

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE  
**Court of Appeals of Indiana**

In the Matter of J.F. and A.F., Minor Children Alleged to be  
Children in Need of Services;

M.F. (Father),  
*Appellant-Respondent*

v.

Indiana Department of Child Services,  
*Appellee-Petitioner*



---

April 26, 2024

Court of Appeals Case No.  
23A-JC-2555

Appeal from the Owen Circuit Court  
The Honorable Kelsey B. Hanlon, Judge

Trial Court Cause Nos.  
60C02-2307-JC-150  
60C02-2307-JC-151

---

**Memorandum Decision by Judge Tavitas**  
Judges Mathias and Weissmann concur.

**Tavitas, Judge.**

## **Case Summary**

- [1] M.F. (“Father”) appeals the juvenile court’s determination that his children, J.F. and A.M. are children in need of services (“CHINS”). Father argues that the juvenile court’s CHINS determination is clearly erroneous and that the juvenile court abused its discretion by denying Father’s motion to correct error. We conclude that the Department of Child Services (“DCS”) presented sufficient evidence to support the CHINS determination and that the juvenile court did not abuse its discretion by denying Father’s motion to correct error. Accordingly, we affirm.

## **Issues**

- [2] Father raises two issues, which we restate as:
- I. Whether DCS presented sufficient evidence to support the CHINS determination.
  - II. Whether the juvenile court erred by denying Father’s motion to correct error.

## **Facts**

- [3] J.F. was born in July 2014, and A.M. was born in December 2019 to Mother and Father, who had an “on again/off again” relationship. Tr. Vol. II p. 52. Their relationship was marred by domestic violence and substance abuse involving heroin and ended several years ago. In 2020, Father was arrested for

possession of methamphetamine and unlawful possession of a syringe. Father later pleaded guilty and was placed on home detention. Father violated his home detention by using prescription pain medication without a prescription.

- [4] In addition to J.F. and A.M., Mother has three older children, including fifteen-year-old A.J. After Mother's and Father's relationship ended, Mother married R.T. ("Stepfather"). The family has been involved with multiple DCS assessments, informal adjustments, and CHINS proceedings.
- [5] In June and July 2023, A.J. called 911 repeatedly due to domestic violence between Mother and Stepfather. On July 13, 2023, after another domestic violence incident, Stepfather was arrested for strangulation and domestic battery. The children reported witnessing domestic violence between Mother and Stepfather. When DCS arrived the following day, the children reported that Mother left the prior evening and that they were home alone. Later that afternoon, DCS located Mother at the residence. Mother was irate and refused a drug screen. DCS then removed the children from Mother's care.
- [6] On July 18, 2023, DCS filed petitions alleging that J.F. and A.M. were CHINS due to domestic violence between Mother and Stepfather, lack of supervision of the children by Mother, and substance abuse by Mother and Stepfather. At the time the petitions were filed, Father had not been in contact with J.F. and A.M. for approximately eighteen months. Father reported that he had recently gained custody of his older children, that he was interested in custody of J.F. and A.M., but that his home was not ready at that time.

[7] At the fact-finding hearing in August 2023, Mother admitted that DCS could establish a prima facie case that J.F. and A.M. are CHINS. Mother testified that Father was verbally and physically abusive to Mother and the children during their relationship. Family Case Manager (“FCM”) Sarah Sexton testified that Father claimed he did not need services and that Father’s attitude toward services is “[v]ery poor.” Tr. Vol. II p. 68. Father refused to provide DCS with a drug screen, but Father said he would “screen privately through his doctor.” *Id.* at 70. At the time of the fact-finding hearing, however, Father had not provided DCS with any screens.

[8] Father testified that he was employed; that he has custody of his two older children, who are teenagers; and that his girlfriend “has current open DCS involvement regarding her children due to substance abuse.” *Id.* at 86. Father also admitted that he was addicted to heroin in 2016; he completed a rehabilitation program; he was arrested in 2020 for possession of methamphetamine and a syringe; he pleaded guilty in 2021 and started serving his sentence, but he violated his home detention by using prescription pain medications without a prescription. When questioned regarding domestic violence during his relationship with Mother, Father admitted that he was “definitely out of line” during his drug use. *Id.* at 79.

[9] The juvenile court issued orders finding that J.F. and A.M. are CHINS. In each case, the juvenile court found:

3. Respondent Father has not had contact with the Child in approximately eighteen (18) months.

4. Respondent Father has a history of substance abuse and has declined to screen for DCS.

5. Respondent Father is currently in a long-term relationship with a woman whose Child(ren) is/are presently the subject of ongoing DCS involvement in another County.

6. There is a history of domestic violence between Respondent Mother and Father.

\* \* \* \* \*

11. That the Child has been involved in multiple DCS assessments, Informal Adjustments and CHINS cases. DCS [h]as offered Mother, her partners and Respondent Father services to address concerns of domestic violence and substance abuse.

12. The Child needs care and supervision from a sober caregiver in a home free from domestic violence and neglect. The Child is not receiving this while in the care of Respondent Parents, and the Child is unlikely to be provided sober care and supervision in an environment free from domestic violence without the coercive intervention of the Court.

Appellant's App. Vol. II pp. 30-31. The juvenile court then entered a dispositional order.

[10] On October 23, 2023, Father filed a motion to correct error. Father alleged that he has not had substance abuse issues since December 2020; that his girlfriend's CHINS cases were closed prior to the fact-finding hearing in this matter; that he has not been involved in domestic violence for over eighteen months; and that

he is a “good, capable, and fit parent.” *Id.* at 157. Father submitted an affidavit in support of his motion. The juvenile court denied Father’s motion. Father now appeals.

## **Discussion and Decision**

### **I. The Evidence is Sufficient to Support the CHINS Determination.**

[11] Father challenges the sufficiency of the evidence to support the juvenile court’s determination that the Children are 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 a two-tiered standard of review to determine 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.

[12] 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.

[13] Here, the juvenile court found J.F. and A.M. were CHINS under the general category of neglect as defined in 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.

[14] “[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 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.

### **A. Challenges to Factual Findings**

[15] Father first argues that Findings No. 3, 4, 5, 6, and 11 are clearly erroneous.<sup>1</sup> In Finding No. 3, the juvenile court found that “Father has not had contact with the Child in approximately eighteen (18) months.” Appellant’s App. Vol. II p. 30. Father contends that the finding is clearly erroneous merely because supervised visits were going well at the time of the fact finding hearing. It is undisputed, however, that, when the CHINS petition was filed, Father had not seen J.F. and A.M. for eighteen months. The finding is not clearly erroneous.

---

<sup>1</sup> Father also argues that Finding No. 12 is clearly erroneous. We address that argument below.



- [16] In Finding No. 4, the juvenile court found that “Father has a history of substance abuse and has declined to screen for DCS.” *Id.* Father contends that the finding is misleading because he is currently sober. Father admittedly has a history of substance abuse, and Father has refused to submit to a DCS drug screen or provide one from his physician. The finding is not clearly erroneous.
- [17] In Finding No. 5, the juvenile court found that “Father is currently in a long-term relationship with a woman whose Child(ren) is/are presently the subject of ongoing DCS involvement in another County.” *Id.* Father contends that he has been in the relationship for less than one year and that the DCS case against the girlfriend was terminated prior to the juvenile court’s ruling. At the hearing, Father admitted that his girlfriend “has current open DCS involvement regarding her children due to substance abuse.” Tr. Vol. II p. 86. Father later testified that his girlfriend got her children back, but he did not testify that the CHINS case was closed. The juvenile court’s finding was, thus, not clearly erroneous. In his later motion to correct error, Father contended that his girlfriend’s CHINS case was closed prior to the fact-finding hearing. Even if the girlfriend’s CHINS case was closed, it was undisputed that she had been involved in a CHINS case due to substance abuse. Any error in the finding is harmless. *See* Ind. Appellate Rule 66(A) (discussing harmless error).
- [18] In Finding No. 6, the juvenile court found that “There is a history of domestic violence between Respondent Mother and Father.” Appellant’s App. Vol. II p. 31. Father contends that the finding is misleading because DCS presented no evidence of current domestic violence involving Father. It was undisputed,

however, that Mother and Father have a history of domestic violence. The finding is not clearly erroneous.

[19] Finally, in Finding No. 11, the juvenile court found that the children had “been involved in multiple DCS assessments, Informal Adjustments and CHINS cases.” *Id.* Father does not dispute the accuracy of the finding but argues that DCS only substantiated one case of abuse or neglect. To the extent the finding suggests multiple CHINS cases, any error is harmless.

## **B. Challenges to Legal Conclusions**

[20] Next, Father challenges the juvenile court’s conclusion that:

The Child needs care and supervision from a sober caregiver in a home free from domestic violence and neglect. The Child is not receiving this while in the care of Respondent Parents, and the Child is unlikely to be provided sober care and supervision in an environment free from domestic violence without the coercive intervention of the Court.

Appellant’s App. Vol. II p. 31. According to Father, he is providing for his older children with a home free from substance abuse, neglect, and domestic violence, and his past is different from his current living situation.

[21] DCS presented evidence that, at the time of the CHINS petition filing, Father had not seen J.F. and A.M. in eighteen months. During Father’s relationship with Mother, Father used heroin and, when questioned regarding domestic violence during his relationship with Mother, admitted that he was “definitely out of line” during his drug use. Tr. Vol. II p. 79. Father admitted that he was

arrested in 2020 for possession of methamphetamine and a syringe. Father pleaded guilty in 2021 and started serving his sentence, but he violated his home detention by using prescription pain medications without a prescription. Although Father now has custody of his two older children and claims to be sober, he refused to submit to a DCS drug screen and failed to provide DCS with a drug screen through his physician. Father also had a poor attitude toward DCS services.

[22] Father merely requests that we reweigh the evidence to give more weight to his alleged current situation than his history over the past few years, which we cannot do. Under these circumstances, we cannot say the juvenile court's finding is clearly erroneous. Accordingly, we conclude that the CHINS determination was supported by sufficient evidence.

## **II. The Juvenile Court Properly Denied Father's Motion to Correct Error.**

[23] Father also argues that the juvenile court abused its discretion by denying Father's motion to correct error. We review a juvenile court's decision regarding a motion to correct error for an abuse of discretion. *R.M. v. Ind. Dep't of Child Servs.*, 203 N.E.3d 559, 562 (Ind. Ct. App. 2023). An abuse of discretion occurs if the juvenile court's decision is against the logic and effect of the facts and circumstances that were before the court. *Id.*

[24] In Father's motion to correct error, he argued that: (1) he has not had substance abuse issues since December 2020; (2) his girlfriend's CHINS cases were closed

prior to the fact-finding hearing in this case; (3) he has not been involved in domestic violence for over eighteen months; and (4) he is a good, capable, and fit parent. In support of the motion, Father submitted an affidavit that addressed his employment, substance abuse, drug screening, domestic violence, his girlfriend's CHINS case, his custody of his two older children, and his supervised visits with J.F. and A.M.

[25] Father argues that the juvenile court was required to take Father's affidavit as true. In support of this argument, Father relies upon *Laudig v. Marion Cnty. Bd. of Voters Registration*, 585 N.E.2d 700, 709 (Ind. Ct. App. 1992), *trans. denied*, which discussed Indiana Trial Rule 59(H). Trial Rule 59(H) concerns affidavits filed in support of a motion to correct error based upon evidence outside the record. With the exception of noting that the girlfriend's CHINS case had been closed, the affidavit here merely reiterated Father's testimony at the fact-finding hearing and presented no evidence outside of the record. Accordingly, we do not find *Lauding* persuasive here, and we conclude that the juvenile court did not abuse its discretion by denying Father's motion to correct error.

## **Conclusion**

[26] DCS presented sufficient evidence to support the CHINS determination, and the juvenile court did not abuse its discretion by denying Father's motion to correct error. Accordingly, we affirm.

[27] Affirmed.

Mathias, J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

Frederick A. Turner  
Turner Law Office LLC  
Bloomington, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Monika Prekopa Talbot  
Deputy Attorney General  
Indianapolis, Indiana