

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

In the Matter of M.C. (Minor Child)

M.C. (Mother),  
*Appellant-Respondent*

v.

Indiana Department of Child Services,  
*Appellee-Petitioner*

And

Kids' Voice of Indiana,  
*Appellee-Guardian Ad Litem*

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May 6, 2024

Court of Appeals Case No.  
23A-JC-2827

Appeal from the Marion Superior Court  
The Honorable Stephen R. Creason, Judge  
Trial Court Cause No.  
49D16-2305-JC-4357

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**Memorandum Decision by Judge Riley**  
Judges Brown and Foley concur.

**Riley, Judge.**

**STATEMENT OF THE CASE**

[1] Appellant-Respondent, M.C. (Mother), appeals the trial court’s adjudication of her minor child (Child) as a Child in Need of Services (CHINS) and the trial court’s subsequent dispositional order.

[2] We affirm.

**ISSUE**

[3] Mother presents this court with one issue on appeal, which we restate as:  
Whether the trial court’s CHINS adjudication and dispositional order are clearly erroneous.

## FACTS AND PROCEDURAL HISTORY

- [4] Child was born on October 6, 2020, to Mother and J.C. (Father),<sup>1</sup> who has established paternity through a paternity affidavit. Mother is the sole legal custodian of Child. Prior to Child's removal from the home by the Department of Child Services (DCS), parents were living together in Father's residence in Indianapolis, Indiana.
- [5] On May 8, 2023, DCS's Family Case Manager (FCM) spoke with Mother at the home of Mother's Grandfather. Mother had driven to Grandfather's residence with Child to get away from Father following a verbal altercation while Child was present. FCM had contacted Mother because of allegations of drug use in the home Mother shared with Father which placed "the safety of [Child] [] under question." (Transcript p. 8). During the conversation with FCM, Mother disclosed that she had used marijuana and cocaine. An oral fluid drug screen returned a positive result for amphetamine, methamphetamine, benzoylecgonine, which is a metabolite of cocaine, cocaine, and THC. Mother informed FCM she had ingested Vyvanse, an amphetamine, for which she had a prescription.
- [6] On May 12, 2023, FCM visited Father's residence, where Mother was living, to conduct a home check. Father informed FCM that Mother used illegal drugs,

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<sup>1</sup> Although the trial court adjudicated Child to be a CHINS as to Father, Father does not participate in this appeal.

with her preferred drug being cocaine, and frequently drank alcohol to excess. Father complained that he had found white powder around the home and described Mother as living a party lifestyle. He told FCM that when Mother “gets angry from drinking and things like that[,]” she “takes off with the baby.” (Tr. p. 36). Father denied using illegal drugs and his oral drug screen gave a negative result. On May 13, 2023, FCM spoke on the phone with Father, who informed FCM that there had been another incident at which Mother was drinking and he had found white residue. Again, Mother got upset and “took off with the baby.” (Tr. p. 39).

[7] On May 24, 2023, after DCS received positive confirmatory drug test results from Mother’s May 8 testing, FCM visited with Mother to inform her of the positive result. An instant drug screen during the visit also returned a positive result, indicating that Mother had ingested illegal substances. Mother refused an oral screen that could be sent for laboratory testing to confirm the instant drug screen result. Mother told FCM that “this is pointless” and “I don’t know why DCS is here[.]” (Tr. p. 41). During this time, Mother was inattentive to Child. Child requested to use the restroom and FCM noticed Child urinate on the floor. Although Mother had been agitated and angry, after FCM informed her that Child would be removed, Mother “did not care.” (Tr. p. 56). When Father returned home from work, he took a urine drug screen which showed positive results for cocaine metabolite.

[8] On May 25, 2023, DCS filed a petition alleging Child to be a CHINS based on Mother’s substance abuse and Father’s inability to secure Child’s safety because

of his own substance abuse. Following the initial hearing, the trial court entered denials on behalf of parents. After the initiation of the case, DCS provided Mother with referrals for random drug screens, a substance abuse assessment, and therapy.

[9] The trial court conducted a fact-finding hearing on DCS's petition on August 24, 2023. At the time of the fact-finding hearing, Mother had moved out of Father's residence and into an apartment of her own. She was unemployed and had minimal plans on how to care for Child should she obtain custody. Evidence was introduced that since Child's removal, Mother had tested positive for amphetamine, benzoylecgonine, and cocaine on June 28 and July 3, 2023. She tested positive for benzoylecgonine on August 2, 2023. Mother was not consistently taking Vyvanse and she only reported that she had recently taken Vyvanse when she gave her May 8 and June 28 samples, but not her July 3 sample.

[10] Dana Hunter (Hunter) was Mother's substance use therapist and started working with her on July 12, 2023. Mother described herself as a free spirit and disclosed a history of weekend recreational use of marijuana. Mother informed Hunter that she started using cocaine in March 2023 and had stopped in June 2023. Mother assured Hunter that the August 2 positive drug result was "a false positive." (Tr. p. 116). Hunter met with Mother most recently two days before the fact-finding hearing. During this assessment, Hunter diagnosed Mother with stimulant use disorder for cocaine with a moderate severity level, which was not in remission. Hunter suggested a ninety-day treatment plan,

ending on November 9, 2023. She noted that if treatment abruptly stopped, patients “came back because they had used again[.]” (Tr. p. 113). Mother did not consult with Hunter about developing a parenting plan or working with Father on sharing custody. Permanency FCM was concerned about the August 2, 2023, positive drug screen and Mother’s denial. Permanency FCM stated that if the trial court closed the case, “I think we still have just concerns” and she wanted more information about Mother’s treatment “because she’s made statements that she doesn’t take her medication regularly.” (Tr. pp. 135, 136).

[11] On October 5, 2023, the trial court entered its findings of fact and conclusion thereon, adjudicating Child to be CHINS and finding, in pertinent part:

The [c]ourt finds that while Mother should be commended for beginning her recovery, it has occurred only because of DCS’s and the [c]ourt’s intervention with her family. Her recovery period thus far has been brief, and the [c]ourt does not believe that Mother is presently capable of sustaining it so as to be able to provide a safe, stable, and appropriate living environment for the [C]hild at this time.

\* \* \*

The parties agree that the child is two years old. The evidence proves that Mother and Father used cocaine and kept a house with cocaine powder on furnishings and therefore exposed the [C]hild to a dangerous narcotic. As explained above, the evidence also shows that both parents have a substance abuse disorder for which they have just begun to obtain treatment and require still more treatment to overcome. The [c]ourt finds that the DCS has met its burden to prove that the [C]hild is under 18 years old and that parents were either unable, refused, or

neglected to meet the [C]hild's needs in a way that seriously endangered the [C]hild.

The evidence described above further proves that the [C]hild's needs for a safe and sober living environment remain unmet and are unlikely to be met without the coercive intervention of the court. The [c]ourt looks to the present situation of the family as well as the situation that gave rise to the filing of the petition. That evidence convinces the [c]ourt that both Father and Mother have not fully embraced therapy for their drug use problems, they continue to require more substance abuse treatment before being able to meet the [C]hild's needs, and that just as they were unable to obtain treatment on their own without DCS's intervention they remain unable to continue their treatment absent continued intervention. DCS has proven that neither Mother nor Father can meet their [C]hild's needs for a safe and sober living environment without the coercive intervention of the [c]ourt.

(Appellant's App. Vol. II, pp. 76, 78).

- [12] On October 30, 2023, the trial court conducted a dispositional hearing at which Mother's counsel informed the court that Mother had missed some drug screens during October, she recently had resumed regular screening, but the results had not yet been received. DCS recommended that Mother continue to engage in substance abuse therapy to avoid a relapse and Child's Guardian Ad Litem (GAL) expressed her concern that Mother hadn't submitted to any random drug screens in the last few weeks. Hunter testified that Mother's treatment plan called for therapy once to twice per week and to participate in case management. DCS requested that Mother participate in home-based therapy, home-based casework, and random drug screens. The following day, October

31, 2023, the trial court entered its dispositional order, which mandated Mother to participate in DCS’s recommended services. The court further ordered Child to be placed with Father immediately on a temporary trial home visit.<sup>2</sup>

[13] Mother now appeals. Additional facts will be provided as necessary.

## **DISCUSSION AND DECISION**

### *I. Standard of Review*

[14] When reviewing a CHINS determination, we neither reweigh the evidence nor judge the credibility of witnesses. *In re D.J.*, 68 N.E.3d 574, 577-78 (Ind. 2017). Rather, we consider only the evidence supporting the court’s decision and the reasonable inferences drawn therefrom. *Id.* at 578. Where, as here, the court supplemented its CHINS determination with findings of fact and conclusions of law, we undertake a two-step process. *Id.* We first consider whether the evidence supports the court’s findings and, second, whether the findings support the ultimate decision. *Id.* Reversal of a CHINS determination is warranted if the court’s decision was clearly erroneous. *Id.* “A decision is clearly erroneous

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<sup>2</sup> The State alerts this court that this cause was successfully closed by the trial court on December 20, 2023, with an associated custody order giving parents joint custody. Although at first blush this event may seem to make the issues raised by Mother in this appeal moot, we conclude that a decision on the merits is warranted and necessary. A CHINS adjudication, even one as short-lived as this one, can have serious consequences for families. Indiana Code section 31-35-2-4(b)(2)(B)(iii) provides that two separate CHINS adjudications can be the basis for a petition to terminate parental rights. Although Child is not currently a CHINS, it is still on record that she has been adjudicated a CHINS and if that adjudication was erroneous, it must be corrected to protect the integrity of the family going forward. *See In re K.D.*, 962 N.E.2d 1249, 1259 (Ind. 2012) (noting that “an abundance of caution should be used when interfering with the makeup of a family and entering a legal world that could end up in a separate proceeding with parental rights being terminated”).



if the record facts do not support the findings or if it applies the wrong legal standard to properly found facts.” *Id.* (cleaned up).

## II. *Sufficiency of the Evidence*

[15] On appeal, Mother disputes the trial court’s adjudication of Child as a CHINS and requests that the dispositional order entered October 31, 2023, be vacated.<sup>3</sup>

[16] A CHINS proceeding is civil in nature, so 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). “‘Not every endangered child is a child in need of services,’ and not every endangered child needs ‘the State’s *parens patriae* intrusion into the ordinarily private sphere of the family.’” *In re D.J.*, 68 N.E.3d at 580 (quoting *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014)).

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<sup>3</sup> Our supreme court has explained that:

[w]ithin the CHINS context, a court’s “finding of CHINS status is a mere preliminary step” to final disposition of the matter. Standing alone, the CHINS finding “d[oes] not constitute a final, appealable judgment.” Even after making a CHINS determination, the court is still required to hold a dispositional hearing to determine the next steps in the child’s placement, care, treatment, or rehabilitation and the nature and extent of the parent’s, custodian’s, or guardian’s role in fulfilling those steps. I.C. § 31-34-19-1. The court must then issue written findings and conclusions in a dispositional decree. I.C. § 31-34-19-10. To the extent our case law leaves any doubt, we make explicit that a CHINS determination, by itself, is not a final judgment.

*In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017) (quoting *In re J.L.V.*, 667 N.E.2d 186, 188 (Ind. Ct. App. 1996)). Finality does not occur until the court, after a dispositional hearing, resolves such questions as what specific services are warranted and whether the child should be placed in an alternative living arrangement, either provisionally or permanently. *In re D.J.*, 68 N.E.3d at 576.

[17] There are three basic elements DCS must prove for a juvenile court to adjudicate a child a CHINS: that the child is under eighteen years of age; one or more of the statutory circumstances outlined in Indiana Code sections 31-34-1-1 through 11 exists; and the care, treatment, or rehabilitation required to address those circumstances is unlikely to be provided or accepted without the coercive intervention of the court. *Matter of K. Y.*, 145 N.E.3d 854, 860 (Ind. Ct. App. 2020) (citing N.E., 919 N.E.2d at 105), *trans. denied*. In this case, DCS alleged that Child was a CHINS pursuant to Indiana Code section 31-34-1-1. To meet its burden under Indiana Code section 31-34-1-1, DCS was required to prove that Child was under the age of eighteen and that:

(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; 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 coercive intervention of the court.

I.C. § 31-34-1-1.

[18] The required proof of the statutory CHINS elements “guards against unwarranted State interference in family life, reserving that intrusion for

families ‘where parents lack the ability to provide for their children,’ [and] not merely where they ‘encounter difficulty in meeting a child’s needs.’” *In re D.J.*, 68 N.E.3d at 580-81 (quoting *In re S.D.*, 2 N.E.3d at 1287). When determining whether the “coercive intervention” of the court is necessary, courts “should consider the family’s condition not just when the case was filed, but also when it is heard.” *Id.* (quoting *In re S.D.*, 2 N.E.3d at 1290). “Doing so avoids punishing parents for past mistakes when they have already corrected them.” *Id.* (citing *In re S.D.*, 2 N.E.3d at 1289-90). The focus of a CHINS determination is on the status of the child, not on an act or omission of the parent. *See, e.g.*, *In re N.E.*, 919 N.E.2d at 105-06; *In re S.C.*, 96 N.E.3d 579, 585 (Ind. Ct. App. 2017). A child therefore cannot be a CHINS “based solely on conditions that no longer exist.” *In re R.S.*, 987 N.E.2d 155, 159 (Ind. Ct. App. 2013).

[19] Although Mother concedes that the court’s intervention was necessary at the time of Child’s removal, her position on appeal, is that she “was progressing in services, was not at risk for further substance abuse, was not a risk to [Child], and was likely to continue services aimed at maintaining her sobriety without further DCS involvement or court intervention.” (Appellant’s Br. p. 19). In support of her argument, Mother points to evidence introduced at the fact-finding hearing, which supported that Mother voluntarily continued to engage in services since the case was opened, attended ongoing group meetings to support her sobriety, had obtained employment and a residence, continued to attend therapy with Hunter, and participated in parenting time sessions. In

light of this testimony evidencing a positive progression in Mother's situation since the commencement of these proceedings and in reliance on *In re C.W.*, 172 N.E.3d 1239 (Ind. Ct. App. 2021), Mother posits that continued DCS involvement and the coercive intervention of the court were no longer necessary at the time of the fact-finding hearing.

[20] In *C.W.*, DCS became involved because child was malnourished due to not being fed properly; mother's untreated mental health issues; parents' prior methamphetamine use; and parents' history of domestic violence. *Id.* at 1242. On appeal, this court reversed the CHINS adjudication because after removal of child and prior to the fact-finding hearing, the reasons for DCS's involvement had been rectified: mother had learned how to appropriately feed C.W., who was thriving in her care; she had voluntarily sought out and was receiving mental health services and taking prescribed medication; and there was no evidence of illicit drug use by mother or domestic violence between mother and father since well before DCS's involvement. *See id.* at 1247. Because "[i]n this case, the system worked[,]" we concluded that "while DCS's early intervention was necessary, its continued intervention [wa]s not." *Id.* at 1248.

[21] While in *C.W.* mother had rectified the reasons for the removal by the time of the fact-finding hearing, here, Mother had not. It should be remembered that DCS initially became involved with the family and removed Child from Mother's care due to Mother's inability to provide Child with a safe home free from Mother's substance abuse. In the intervening time between Child's removal on May 25, 2023, and prior to the fact-finding hearing on August 24,

2023, Mother tested positive for illegal substances on three separate occasions. Following DCS's referrals for random drug screens, substance abuse assessment, and therapy, Mother was diagnosed with stimulant use disorder for cocaine with moderate severity level. Between the trial court's adjudication of Child as a CHINS on October 5, 2023 and the dispositional hearing on October 30, 2023, Mother, by her own admission, had missed her drug screens and had only resumed regular screening immediately prior to the hearing, which the trial court found not to be "terribly helpful." (Tr. p. 203).

[22] Mother contends that her August 2, 2023 positive drug screen was a false positive but she only offered her self-serving opinion that the test could not be correct. (Appellant's Br. p. 8). While Mother refers to Hunter's testimony that she had no concerns about Mother relapsing, at the same time she ignores Hunter's testimony about the need for ongoing substance abuse treatment. Hunter testified that if treatment abruptly stopped, patients "came back because they had used again[.]" (Tr. p. 113).

[23] Mother also refers to testimony developed at the dispositional hearing that DCS was concerned about the possibility of relapse and argues that "[t]he concerns articulated by DCS regarding the future of Child's family are insufficient." (Appellant's Br. p. 19). While we agree that speculation cannot be a basis for a CHINS adjudication, Mother ignores that DCS's concerns are grounded in facts. *In re K.D.*, 962 N.E.2d 1249, 1256 (Ind. 2012) ("Speculation is not enough for a CHINS finding.") There was no evidence that during the two years of Child's life Mother had ever obtained treatment for substance abuse.

She admitted she had not been in treatment for drugs, had several positive drug screens, failed to submit to random drug screens, and had only resumed screening immediately prior to the dispositional hearing. *See In re J.L.*, 919 N.E.2d 561, 564 (Ind. Ct. App. 2009) (when a caregiver is under the influence of illegal drugs they “essentially abandon” children without responsible supervision). Assessing the evidence as a whole, we find that there is substantial evidence that Mother’s substance abuse endangered the safety of Child and Child’s needs would go unmet absent coercive intervention by the trial court. Accordingly, we cannot say that the trial court’s adjudication of Child as CHINS and its dispositional order<sup>4</sup> were clearly erroneous.

## **CONCLUSION**

[24] Based on the foregoing, we affirm the trial court’s adjudication of Child as a CHINS.

[25] Affirmed.

[26] Brown, J. and Foley, J. concur

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<sup>4</sup> It should be noted that Mother did not formulate a separate argument to contest the findings of the dispositional decree.

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