MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of M.H. (Minor Child),

Child in Need of Services,

D.H. (Father), and H.H. (Mother)

December 10, 2021

Court of Appeals Case No. 21A-JC-1425

Appeal from the Greene Circuit Court

The Honorable Lucas Rudisill, Magistrate[1]

[1] We note that none of the orders in this case, including the Dispositional Order that triggers this appeal, is signed by a judge. It has long been established that "trial court magistrates do not have the authority to enter

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner

Trial Court Cause No. 28C01-2101-JC-6

May, Judge.

[1] D.H. ("Father") and H.H. ("Mother") (collectively "Parents") appeal the adjudication of their child, M.H. ("Child"), as a Child in Need of Services ("CHINS"). Parents argue the trial court's order is clearly erroneous because its findings do not support its conclusions. We affirm.

Facts and Procedural History

[2] Child was born to Parents on November 19, 2020. Child was born at thirty-one weeks gestation and spent two months in the Neonatal Intensive Care Unit ("NICU"). Because she was born prematurely, Child has

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final judgments in civil cases, including juvenile cases. Final dispositional orders in [Children in Need of Services] cases *must* be signed by the trial court judge, *not* simply the magistrate." *In re D.F.*, 83 N.E.3d 789, 795 (Ind. Ct. App. 2017) (emphases added). As neither party here has raised any objection to this procedural error, and in light of our preference to decide cases on their merits whenever possible, we will address Parents' arguments. *See id*. (noting failure to present issue constitutes waiver and court's preference to decide cases on their merits despite procedural errors). However, we admonish the trial court to abide by procedural rules in the future, as failure to do so "only increases the chance of unnecessary delays in otherwise time-sensitive cases involving children." *Id*.

> special medical needs which include potentially dangerous dips in her heart rate when feeding, special nutritional needs, compromised immunity, under-developed or immature lungs, compromised kidney function that made her susceptible to frequent urinary tract infections that could lead to complications including renal failure, [and] increased risk for developmental delay.

(Mother's App. Vol. II at 80.) In addition, she had been exposed to THC while in utero. The Department of Child Services ("DCS") received a report on January 28, 2021, that hospital staff had "significant safety concerns" should Child be released into Parents' care with no services in place. (*Id.* at 24.) The hospital staff stated Parents displayed an "impressive degree of disconnect" and staff had "not seen this amount of disregard by parents to their child." (*Id.*) DCS took custody of Child and placed Child in foster care, where she has remained throughout these proceedings.

[3] On January 29, 2021, DCS filed its petition alleging Child was a CHINS based not only on the concerns of hospital staff, but also because Parents "have substantiated DCS history for neglect[,]" "have criminal history," and "use marijuana." (*Id.* at 28.) The trial court held an initial hearing on the matter on the same day, appointed Parents' separate counsel, and set a factfinding hearing for March 8, 2021. After motions to continue from Mother and DCS, the trial court held its fact-finding hearing on April 15, 2021.

[4] On June 11, 2021, the trial court adjudicated Child a CHINS. On July 1, 2021, the trial court held a dispositional hearing. On July 7, 2021, the trial court issued its dispositional order requiring Parents to participate in certain services.

Discussion and Decision

[5] A CHINS proceeding is civil in nature, so DCS 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). The CHINS petition 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; 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.

Under Indiana Code section 31-34-1-2, the State must prove "the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian."

[6] A CHINS adjudication focuses on the needs and condition of the child and not on 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. "[T]he acts or omissions of one parent can cause a condition that creates the need for court intervention." *Id.* at 105. "A CHINS adjudication can also come about through no wrongdoing on the part of either parent[.]" *Id.*

> While we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that - a determination that a child is in need of services. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. Only when the State moves to terminate a particular parent's rights does an allegation of fault attach. We have previously made it clear that CHINS proceedings are "distinct from" involuntary termination proceedings. The termination of the parent-child relationship is not merely a continuing stage of the CHINS proceeding. In fact, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child.

Id. (internal citations omitted).

[7] When 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*. Parents do not challenge the trial court's findings and thus they "must be accepted as correct." *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1991).

[8] In support of its conclusion that Child was a CHINS, the trial court found:

> 3. Dr. Horan [the doctor who primarily cared for Child when she was in the NICU] had many concerns with Mother's and Father's ability to meet [Child's] special care needs which include: (1) Mother and Father only visited [Child] one time during the 64-day period following Mother's discharge from the hospital; (b) Mother and Father rarely if ever called to check on [Child's] wellbeing despite rarely visiting her for 64 consecutive days; (c) [information about Child's various health issues, which are noted supra]; (d) Mother and Father demonstrated inability to execute the feeding, exhibiting impatience, anger, and aggression when attempting to meet [Child's] onerous nutritional and medical needs once they ultimately did begin to visit [Child] and attempt to execute the "rooming in" procedures; (e) Mother and Father left frustrated and prematurely the first three times the "rooming in" was attempted well prior to completing a 24-hour

let alone a 48-hour "rooming in"; (f) resources for transportation and accommodation to [Parents] were offered and not accepted; (g) [Child] had needs for frequent follow up appointments with neurological and kidney specialists and Mother and Father demonstrated a lack of concern and ability to secure [Child's] attendance at such follow up appointments – Mother initially told Dr. Horan she would not be taking [Child] to Indianapolis for follow-up appointments and ultimately conceded that she could take her to some appointments but not if it required frequent follow-ups multiple times per week; (h) even though [Parents] ultimately completed a 24-hour "rooming in" period, Dr. Horan did not believe that Mother and Father were capable of identifying and meeting [Child's] special medical and nutritional needs; (i) in Dr. Horan's opinion, [Child] was at serious risk for aspiration and death if discharged to Mother and Father, and was also at serious risk for developmental, neurological and/or renal complications due to Mother's unwillingness to secure follow up services[.]

4. Kathy Bruce, RN, (hereafter, "Nurse Bruce") is a Registered Nurse in the NICU at IU Health Bloomington Hospital who has worked in that capacity for 8 years. Nurse Bruce provided primary care for [Child] throughout [Child's] stay at the NICU. After a phone conversation with Mother about "rooming in" was met with resistance by Mother, who indicated they will not do so and cannot do so due to working 7 days a week, she directed Mother and Father to discuss the "rooming in" process with a Neonatologist. Mother and Father thereafter met with a Neonatologist . . . to discuss a plan for discharge to their home. A 48-hour "rooming in" period was discussed. Mother and Father expressed some frustration related to communication. Ultimately, the day of this meeting, Mother and Father left the meeting and chose not to see or visit with [Child] at all despite being approximately 20 feet way from [Child] while meeting with the Neonatologist.

* * * * *

6. Mother and Father were offered services in the form of supervised visits and therapeutic services.

7. Elizabeth Hildebrand received referrals for individual therapeutic services for Mother and Father and for supervised visits between Mother, Father, and [Child]. Mother and Father no-showed all visits, with the exception of one visit that they cut off early and left after 30 minutes stating a non-specific need to go to Bloomington. While Mother and Father, for the most part, were completely disengaged with and unwilling to submit to any services with Ms. Hildebrand, Ms. Hildebrand was able to speak with them at a Family and Team Meeting. She stressed the importance of bonding with [Child] through supervised visits and how critical such bonding is to [Child's] well-being and development. Ms. Hildebrand offered to provide more educational resources to explain the importance of the bonding and its impact on [Child]. Mother and Father declined to meet with Ms. Hildebrand and declined to attend any supervised visits other than the aforementioned visit that they cut short and left for a non-specified reason. Mother claimed that she declined the visits because they were not court-ordered.

8. Mother had prior DCS involvement in which her older child was removed from her care due to concerns involving substance abuse and physical abuse. That child was adjudicated a child in need of services by Order of the Owen Circuit Court II dated June 6, 2016, arising from the substance abuse and Mother's "rough, inappropriate" handling of an infant child in a way that "created safety concerns" and that involved Mother being "agitated" and "swinging the child around". That child was ultimately placed with her [f]ather (who is not D.H.) and remains in her [f]ather's care. Mother claims to have no insight into why that child was removed and not reunified with her because "it's been almost 6 years".

9. Mother acknowledges that work obligations would not have gotten in the way of her having visited [Child] or completed "rooming in" processes as she was not working. She testified that transportation limitations were the only barrier. Mother testified that she didn't refuse to "room in" with the child but just insisted with talking to a doctor, who she said was a Dr. Acosta and not a Dr. Giselle. She denied having been offered resources for transportation. Mother claims that they visited [Child] at least 4 additional times not documented [sic] by or testified to by DCS witnesses. Mother testified that she and Father have remedied their transportation limitations. She is taking classes online while Father works. Her plan is to continue to take classes while she cares for the baby and Father works.

10. Madison Fawkes (hereafter, "FCM Fawkes") is a Family Case Manager with DCS who was involved in assessing the report that [Child] was at risk. She met with Mother [and] Father, and consulted IU Health personnel involved in [Child's] care and needs. Mother and Father expressed that they didn't like Indianapolis and were unwilling to drive to Indianapolis for follow-up visits that were critical to [Child's] health and safety and to adequately meet her extensive special medical needs. Both parents admitted to use of marijuana. As Mother and Father attempted their 4th "rooming in" period, FCM Fawkes tried to discuss with Mother and Father the ability [sic] of placing services in the home to assist the family in meeting [Child's] needs. Mother was combative and unwilling to discuss services. She told FCM Fawkes she would be leaving the hospital when the 24-hour "rooming in" was completed with or without [Child]. At this point DCS made the decision to detain [Child] and substantiate neglect against Mother and Father due to: (a) unwillingness to learn to meet [Child's] special nutritional and medical needs; (b) lack of attempts to bond with [Child]; and (c) failure to acknowledge the importance of and ability to/willingness to secure [Child's] attendance at follow up medical appointments critical to meeting her special medical

needs. FCM Fawkes has observed Mother and Father have an opportunity to have contact with [Child] at least twice post-discharge; each time, even after suggestion that they could hold and spend some time interacting with [Child], [Parents] declined to do so.

11. Ethan Brown (hereafter, "FCM Brown") is a Family Case Manager with DCS who is the ongoing case manager for [Child]. FCM Brown visits regularly with [Child] in her foster placement setting. While [Child] has progressed and become stronger and healthier since discharge, she continues to require frequent, attentive, hands-on care. [Child] has regular follow-up appointments with pediatric urologist, neurologist, and a developmental pediatrician. [Child] still has special nutritional and medical needs and is at serious risk for aspiration and death if not in the care of someone who has the knowledge, patience, willingness, and ability to meet those needs the way that foster placement has. FCM Brown does not believe that Mother and Father have remedied the reasons for [Child's] detention and that [Child] remains in need of services that [Child] is unlikely to receive in the absence of this court's intervention. Specifically, FCM Brown believes that placing [Child] in Mother's and Father's home at this time would place [Child] at serious risk for aspiration and death. In addition to being non-compliant with supervised visitation, therapy, and in-home services offered to [Parents], [Parents] lack compliance with random drug screening. Mother and Father have missed several screens and continue to both test positive for THC when they have been screened. Mother and Father continued, post-discharge of [Child], to cite transportation difficulties as a reason for missing supervised visits and drug screens. The location of the supervised visits has been 0.4 miles from their home and the location for drug screens has been 0.6 miles from their home. Mother has also continued to cite lack of a court order as a basis for no visits with [Child] and for not providing information to assist with accommodation of services (e.g., Mother refused to produce school schedule to

accommodate weekend visit scheduling on grounds it was not court ordered).

12. [Parents] correctly call attention to the fact that the Court must assess whether [Child] is a child in need of services based upon the parties' present and not past circumstances. [Parents] have remedied the transportation deficiencies that at least arguably contributed to their lack of visits and bonding with [Child] in the NICU through the acquisition of two working vehicles. However, this does not establish that the conditions that lead [sic] to [Child's] removal no longer exist nor that [Child] is no longer in need of services that she is unlikely to receive absence [sic] the intervention of this Court. Parents have declined supervised visits, declined resources to assist with bonding, continue to no-show or test positive for THC and drug screens, and have not demonstrated an ability or willingness to meet [Child's] special medical needs. Parents have not maintained communication with FCM Brown, failing to return numerous phone calls and attempts at correspondence.

13. [Parents'] claim or implication that they cannot demonstrate an ability to meet [Child's] needs due to DCS'[s] intervention is without merit; even given the lack of engagement and involvement by [Parents] with [Child] during her time in the NICU when there were Neonatologists and specialized care nurses willing and able to assist them with demonstrating that ability and DCS had not yet intervened, [Parents] could have demonstrated an ability and willingness to meeting [Child's] needs post-discharge by attending supervised visits demonstrating care skills, discussing resources for them and for [Child], demonstrating a knowledge of [Child's] special medical needs and a willingness to do what it takes to meet them, and taking advantage of services and resources offered [to] them rather than declining them on the basis that they were not court-ordered.

* * * * *

> 15. [Parents] further correctly point out that the Court cannot base a CHINS adjudication solely upon speculative, potential future harm. However, the Court bases its decision herein specifically upon the evidence of the special nutritional and medical needs of [Child] and the acts, omissions, statements, and conduct of [Parents] – both prior to and after [Child's] discharge from the NICU/Hospital – and not solely upon speculative, potential future harm.

(Mother's App. Vol. II at 80-4.)

[9] Mother argues the trial court's decision to adjudicate Child a CHINS is clearly erroneous because DCS did not demonstrate Child was seriously endangered by Mother's actions or inactions. However, as the unchallenged findings illustrate, Mother routinely tested positive for THC; has indicated on multiple occasions she would not transport Child to necessary medical appointments despite having the ability to do so; has failed to attend visitation with Child despite having the ability to do so; and has not participated in services. Child has multiple medical and nutritional needs, and DCS presented evidence that Mother was not prepared to meet those needs. Mother's contention otherwise asks us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court cannot reweigh evidence or judge credibility of witnesses).

[10] Additionally, Parents both argue the trial court impermissibly based its decision to adjudicate Child a CHINS on speculation of future behavior. "[A] cause for concern is not the touchstone of a CHINS determination, and an unspecified concern about what might happen in the future is insufficient in itself to carry

the State's burden of proof. Indeed, future concerns rather than present facts are not enough to support a CHINS determination." *Matter of L.N.*, 118 N.E.3d 43, 49 (Ind. Ct. App. 2019). Here, the trial court noted some of the improvements Parents made between the time the CHINS petition was filed and the fact-finding hearing, specifically that Parents had obtained two working vehicles. However, DCS presented evidence that Parents were uncooperative with services, did not visit with Child, and had not demonstrated the ability or willingness to care for their Child's nutritional and medical needs. Parents' argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re Des. B.*, 2 N.E.3d at 836 (appellate court cannot reweigh evidence or judge credibility of witnesses). We hold the trial court's findings support its conclusions, and thus its order adjudicating Child a CHINS was not clearly erroneous. *See contra Matter of E.K.*, 83 N.E.3d 1256, 1262-3 (Ind. Ct. App. 2017) (coercive intervention of the court not necessary when parents have been cooperative with DCS's services prior to the child's adjudication), *trans. denied*.

Conclusion

[11] The trial court's findings supported its conclusions, and thus it did not err when it adjudicated Child a CHINS. Accordingly, we affirm the trial court's decision.

[12] Affirmed.

Vaidik, J., and Molter, J., concur.