

## 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

S.C.,

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

September 20, 2021

Court of Appeals Case No.  
21A-JC-550

Appeal from the White Circuit  
Court

The Honorable Jason A.  
Thompson, Judge

Trial Court Cause No.  
91C01-2010-JC-45

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Respondent, S.C. (Mother), appeals the trial court’s adjudication of her minor child, T.C. (Child), as 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 when it adjudicated Child as a CHINS pursuant to Indiana Code section 31-34-1-10.

## FACTS AND PROCEDURAL HISTORY

- [4] Mother and C.C. (Father)<sup>1</sup> are the biological parents of Child, born on October 13, 2020. Upon Child’s birth, the White County Department of Child Services (DCS) was notified that Child’s cord blood tested positive for methamphetamine and amphetamine. The following day, October 14, 2020, DCS’s family case manager (FCM) assessed the received report of “caregiver impairment” and “drug exposed newborn.” (Transcript p. 19). While visiting Mother in the hospital, Mother admitted to FCM of having used methamphetamine throughout her pregnancy, with her last usage believed to be the week prior to Child’s birth. FCM was informed by the hospital staff that

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<sup>1</sup> Although the trial court also adjudicated Child to be a CHINS as to Father, Father does not appeal the trial court’s determination. We will include facts with respect to Father as necessary for our opinion.

they removed Child from Mother at night because Mother continuously fell asleep while holding Child. FCM also observed Child to have tremors and twitches, which are indicative of Neonatal Abstinence Syndrome or drug withdrawal. Mother was screened for substances in her system on October 13 and 14, 2020, with both screens testing positive for methamphetamine and amphetamine. Pursuant to a court order, DCS removed Child from Mother's care and placed him with a maternal aunt, who also had guardianship over Mother's two older children. Child remained in the placement for about two weeks until maternal aunt alerted DCS that she could not care for four young children—one of which was her own, with the three other children being Mother's. Child was then placed with paternal grandmother, but she also requested Child to be removed. In late October 2020, Child was moved to foster care where he is doing "wonderful." (Tr. p. 62).

[5] On October 15, 2020, FCM spoke with Father by phone and advised him that Child had been removed from Mother's care. Father informed FCM that he was on house arrest after entering into a plea agreement on September 24, 2020, for possession of methamphetamine, as a Level 6 felony, and possession of marijuana, as a Class B misdemeanor. He was sentenced to one year on the Level 6 felony and 180 days on the Class B misdemeanor. While Father was on house arrest, Father and Mother were residing together. Father's house arrest was to continue until mid-February 2021.

[6] After Child's removal from the home, Mother and Father were provided parenting time—three 90-minute visits each week. Although Mother was

offered increased parenting time at some later point in the proceedings, Mother did not avail herself of the opportunity and explicitly informed the visitation supervisor that she did not want increased parenting time. Mother did not visit consistently, and a “lot of times” Mother cancelled visits “two to three times a week.” (Tr. p. 40). When visits did occur, the visitation supervisor observed that Mother either did not feed Child or overfed him. Although the visitation supervisor offered to show Mother how to properly feed Child, Mother declined the offer. While parents visited with Child, the visitation supervisor did not “recognize a bond” between Child and parents. (Tr. p. 39). Mother did not hold Child, and often Child was left in his car seat. At times, the visitation supervisor believed Mother to be impaired as she would appear sluggish and move slowly. Upon being questioned, Mother admitted to getting drugs from friends. During one visit, parents fought in the presence of Child and the visitation supervisor when Mother wanted to leave early to get some bandages and Father was worried about violating his house arrest. When the COVID pandemic became prevalent and Father tested positive for the virus, virtual visits were offered to accommodate the parents, but parents declined.

[7] Throughout the current proceedings, Mother was offered IOP, drug screens, and home-based case management. Mother never commenced IOP prior to the factfinding hearing and failed to initiate home-based case management. Mother informed FCM that she did not want to engage in services until “we went to court.” (Tr. p. 64). Mother declined all requested drug screens, except one, because “she doesn’t want any services and nothing to do with DCS.” (Tr. p.

87). Mother's drug screen of December 21, 2020, returned a positive result for methamphetamine and amphetamine. When confronted with the positive test, Mother advised FCM that her drug use occurred in her home, and "it wasn't anybody else's business. She wasn't hurting anybody else." (Tr. p. 81).

Although Father and Mother were living together at the time Mother tested positive, Father was unaware Mother was using drugs. Mother also admitted that she had previously enrolled in in-patient drug treatment in "2017 or 2018" but had left the treatment facility as she "didn't really think it was helping." (Tr. p. 117). She had been using substances since she was 18 years old and rather than expose her children "to harmful things[,] she placed them with other people. (Tr. p. 118). Father was generally aware of Mother's drug use, but he could not always tell when she was using drugs or became impaired. Paternal grandmother admitted that she was unaware that Mother was using drugs during her pregnancy with Child.

[8] On October 19, 2020, DCS filed its petition alleging Child to be a CHINS. On January 14, 2021, the trial court conducted a factfinding hearing. FCM testified that it was in Child's best interest not to be returned to Mother's care until she addressed her substance abuse problems as Father was unable to protect Child. FCM also opined that the trial court's coercive intervention was necessary because Mother would not engage in services if DCS and the court were not involved because Mother "would rather give up her parental rights than have a case with DCS." (Tr. p. 71). Placement of Child with Father was also not in Child's best interest due to Father's house arrest and his work and travel

schedule which required him to be out of the home where he was living with Mother and paternal grandmother.

[9] On February 17, 2020, the trial court issued its Order, adjudicating Child to be a CHINS, and finding that Child “needed the coercive intervention of the court to provide necessary shelter, medical care, nutrition, supervision, and support.” (Appellant’s App. Vol. II, p. 17). The trial court concluded that “[t]he Child, [], DOB 10/13/2020 age 5 months, is ADJUDICATED a [CHINS] as defined by Indiana Code § 31-34-1-10.” (Appellant’s App. Vol. II, p. 18). On March 4, 2021, after a dispositional hearing, the trial court found that it was in the best interest of the Child to continue to be removed from the home and remain in the care of DCS.

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

## **DISCUSSION AND DECISION**

[11] Mother contends that the trial court abused its discretion in adjudicating Child to be a CHINS. The trial court adjudicated Child a CHINS pursuant to Indiana Code section 31-34-1-10, which provides that,

except as provided in Sections 12 and 13, a child is a child in need of services if:

- i. The child is born with:
  - 1. Fetal Alcohol Syndrome;

2. Neonatal Abstinence Syndrome; or
3. Any amount, including a trace amount, of a controlled substance, a legend drug, or a metabolite of a controlled substance or legend drug in the child's body, including the child's blood, urine, umbilical cord tissue, or meconium, and
  - ii. The child needs care, treatment or rehabilitation that:
    1. The child is not receiving; or
    2. Is unlikely to be provided or accepted without the coercive supervision of the court.

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 (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 Co. 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.*

[12] In her appellate brief, Mother challenges the sufficiency of the evidence supporting the trial court's CHINS adjudication. More specifically, while Mother does not challenge the court's findings of fact or argue that Child is not

a CHINS as to her, she instead focuses on Father’s role as an appropriate caregiver. Advocating for Father—who elected not to appeal the trial court’s determination—she contends that Child would not be endangered in Father’s care as “Father and Mother had moved into the home of [paternal grandmother], a previously approved placement for[C]hild, so that he could satisfy the only other issue that the [DCS] seemed concerned with which was that [C]hild would not be left alone with the Mother due to her risk of being under the influence, as the [paternal grandmother] would be a sober caregiver present when the Father was at work.” (Appellant’s Br. p. 12). In response, DCS contends that “Mother does not have standing to challenge CHINS determination as to Father.” (Appellee’s Br. p. 27).

[13] A CHINS determination establishes the status of a child alone. *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010). Because a CHINS determination regards the status of the child, a separate analysis as to each parent is not required in the CHINS determination stage. *Id.* The conduct of one parent can be enough for a child to be adjudicated a CHINS. *Id.* Indeed, to adjudicate culpability on the part of each individual parent in a CHINS proceeding would be at variance with the purpose of the CHINS inquiry. *Id.* Said differently, the purpose of a CHINS adjudication is to protect children, not punish parents. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*. The resolution of a juvenile proceeding focuses on the best interests of the child, rather than guilt or innocence as in a criminal proceeding. *Baker v. Marion County Office of Family & Children*, 810 N.E.2d 1035, 1039 (Ind. 2004).



[14] Without addressing the State’s standing argument, we note that the trial court adjudicated Child to be a CHINS pursuant to I.C. § 31-34-1-10. In support of the statutory requirements, DCS established, through testimony at the hearing, that Child was born with methamphetamine and amphetamine in his system. He was suffering from tremors related to Neonatal Abstinence Syndrome and exhibited withdrawal symptoms related to methamphetamine and amphetamine ingested by Mother during her pregnancy.

[15] The evidence further reflects that coercive intervention is necessary to ensure Child receives the care and treatment he needs. During the sporadic supervised visits of parents with Child, it became clear to the visitation supervisor that no bond existed between the parents and Child. Mother did not hold Child, and often Child was left in his car seat. Mother either did not feed child or overfed him. Although Mother was offered services to teach her to properly care for Child, Mother declined to initiate or participate in the classes. Throughout these proceedings Mother tested positive for methamphetamine and amphetamine. Even during supervised visitations, the visitation supervisor observed that Mother would appear to be impaired. Even though she was offered services to help with her substance abuse, Mother declined because “she doesn’t want any services and nothing to do with DCS.” (Tr. p. 87). She asserted that her drug use occurred in her home, where “it wasn’t anybody else’s business. She wasn’t hurting anybody else.” (Tr. p. 81). FCM testified that Mother refuses to address her substance abuse and “would rather give up her parental rights than have a case with DCS.” (Tr. p. 71).

[16] Mother now claims that “her family unit has the ability to care for the [C]hild even if she, as part of the unit, may not be fit alone to do so or caused the initial intervention of DCS.” (Appellant’s Reply Br. pp. 8-9). However, the evidence supports that DCS considered relative placement and placement with Father, but all were rejected in favor of placement in foster care. Father, who was living with Mother in paternal grandmother’s house at the time of the hearing, could not always tell when Mother was using drugs and therefore was not always in a position to protect Child. Similarly, paternal grandmother was unaware that Mother was using drugs during her pregnancy. FCM opined that placing Child with Father, in paternal grandmother’s residence, was not in the Child’s best interest because Father’s employment schedule required him to be “gone for long periods of time.” (Tr. p. 71). FCM maintained that leaving Child in the home with Mother and paternal grandmother was concerning as paternal grandmother had her own “routine,” which would require leaving Mother alone with Child and without supervision. (Tr. p. 71). Considering the lack of attention Mother bestowed on Child during visitations and Mother’s difficulties in feeding Child, FCM advised the trial court that placement with Father was not in the Child’s best interest.

[17] In light of the evidence before us, we conclude that there is sufficient evidence to establish that the Child needs care and treatment that is unlikely to be provided or accepted without coercive intervention by the trial court. *See* I.C. § 31-34-1-10. Returning Child to the parents’ care now would be tantamount to placing him in the same environment that induced his detention in the first

place. Mother's blatant refusal to address her substance abuse issues and to participate in services in order to be able to properly care for Child during Father's and paternal grandmother's absence from the residence would expose Child to drug use and potential neglect and supports the trial court's conclusion that coercive intervention is necessary. We find no error here.

## **CONCLUSION**

[18] Based on the foregoing, we conclude that the trial court's CHINS's adjudication pursuant to Indiana Code section 31-34-1-10 was not clearly erroneous.

[19] Affirmed.

[20] Najam, J. and Brown, J. concur