious, and [P]arents did not act on their own to get [Child] medical attention.

14) Parents did not take [Child] to any of his post-birth follow up doctor's appointments.

15) It is unknown whether the [P]arents' lack of treatment provided to [Child] was intentional or unintentional.

16) The lack of treatment [Child] had received may be due to Mother's continued use of drugs, issues with prescription drugs she is taking, or her physical or mental ability to comprehend the care [Child] needed and continues to need.

17) Father and [Child] had a supervised visit during which Father was visibly impaired, due to being under the influence of substances.

18) [Child] needs sober caregivers to ensure that his needs are being met.

19) Intervention by DCS and the [c]ourt needs to continue to provide services to address substance use and to ensure the [P]arents can meet [Child's] needs.

(Appellant's App. Vol. II, pp. 128-29). Based on these findings, the trial court reached a three-fold conclusion: (1) that the Parent's actions or inactions have seriously endangered Child, that Child's needs are unmet, and that those needs

are unlikely to be met without State coercion, Ind. Code § 31-34-1-1²; (2) Child’s physical or mental health is seriously endangered due to injury by the act of Child’s Parents, I.C. § 31-34-1-2; and (3) Child was born with drugs in its umbilical cord tissue, I.C. § 31-34-1-10.

[10] Mother now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[11] In her appellate brief, Mother challenges the sufficiency of the evidence supporting the trial court’s CHINS adjudication in general without focusing on one of the trial court’s three specific conclusions. More specifically, Mother contends that the trial court’s findings are insufficient to support its conclusions as the findings merely refer to Mother’s “historical failures” of seeking delayed medical attention for Child and her drug abuse. (Appellant’s Br. p. 17). Mother claims that these historical failures were corrected by Child’s hospitalization and now no longer exist.

[12] In reaching its determination, the trial court should consider the family’s condition not just when the case was filed, but also when it was heard. *In re S.D.*, 2 N.E.3d 1283, 1290 (Ind. 2014). A CHINS adjudication cannot be based solely on conditions that have ceased to exist. *In re S.A.*, 15 N.E.3d 602, 611

² Effective July 1, 2019, Indiana Code section 31-34-1-1 was amended to include that a child is a CHINS if the child’s physical or mental condition is seriously endangered by the parent’s actions “(1)(A) when the parent, guardian, or custodian is financially able to do so; or (1)(B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so.” Those provisions are not at issue in this appeal.

(Ind. Ct. App. 2014), *trans. denied*. The adjudication must be based on the evidence presented in court and not on the allegations in the pleadings.

Maybaum v. Putnam Cnty. O.F.C., 723 N.E.2d 951, 954 (Ind. Ct. App. 2000). In reviewing a CHINS determination, we do not reweigh evidence or assess witness credibility. *Matter of N.C.*, 72 N.E.3d 519, 523 (Ind. Ct. App. 2017).

We consider only the evidence in favor of the trial court’s judgment, along with any reasonable inferences arising therefrom. *Id.* DCS carries the burden of establishing that a child is a CHINS by a preponderance of the evidence. I.C. § 31-34-12-3.

[13] We note that DCS is in agreement with Mother that finding 15 is speculative by its very nature because it noted that even though Child was harmed, the intent leading to that harm was not clear. Likewise, both parties agree that finding 16 is speculative as to the possible cause for Child’s lack of medical treatment. Yet, despite the speculative nature of these two findings, it is clear that Child suffered serious and life-threatening harm—whether by act or omissions, intentionally or unintentionally. And the harm suffered was as a result of Child not having received proper and necessary daily care and treatment regardless of whether this was due to Mother’s neglect, refusal, and/or her ability to comprehend Child’s basic needs.

[14] DCS is permitted to intervene in a family’s life when the family cannot meet the child’s needs without intervention of the court. *In re S.D.*, 2 N.E.3d at 1286. When determining whether coercive intervention is necessary, “the question is whether the parents must be coerced into providing or accepting necessary

treatment for their child.” *Matter of E.K.*, 83 N.E.3d 1256, 1262 (Ind. Ct. App. 2017). The same evidence used by the court to determine that a parent’s acts or omissions injured or endangered a child may also support that coercive intervention is necessary to safeguard the child. *See, e.g., In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010) (same evidence used to establish more than one element of the parental rights intervention statute), *trans. denied*; *In re V.C.*, 867 N.E.2d 167, 179 (Ind. Ct. App. 2007) (same evidence supported CHINS and custody modification).

[15] Although contested by Mother, there is conflicting testimony in the record as to whether Mother stopped abusing drugs, and the trial court’s findings reflect that the trial court did not find Mother credible in this regard. Mother admitted that she used marijuana during her pregnancy and continued using after Child’s birth even though she realized that “wasn’t okay.” (Tr. p. 89). Although she denied “using marijuana today,” Mother also testified that she still smoked half a joint after her older children went to school. (Tr. p. 73). She admitted that the intervention of the court stopped her from using marijuana on a daily basis, yet she did not think using marijuana on a daily basis hindered her ability to be a good mother.

[16] Mother also objects that the continued coercive intervention of the court is not needed because “[t]here is no evidence that the concerns articulated by the trial court are continuing concerns.” (Appellant’s Br. p. 19). We disagree. At the time of Child’s emergency hospitalization, Child was six hours from death. The “severity of dehydration” was “scary,” Child was “very lethargic,” and he

had lost twenty-one percent of his birth weight. (Tr. pp. 64, 67). While Child was eating and gaining weight during his hospital stay, with his overall health improving, this was not thanks to Mother's participation in his care. The record is replete with references to Mother's unresponsiveness to Child's needs. Parents were not able to independently feed Child, Mother would not wake up to Child's cries, and nurses were unable to rouse her or to get her to attend to Child's needs. Frequently, a nurse would step in and feed Child.

[17] Even after Child was discharged from the hospital and Mother attended supervised visits, Mother would need help and prompting to care for Child. Evans opined that Mother "needs education on how to care and follow through with care for Child" for his "basic needs." (Tr. p. 132).

[18] The purpose of a CHINS determination is to protect the child, not to punish the parents. *In re R.S.*, 987 N.E.2d 155, 158 (Ind. Ct. App. 2013). When determining whether a child is a CHINS, the court looks at "the family's condition not just when the case was filed, but also when it is heard." *Id.* at 159. Both FCM and Evans testified at the time of the factfinding hearing that Mother continued to need services before she could properly care for Child. Returning Child to Mother's care now would be tantamount to placing him in the same environment that induced his detention in the first place. Mother's continued marijuana use, her disinterest in Child's care, and the continued prompting to encourage her to address the needs of Child would expose Child to drug use and potential neglect and supports the trial court's conclusion that coercive intervention is necessary. We conclude that the unchallenged findings

and facts establish the statutory requirements that Mother's actions or inactions seriously endangered Child, that his needs were unmet, that his physical health was seriously endangered due to injury by his Parents, and he was born with drugs in his umbilical cord. See I.C §§ 31-34-1-1; -2; -10. We find no error here.

CONCLUSION

[19] Based on the foregoing, we conclude that the trial court did not err in adjudicating Child to be a CHINS.

[20] Affirmed.

[21] Bailey, J. and Vaidik, J. concur