

## MEMORANDUM DECISION

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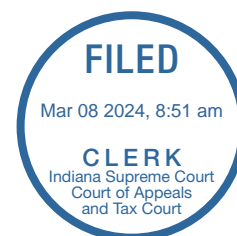


IN THE  
**Court of Appeals of Indiana**

In the Matter of J.D., A Child in Need of Services,  
H.M., Mother and B.D., Father,  
*Appellants-Respondents,*

v.

Indiana Department of Child Services,  
*Appellee-Petitioner.*



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March 8, 2024

Court of Appeals Case No.  
23A-JC-1320

Appeal from the Decatur Circuit Court

The Honorable Timothy B. Day, Judge

Trial Court Cause No.  
16C01-2302-JC-38

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**Memorandum Decision by Judge Foley**  
Judges Pyle and Tavitas concur.

**Foley, Judge.**

- [1] H.M. and B.D. (together, “Parents”) appeal from the juvenile court’s order adjudicating J.D. (“Child”) a child in need of services (“CHINS”). Parents raise three issues which we consolidate and restate as: whether the trial court’s CHINS adjudication was clearly erroneous. We affirm.

**Facts and Procedural History**

- [2] On September 28, 2021, the Indiana Department of Child Services (“DCS”) filed a CHINS petition after nine-month-old B.D. Jr (“Sibling”)<sup>1</sup> was taken to the hospital and “imaging examinations showed that” Sibling “had two broken arms [at] two stages of healing.” Ex. Vol. 1 p. 18. Health care professionals determined that Sibling’s injuries were not an accident, and when asked, Parents did not have an explanation for how Sibling sustained those injuries and “Mother [ ]inquire[d] about whether or not picking [Sibling] up by his arms could have caused fractures.” Ex. Vol. 1 p. 18.
- [3] In October 2021, Parents stipulated that Sibling was a CHINS and that they would benefit from parenting classes. In December 2022, Mother pleaded

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<sup>1</sup> Sibling is not the subject of this appeal.

guilty to Level 5 felony neglect of a dependent resulting in bodily injury concerning Sibling. The trial court sentenced Mother to 3 years, with credit for the fourteen days incarceration and the rest suspended to probation. The State did not charge Father. Mother began participating in parenting services in Sibling's CHINS case. One such service was the psychological and parenting assessment performed by Doctor Amanda Pfeffer ("Dr. Pfeffer"). Mother did not successfully complete the parenting services.<sup>2</sup> On January 17, 2023 (about one month prior to Child's CHINS), DCS filed its petition to terminate the parent-child relationship ("TPR") between Parents and Sibling because the conditions that led to Sibling's removal had not been remedied and continuation of the parent-child relationship posed a threat to Sibling's well-being. On April 15, 2023, Parents signed consents for Sibling to be adopted, thus closing Sibling's TPR case.

[4] On February 16, 2023, Mother gave birth to Child. At that time, DCS received allegations from hospital staff regarding Parents' abilities to care for Child. Family Case Manager Brian Clark ("FCM Clark") assessed the allegations and evaluated Parents' home. Subsequently, DCS filed its petition alleging Child was a CHINS based on inability, refusal or neglect under Indiana Code section 31-34-1-1 and living in a household with an adult who committed specific offenses under Indiana Code section 31-34-1-2(c). Keri Little ("Ms. Little"), a

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<sup>2</sup> The record is not clear on Father's participation in the parental services ordered as part of Sibling's CHINS case.

family centered treatment coordinator, was assigned to start therapy sessions with Parents. On April 21, 2023, a fact-finding hearing was held. FCM Clark testified regarding his assessment, Dr. Pfeffer testified regarding her psychological and parenting assessment of Mother, and Ms. Little testified regarding her therapy sessions with Parents.

[5] FCM Clark testified that “there was a lot of fighting, verbal back and forth between [Parents]” regarding the feeding of Child while they were at the hospital. Tr. Vol. 2 p. 11. When Mother wanted to breastfeed Child, Father “would yell at her, scream at her, curse in the hospital about her efforts to breastfeed[,]” eventually causing Mother to switch to bottle feeding. *Id.* On one occasion, “Child went five hours between feedings and hospital staff reported that they had to prompt [ ] [P]arents several times to get them to feed [C]hild.” *Id.* Parents seemed to be more concerned about “who was going to [feed Child].” *Id.* Father’s behavior towards Mother was also concerning, as he was “very overbearing, yelling, cursing, very domineering over Mo[ther] and seemed to not let [Mother] make her own decisions.” *Id.* FCM Clark also observed that Father was “agitated” and that Father made “very aggressive comments [about] who he thought could have been” the person who reported the allegations to DCS. *Id.* at 48.

[6] FCM Clark assessed Parents’ home which was a “two-bedroom apartment” with four—or “maybe six”—people living there. *Id.* at 46. When FCM Clark attempted to assess the apartment, one of the individuals—Larry—followed FCM Clark to the apartment and began “yelling and screaming” at him and

demanded “to have copies of the report, wanting to know what’s going on, yelling expletives about [FCM Clark], [DCS] and saying he was going to stand guard outside the apartment while [FCM Clark] went inside.” *Id.* at 50. It was after FCM Clark called law enforcement that Larry walked away from the apartment building, still “screaming expletives” about FCM Clark and DCS. *Id.* FCM Clark testified that the bedroom that was intended for Parents and Child had a “very limited amount[ ] of items for [C]hild.” *Id.* Upon investigating the individuals that also lived in the home, FCM Clark testified that he discovered that “Larry was arrested for possession of methamphetamine, possession of a firearm by a felon, and possession of marijuana” at the end of December 2022. *Id.* at 50. Although the home was physically safe, FCM Clark testified that DCS was concerned that the environment of the home would not be safe for Child based on the “people that lived in the home, [ ] history that [he] knew of that specific person[,]” and Sibling’s open CHINS case. *Id.* at 49.

[7] FCM Clark also testified that he saw “indications from [Mother] that she would be willing to participate in services [provided by DCS,]” but did not see those same indications from Father. *Id.* at 54. Despite the indications from Mother, DCS was still concerned about Parents’ abilities to care for Child because Father had “anger issues” and Mother had not demonstrated that she could “handle the stress of a baby” after what occurred with Sibling. *Id.* at 58. FCM Clark testified that DCS was concerned that “what happened with [Sibling]

might happen [with Child] because none of the underlying causes for [what happened with Sibling] ha[d] been addressed.” *Id.* at 59.

[8] Dr. Pfeffer testified that Mother has two chronic mental health diagnoses—intellectual disability mild and persistent depressive disorder—“that warrant clinical attention[,]” and in order for Mother to “[e]ffectively parent any child[,]” Mother “will be in need of support to [ ] adequately provide parenting, and that support is . . . going to need to increase as the developmental demands of a child increase . . . as the child increases in age.” *Id.* at 36. Because Mother’s chronic mental health diagnoses are “lifelong . . . [with] no specific . . . treatment to alleviate the symptoms[,]” it is necessary for Mother to receive assistance in order to “provide adequate care to that child.” *Id.* at 33–34, 36.

[9] Ms. Little testified that meeting with Mother had “been rocky” because “there’s been mostly cancellations [of the meetings] on [Mother’s] part[,]” so she could not say that Mother had made “consistent changes” from the two times she met with her. *Id.* at 62–63. Ms. Little also testified that Father attended only one meeting and later “reported that he didn’t want therapy and [that] he didn’t need it.” *Id.* at 64. Ms. Little testified that Parents “would benefit from therapy with [her] and continuing the services and getting them the help they need.” *Id.* at 65.

[10] Mother also testified at the hearing, and she testified that she did not “successfully complete” the services that she was required to participate in as

part of Sibling’s CHINS case.<sup>3</sup> *Id.* at 44. Mother also testified that she and Father moved into their own apartment the Thursday before the fact-finding hearing and that the lease was “month to month.” *Id.* at 67. Mother testified that she was not employed.

[11] After the fact-finding hearing, the juvenile court issued an order adjudicating Child a CHINS. In support of its determination, the juvenile court included the following pertinent *sua sponte* findings:

1) . . . Dr. Pfeffer stated that [Mother] has parenting deficits that render her ill-equipped to serve as an adequate caregiver of her children without ongoing and continuing parenting education and assistance . . . The Court finds Dr. Pfeffer’s testimony persuasive.

2) [Mother] pled guilty to committing the crime of Neglect of a Dependent Resulting in Bodily Injury . . . for significant injuries sustained by [Sibling] when he was 9 months old . . .

. . . .

4) Testimony established that [P]arents did neither engage[] nor complete[] any of the services that were referred to them in the previous CHINS case.

Appellants’ App. Vol. 2 pp. 86–87. Parents now appeal.

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<sup>3</sup> Although Father testified, his testimony did not address his participation in the parental services ordered as part of Sibling’s CHINS case.

## Discussion and Decision

- [12] Parents challenge the sufficiency of the evidence to support the juvenile court’s determination that Child is a CHINS. CHINS proceedings are civil actions; thus, “the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code.” *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010); *see* Ind. Code § 31-34-12-3. On review, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.J.*, 68 N.E.3d 574, 577–78 (Ind. 2017). Here, the juvenile court entered, *sua sponte*, findings of fact and conclusions thereon in granting the CHINS petition. “As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). We review the remaining issues under the general judgment standard, which provides that a judgment ““will be affirmed if it can be sustained on any legal theory supported by the evidence.”” *Id.* (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). We will reverse a CHINS determination only if it is clearly erroneous. *D.J.*, 68 N.E.3d at 578.
- [13] DCS must prove three elements for a juvenile court to adjudicate a child a CHINS: (1) the child is under the age of eighteen; (2) that one of eleven different statutory circumstances exist that would make the child a CHINS; and (3) the child needs care, treatment, or rehabilitation that he or she is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court. *Id.* at 580.



[14] Here, the juvenile court found Child was a CHINS under the general category of neglect as defined in Indiana Code Section 31-34-1-1,<sup>4</sup> 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.

[15] “[T]he purpose of a CHINS adjudication is to protect children, not [to] punish parents.” *N.E.*, 919 N.E.2d at 106. A CHINS adjudication is not a

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<sup>4</sup> Parents also argue that DCS failed to prove CHINS-2, but since we find sufficient evidence under CHINS-1, we need not address Parents’ argument.

determination of parental fault but rather is a determination that a child is in need of services and is unlikely to receive those services without intervention of the court. *Id.* at 105. “A CHINS adjudication focuses on the condition of the child . . . . [T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* (citations omitted). “A CHINS finding should consider the family’s condition not just when the case was filed, but also when it is heard.” *S.D.*, 2 N.E.3d at 1290. The conduct of one parent may be enough to warrant a CHINS finding. *See In re K.D.*, 962 N.E.2d 1249, 1256 (Ind. 2012).

[16] Parents claim that DCS failed to prove that Child is “seriously endangered” because “the undisputed evidence is that [Child] had not suffered any injury, neither parent used illegal drugs, no domestic violence had occurred, and the parents had appropriate housing, a crib, car seat, clothing, formula, bottles and baby supplies.” Appellants’ Br. p. 13. Parents further contend that DCS failed to prove “by a preponderance of the evidence that the coercive intervention of the court is necessary in this case.” *Id.* at 12. According to Parents, DCS and the juvenile court “started with a presumption that [Child] is a CHINS based upon [Sibling’s] CHINS status.” *Id.* at 11. Specifically, Parents argue that the juvenile court’s findings derived from Parents’ actions and inactions in Sibling’s CHINS case and that the record lacks evidence that “[Child] was not in a safe environment, or that he was not ‘receiving necessary food, clothing, shelter, medical care, education[,] or supervision’ as required by statute.” *Id.* at 10. Therefore, Parents argue that DCS failed to prove that “[Child] needs care,

treatment, or rehabilitation that he is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court.” *Id.*

[17] We note that Parents take issue with the trial court considering accusations and facts of Sibling’s concurrent case in determining that Child was a CHINS. The trial court appropriately considered Sibling’s case while evaluating whether Child was a CHINS in the instant matter. Parents failed to complete, or even significantly engage in the services ordered in Sibling’s case. DCS’s concerns that the criminal neglect that resulted in Sibling’s broken arm may reoccur because Parents failed to address the underlying cause for Sibling’s removal from their care is well founded. *See In re A.L.H.*, 774 N.E.2d 896, 899 (Ind. Ct. App. 2002) (noting that a trial court may consider a parent’s history of neglect to determine whether there is a substantial probability of future neglect or deprivation of the children).

[18] Furthermore, the trial court did not solely base its decision on the circumstances surrounding Sibling’s case. The initial allegations that led to DCS’s involvement with Parents and Child pertained to concerns over Parents’ abilities to care for Child based on observations of their behavior after Mother gave birth to Child. FCM Clark testified that Parents argued regarding the feeding of Child while they were at the hospital. Tr. Vol. 2 p. 11. Mother wanted to breastfeed Child, but eventually opted to bottle feed Child because Father “would yell at her, scream at her, curse in the hospital about her efforts to breastfeed.” *Id.* On one occasion, Child went five hours between feedings and the Parents were more concerned about “who was going to [feed Child]”

than actually feeding Child. *Id.* Hospital staff had to intervene several times just to get Parents to feed Child. Father appeared to have anger issues and his behavior towards Mother was also concerning, as he was “very overbearing, yelling, cursing, very domineering over Mo[ther] and seemed to not let [Mother] make her own decisions.” *Id.* Both Mother and Father were not compliant with their family therapy sessions with Ms. Little which were designed to help them with their parenting abilities.

[19] Although Mother testified that she and Father moved into a new apartment, our review of the record reveals that DCS had not assessed the home given that Parents moved into their new home nine days before the fact-finding hearing. Therefore, at the time of the hearing, no evidence was presented addressing whether DCS’s concerns regarding the home environment, including the presence of Larry or other third parties, were rectified. Our careful review of the record reveals that the trial court did not simply rely upon the prior determination of CHINS in Sibling’s case, but also considered facts and circumstances that occurred after Child’s birth to support its finding that DCS met its burden with respect to Child’s physical or mental condition under Parents’ care and the need for coercive court intervention.

[20] Parents also challenge the juvenile court’s finding that “[Mother] has parenting deficits that render her ill-equipped to serve as an adequate caregiver for her children without ongoing and continuing parenting education and assistance” per Dr. Pfeffer’s testimony. Appellants’ App. Vol. 2 p. 86; *see also* Appellants’ Br. p. 11. Parents claim that the juvenile court’s finding was clearly erroneous

because “Dr. Pfeffer did NOT testify that Mother needed ongoing and continuing parenting education” nor did Dr. Pfeffer “make any specific recommendations for what kind of support would be needed.” Appellants’ Br. p. 11. Contrary to Parents’ contentions, Dr. Pfeffer’s testimony clearly expressed that Mother would need ongoing services in order to parent any child, not just Child. Dr. Pfeffer testified that Mother has two chronic mental health diagnoses that require treatment from a health professional. In order for Mother to effectively parent any child, Mother needs support from a professional and the support will increase as the child gets older. Because Mother’s chronic mental health diagnoses are lifelong, it is necessary for Mother to receive assistance in order to adequately care for Child. The evidence supported the juvenile court’s finding.

[21] Parents next argue that the juvenile court’s finding that Parents “did neither engage[] nor complet[e] any of the services that were referred to them in the previous CHINS case” was clearly erroneous because “Mother participated in services during [Sibling’s] CHINS case,” and there was no testimony that Child “needed Mother to complete services before she could adequately parent him with support from her family.” Appellants’ App. Vol. 2 p. 87; *see also* Appellants’ Br. pp. 11–12. We disagree. As noted above, Sibling was removed from Parents’ care when he was nine months old because he suffered “two broken humerus bones, one in each arm” which health care professionals later determined were not accidental injuries. Tr. Vol. 2 p. 53; *see also* Ex. Vol. 1 p. 18. Improving Parents’ parenting abilities was of the utmost importance given

that Sibling sustained significant injuries under their care. Although Mother participated to some extent in the services ordered during Sibling's CHINS case, Mother testified that she did not successfully complete the services. Furthermore, FCM Clark testified that "there was very little participation [from Parents] in any services . . . referred by [DCS]" in the current CHINS matter. *Id.* at 54. Because Parents "were not actively participating in services designed to address their parenting abilities[,]," DCS could not ensure Child's safety "if he was left in the care of [Parents]." *Id.* DCS's ensurance of Child's safety was imperative given that Parents did not have an explanation for Sibling's two broken arms and the fact that Mother asked if picking Sibling up by the arms "could have caused fractures." Ex. Vol. 1 p. 18. Moreover, Mother's support from her extended family is not adequate to ensure that she will effectively parent Child. Mother has two chronic mental health diagnoses that require clinical attention so the support she needs is that which addresses "the defects that come along with that [diagnosis]" so that she can adequately parent Child. *Id.* at 36. The evidence supports the juvenile court's finding.

[22] Although Parents focus on certain findings and take issue with the juvenile court considering Sibling's case in making its decision, the evidence ultimately indicates that the juvenile court not only appropriately considered Sibling's case, but also the facts and circumstances that occurred with respect to Child's case. *See Prince v. Department of Child Services*, 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007) (noting that neither this court nor the trial court is required to ignore "the parent's habitual patterns of conduct when determining the probability of

future neglect or deprivation of the child.”). Parents had difficulty prioritizing the feeding of Child when Child was just a newborn, leaving Child unfed for as many as five hours and prompting hospital staff to intervene on Child’s behalf. DCS intervention indicated that there were root causes to Mother’s difficulty in caring for Child, with Mother requiring ongoing medical attention and professional support systems to be an effective parent. However, Parents did not consistently participate in court-ordered services that were intended to address their parenting abilities during Sibling’s case nor during Child’s case. Based upon this evidence, we conclude that DCS proved by a preponderance of the evidence that Child’s physical or mental condition was seriously endangered and that Child needs care that is unlikely to be provided without the coercive intervention of the court. The juvenile court’s order adjudicating Child a CHINS was not clearly erroneous.

[23] Pyle, J., and Tavitas, J., concur.

Vote line.

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