

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of M.J. and Z.J.,
Children in Need of Services,
T.J., Father,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner,

and

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

November 17, 2021

Court of Appeals Case No.
21A-JC-915

Appeal from the
Marion Superior Court

The Honorable
Geoffrey A. Gaither, Judge
Rosanne T. Ang, Magistrate

Trial Court Cause No.
49D09-2008-JC-1859
49D09-2008-JC-1860

Molter, Judge.

- [1] T.J. (“Father”) and P.A. (“Mother”) have two children, M.J. and Z.J. (“Children”). Mother was their custodial parent, and they were removed from her home after the Indiana Department of Child Services (“DCS”) received a report of abuse. DCS filed a petition alleging Children were children in need of services (“CHINS”), and Father appeals the juvenile court’s determination that Children are CHINS, claiming that the evidence was insufficient to support this determination and maintaining that he can adequately care for them. He also challenges the juvenile court’s dispositional and parental participation orders. Finding no error, we affirm.

Facts and Procedural History

- [2] Father and Mother are the parents of Z.J., born on September 22, 2015, and M.J., born on August 2, 2016. In June 2019, Family Case Manager (“FCM”) Shena Wheaton received a report alleging neglect of Children. Tr. at 14–16. Children were staying with Father at the time. When FCM Wheaton visited Father’s residence to investigate the report, she found dog feces, dog urine, and trash throughout the residence, as well as dirty dishes and no food in the kitchen. Father told her he was unable to care for Children because he did not have food in the home and he could not go to job interviews because he did not have childcare. He also admitted he was using marijuana.
- [3] DCS removed Children from Father’s care, placed them with Mother, and filed a petition alleging that Children were CHINS. Appellant’s App. Vol. 2 at 247. Father did not participate in the CHINS matter. *Id.* In August 2019, DCS dismissed the case, and Children remained with Mother. *Id.*
- [4] About one year later, in August 2020, FCM Jason Gray received a report alleging abuse of Z.J. *Id.* at 246. When FCM Gray investigated this report, he discovered that Z.J. had bruises and lacerations on his face, torso, back, arms, and legs. A pediatrician and professor of clinical pediatrics at Riley Hospital then examined Z.J. and found a puncture wound to the right scrotum; swelling and tenderness of the penis; bruising and swelling to the abdomen; eleven fractured ribs at different stages of healing; several internal abdominal injuries, including lacerations to the peritoneum; a hematoma to the wall of the large

intestine; and a tear to the ligament that connects the liver to the abdominal wall. *Id.*; Tr. at 52. Z.J.'s physician opined that his injuries were life-threatening and not accidental. Appellant's App. Vol. 2 at 247.

- [5] DCS subsequently removed Children from Mother's care and again filed a petition alleging that Children were CHINS. *Id.* at 33–36. DCS first placed Children with their paternal grandparents. However, Children were later placed with an individual who DCS believed was related to Mother.
- [6] During this time, Children began seeing a mental health professional for behavioral issues, and Father participated in a Father Engagement program for a few months. Appellant's App. Vol. 2 at 248. Also around the same time, his case manager from the Father Engagement program, Simon Gelaye, expressed gun safety concerns to Father. In particular, Father had a firearm with no lockbox which he stored under his pillow when Children were not present and on the top shelf of a closet when they were. *Id.* Father stopped participating in the program in January 2021. *Id.*
- [7] The juvenile court held fact-finding hearings on December 14, 2020 and February 2, 2021. Tr. 4–137. At the hearings, Father testified that he was employed full-time and had rented a two-bedroom apartment for several years; that he had food, water, electricity, transportation, and a lockbox for his firearm; and that he had applied for daycare and could rely on relatives for childcare. *Id.* at 114–20. However, Father also stated that he did not have a

plan for continuing Children’s therapy sessions. *Id.* at 120. And while Father testified about the gun lockbox, Gelaye testified that gun safety issues persisted because he found shell casings on Father’s back porch. *Id.* at 85.

[8] FCM Vivian Todd-Scott also testified at the fact-finding hearings. She stated that DCS was not going to place Children with Father until Father developed a childcare plan and showed more stability. *Id.* at 126.

Q: Why is DCS not placing with Father at this time?

A: To our knowledge custody hasn’t been established. There is no clear cut – there has not been a clear cut child care plan and as for stability, he was just recently not employed and did not have food for the children and that was told to me directly by Mr. Jackson. So, we’re concerned with his stability, we would like for him to be stable a while longer before we would place the children with him.

Id. at 125–126.

[9] The juvenile court entered its orders determining that Children were CHINS and, among other facts, found that: Children were removed from Father’s care in 2019 because his residence fell below the minimum standard for care; before purchasing a lockbox, Father failed to store his firearm properly; even after purchasing the lockbox Father had shell casings on his back porch; Father ceased participating in a Father Engagement program; Children needed continued therapy; Father had not made a decision about obtaining custody of Children; Father recently sought assistance from a food pantry; Father did not identify a therapist for Children; and DCS wanted Father to demonstrate a

period of stability before placing Children with him. Appellant's App. Vol. 2 at 245–50.

[10] Soon after, the juvenile court held a dispositional hearing and ordered that Children remain in the custody of DCS and be placed in relative care. *Id.* at 28–31. It also issued a parental participation order, directing Father to participate in a Father Engagement program. Appellant's App. Vol. 3 at 34. Father now appeals.

Discussion and Decision

I. CHINS Adjudication

[11] Father challenges Children's adjudications as CHINS. Where, as here, a juvenile court enters findings of fact and conclusions of law in a CHINS decision, we apply a two-tiered standard of review. *In re Des. B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). We first consider whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We may not set aside the findings or judgment unless they are clearly erroneous. *Id.* Findings are clearly erroneous when the record contains no facts to support them either directly or by inference, and a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.* We give due regard to the juvenile court's ability to assess witness credibility and do not reweigh the evidence; we instead consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.* We defer

substantially to findings of fact but not to conclusions of law. *Id.* Unchallenged findings “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1991).

[12] A CHINS proceeding is civil in nature, so DCS must prove by a preponderance of the evidence that a child is a CHINS. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). The CHINS petition at issue was filed pursuant to [Indiana Code section 31-34-1-1](#), which states:

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.

A CHINS adjudication focuses on the needs and condition of the child and not the culpability of the parent. *In re N.E.*, 919 N.E.2d at 105. The purpose of a CHINS adjudication is not to punish the parent but to provide proper services for the benefit of the child. *Id.* at 106. The acts or omissions of one parent can cause a condition that creates the need for court intervention. *Id.* at 105. However, a CHINS adjudication can also occur through no wrongdoing of either parent. *Id.*

[13] Father argues the evidence was insufficient to prove that Children were CHINS, and he contends that the evidence does not support Findings 14, 16, 20, 21, and 22. We note at the outset that Father challenges various determinations made by DCS regarding Father or Children. However, our role is to consider whether the evidence supports the juvenile court’s findings and whether those findings support the judgment—not whether the allegations made by DCS are correct. *In re Des. B.*, 2 N.E.3d at 836.

[14] Father first challenges the juvenile court’s Finding 14. He argues that the juvenile court erred when it found that he did not participate in the dismissed CHINS matter because he was not served until after the initial hearing, the CHINS matter was dismissed soon after he was served, and “no evidence was submitted as to what hearings were held in the interim or whether Father had notice of any of th[o]se hearings.” Appellant’s Br. at 11. The evidence

presented to the juvenile court showed that Children were taken from Father's residence in 2019 at the outset of the dismissed CHINS matter, which established that Father was aware of DCS involvement in Children's care. Tr. at 29. Additionally, the evidence showed that Father was aware that a CHINS matter regarding Children was ongoing after he was served. *See* Appellant's App. Vol. 2 at 159–60. Father did not appear at the hearings that were held after his service. *Id.* at 159–60, 171. Therefore, the evidence presented supported the juvenile court's finding that Father did not participate in the dismissed CHINS matter.

[15] Father next contends that Finding 16, which dealt with gun safety issues, addresses a “non-issue” because Father now has a lockbox for his gun. Appellant's Br. at 12. But the juvenile court acknowledged that Father “purchased and began to use a lock box for his firearm.” Appellant's App. Vol. 2 at 248. Nevertheless, Gelaye's concern “regarding improper use of firearms” persisted because “he observed shell casings on [Father's] back porch on New Years Day.” *Id.* Father acknowledges this evidence. Appellant's Br. at 12 (acknowledging “someone may have shot off a gun on New Year's Eve from Father's back porch but his children were not present at this time”). So, we cannot conclude that there is no evidence to support the juvenile court's finding.

[16] Father further challenges Finding 20 that he “has not made any decision regarding attempting to obtain custody of the children.” *Id.* Although Father

testified that he tried to obtain custody of Children by working out an agreement with Mother and that he had inquired about obtaining custody of Children from Gelaye, Gelaye testified that Father stated that he “was thinking about” obtaining custody of Children. *Id.* at 87, 113. Also, at the hearing, FCM Gray testified that while Father expressed an interest in obtaining custody of Children, Father stated that he was not in a place to do so at the time. *Id.* at 91. Father faults the juvenile court for focusing on his comments from months before the CHINS hearing, Appellant’s Br. at 13, but he does not point to any evidence or inferences from which the juvenile court must inevitably conclude there had been a change in circumstances. The evidence presented, therefore, supported the juvenile court’s finding that Father had not decided on whether or how to obtain custody of Children.

[17] In Finding 21, the juvenile court also found that Father recently required assistance from a food pantry and had not identified a therapist for Children. Appellant’s App. Vol. 2 at 249. Father argues that there is no evidence to support this finding. We disagree. As noted earlier, we give due regard to the juvenile court’s ability to assess witness credibility and do not reweigh the evidence. *In re Des. B.*, [2 N.E.3d at 836](#). Instead, we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.* Here, the juvenile court’s finding was not erroneous.

[18] Father testified that he had visited a food pantry. Tr. at 120. Although he clarified that he did not visit the food pantry for food, the juvenile court was not

required to find his testimony credible and could reasonably infer that Father visited the food pantry for assistance. *See id.* Also, when asked about his plan to continue Children’s therapy, Father stated that he “[had not] figured that out yet.” *Id.* As a result, this evidence supported the juvenile court’s finding that Father required assistance from a food pantry and had not identified a therapist for Children.

[19] Father last argues that there was no evidence to support Finding 22 where the juvenile court found that he recently told FCM Todd-Scott that he was no longer employed and did not have food. Father contends this finding was unsupported because he testified that, at the time of the hearing, he was employed. Tr. at 115. But he did not introduce any evidence of how long he had been employed prior to the hearing, and the context for the juvenile court’s statements regarding employment history was an explanation that DCS would like Father “to demonstrate a period of stability prior to considering him as a placement for the children.” Appellant’s App. Vol. 2 at 249. We cannot say that the trial court’s finding that Father had recently been unemployed is unsupported by the record. To the extent Father is arguing that there is conflicting testimony regarding his employment history, the “factfinder is obliged to determine not only whom to believe, but also what portions of conflicting testimony to believe.” *Perry v. State*, 78 N.E.3d 1, 8 (Ind. Ct. App. 2017). And we are not permitted to reweigh the evidence. *In re Des. B.*, 2 N.E.3d at 836. Therefore, the evidence presented supported the juvenile court’s

finding that Father told FCM Todd-Scott that he was unemployed and did not have food.

[20] Based on the evidence presented at the factfinding hearing, we conclude that the findings of the juvenile court were not clearly erroneous, and the juvenile court's findings support its judgment that Children were CHINS.

II. Dispositional and Parental Participation Orders

[21] Father argues that the juvenile court abused its discretion when it continued Children's placement in relative care and ordered Father to participate in a Father Engagement program. Following a CHINS determination and dispositional hearing, the juvenile court issues a dispositional order which details the plan of care, treatment, or rehabilitation required to address the needs of the child, which includes the entry of findings and conclusions. *See* [Ind. Code §§ 31-34-19-1, -10](#). [Indiana Code section 31-34-20-3](#) provides,

If the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, the court may order the parent, guardian, or custodian to do the following:

- (1) Obtain assistance in fulfilling the obligations as a parent, guardian, or custodian.

- (2) Provide specified care, treatment, or supervision for the child.

- (3) Work with a person providing care, treatment, or rehabilitation for the child.
- (4) Participate in a program operated by or through the department of correction.
- (5) Participate in a mental health or addiction program.

[22] “Although the juvenile court has broad discretion in determining what programs and services in which a parent is required to participate, the requirements must relate to some behavior or circumstance that was revealed by the evidence.” *In re A.C.*, 905 N.E.2d 456, 464 (Ind. Ct. App. 2009). This court has recognized that forcing unnecessary requirements on parents whose children have been determined to be CHINS can set them up for failure and can result in failed reunification of the family and even the termination of parental rights. *Id.* at 464–65.

[23] Father argues that the juvenile court’s dispositional order was an abuse of discretion because DCS did not present sufficient evidence to support the placement of Children in relative care. We disagree. The evidence presented to the juvenile court showed that Father, at times, was unemployed and lacked food and stable housing. Tr. at 14–16, 120, 126. Also, the evidence presented showed that Father was sometimes unable to care for Children. *Id.* at 15–16. And Father had not yet decided on whether to obtain custody of Children. *Id.* at 87, 113. Therefore, the juvenile court did not abuse its discretion when it

issued the dispositional order, and the evidence supported Children's placement in relative care.

[24] Relatedly, Father contends that the juvenile court abused its discretion in ordering Father to participate in a Father Engagement program. Father argues that this requirement was unrelated to the behavior or circumstances revealed by the evidence. We disagree. Father's employment, transportation, food security, and communication with Children were concerns for Gelaye and FCM Todd-Scott, upon whose testimony the juvenile court established the factual basis for the CHINS adjudication. *Id.* at 86–87, 126; Appellant's App. Vol. 2 at 245–50. Also, Father ceased attending a past Father Engagement program. *Id.* at 86. The juvenile court therefore did not abuse its discretion in issuing its parental participation order and ordering Father to participate in a Father Engagement program.

[25] Affirmed.

Vaidik, J., and May, J., concur.