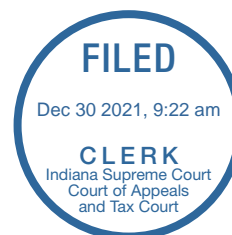


MEMORANDUM DECISION

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

In the Matter of S.J., Le.J.,
Le.Y. and L.J. (Minor Children),
Children in Need of Services and
A.J. (Mother) and L.Y. (Father),
Appellant-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

December 30, 2021

Court of Appeals Case No.
21A-JC-1600

Appeal from the Vanderburgh
Superior Court

The Honorable Renée Allen
Ferguson, Magistrate

Trial Court Cause Nos.
82D04-2009-JC-1350
82D04-2009-JC-1352
82D04-2009-JC-1353
82D04-2105-JC-792

Brown, Judge.

[1] L.Y. (“Father”) and A.J. (“Mother”) appeal the determinations that their children are children in need of services (“CHINS”). We affirm.

Facts and Procedural History

[2] Father and Mother (“Parents”) are the parents of S.J., Le.J., Le.Y., and L.J. In September 2020, the Indiana Department of Child Services (“DCS”) filed petitions alleging that S.J. and Le.J., who were born in April 2019, and Le.Y., who was born in June 2020, were children in need of services (“CHINS”). DCS alleged that Father had been arrested for domestic battery of a pregnant woman and strangulation involving Mother, and a family case manager observed the children in an unhygienic state and trash throughout the house. DCS stated the children had been removed from the home. On November 13, 2020, the court held a hearing at which the court granted a continuance to Father as his counsel was unavailable, Mother submitted the case on the evidence in the case file with certain amendments, including an amendment to the petitions that Le.Y. was born THC exposed and Father and Mother (“Parents”) continued to use marijuana as of September 25, 2020, and the court found S.J., Le.J., and Le.Y. were CHINS as to Mother.

[3] On April 8, 2021, L.J. was born. On May 17, DCS filed a request for authorization to file a petition alleging L.J. was a CHINS together with a copy of the petition, a request to take custody of L.J., and the preliminary inquiry report. The petition alleged Father was the primary caregiver, a family case manager observed a strong presence of THC odor at the home on March 25, 2021, and Parents had prior substantiations for neglect. On May 18, 2021, the

court held a hearing and issued an Order on Initial/Detention Hearing which ordered that L.J. be placed outside the home.

[4] On June 2 and 9, 2021, the court held a hearing with respect to Father in the cases of S.J., Le.J., and Le.Y., and with respect to Parents in L.J.'s case. The court heard testimony from Parents, Mother's brother, Family Case Manager Cody Flores ("FCM Flores"), and Family Case Manager Conni Stoner ("FCM Stoner"). Mother's brother testified that S.J., Le.J., and Le.Y. were removed in September 2020 after an altercation between Parents which resulted in Mother's injury and hospitalization, he received placement of the children, and one of the children had a pretty bad diaper rash. He testified that he asked Mother for diapers, she asked him how often he was changing the children, he told her every time they were wet, and "apparently she would wait at least a couple of times before she would change them. A pack of diapers wuld [sic] last her a while." Transcript Volume II at 47. When asked if he was surprised that Mother recanted the statement she made to police regarding any physical violence, he answered "[s]urprised but not really shocked," and when asked "[w]hy," he answered "[s]he's mentioned before that it's happened before." *Id.* at 51.

[5] Mother testified that she currently lived with Father and had been in a relationship with him for about seven years. She indicated the police were called for a domestic violence incident on September 25, 2020, she did not call the police, she had not been harmed or hit, and she and Father had a verbal argument which never became physical. When asked why she was in the

hospital that day, she said the police had suggested that she have her head scanned because she had markings on her eye, she did not know how that occurred, the ones on her neck happened while she was having sex, the scratch was from her metal bedframe, and she was anemic and bruised easily. She indicated she told the police that Father had slapped her repeatedly and choked her in front of the children and that she told a family case manager that Father caused the marks. She indicated that she had lived in her current residence for the prior year, she previously stayed in hotels, she stayed in at least ten hotels, and before that she had lost her house. She testified that, at the beginning of the case, she worked thirty-six to forty hours per week at Taco Bell and additional hours through DoorDash and Instacart, Father was not working, and he was staying home to watch the children. She indicated it was fair to say she was the breadwinner. She stated that she remembered reporting to the case manager that sometimes she would come home to full diapers and rashes because Father had been playing PlayStation most of the day. She testified that, between September and L.J.'s birth, she started working at Wendy's and that she was employed during her pregnancy. She indicated that, during the assessment, she told the case manager that she and Father used marijuana and marijuana helps her sleep. She later stated that she and Father were no longer using marijuana, that her house was currently clean, and that the plumbing was working which had been the reason for the dirty dishes.

[6] Father testified that he earned money doing lawn care and side jobs and trading stock, and when asked if he could produce any paystubs or dividend payouts,

he indicated he did not have any dividend payouts because he was currently in the crypto market. Father indicated that he did not recall why the police were called to his house on September 25, 2020. He stated that he and Mother had a disagreement. When asked if Mother had bruises, he testified “[s]he had bruises earlier that night from our sexual intercourse that we had that night . . . and it was the last time that we could have playful sexual intercourse without having to worry about my baby’s safety.” *Id.* at 85. He stated that Mother was anemic and bruises easily. He testified that marijuana helped Mother sleep, and when asked if he knew Mother was smoking marijuana while pregnant, he answered “[y]eah, I had no problem with that.” *Id.* at 90. When asked “[y]ou don’t like being told what to do, do you,” he answered “I don’t mind being told what to do, depending on what that thing is that you would like me to do. I’ll take it in my own consideration if I should or should not do this,” and when asked “if DCS said do a drug screen would you do a drug screen,” he stated “[n]o” and “[b]ecause it’s in my legal right not to.” *Id.* at 92.

[7] FCM Flores testified that he performed an assessment and the allegations concerned domestic violence and the conditions in the home, he visited the home on September 25th and spoke with Mother, and Mother informed him that Father had hit her, slapped her in the face, and choked her, Mother was upset, and Mother told him that she and Father had been together for about six years and he started hitting her about two or three years into their relationship. When asked “[i]n your opinion and training does that seem like a pattern of domestic violence to you,” he answered “[y]eah, and just based on what I saw

in some of my assessments.” *Id.* at 104. He testified that he observed a lot of garbage packed around the children’s sleeping area, the living room, the kitchen, and the bathroom, there were a lot of dishes and trash on the counters and trash on the floor, and a bouncer was covered in dirt. He indicated that it appeared the children had not been bathed in a while.

[8] FCM Stoner testified that she spoke with Parents about having a child and family team meeting and Father said “[n]o, absolutely not.” *Id.* at 110. She testified there was an issue with Father intimidating a parent aide in the home, “[h]e would get in their face, tell them to move,” he “[t]old [Mother] several times to stop working on things that they were working on, such as cleaning,” “[h]e got in her face one time and told her to move out of the way,” and DCS decided it was not safe for the worker to be in the home. *Id.* at 111. When asked if Mother was compliant with substance abuse treatment, she replied “[s]he was up until the last three visits before she had [L.J.],” she assumed that was due to her pregnancy, and Mother was just a “no call, no show,” and when asked if the substance abuse treatment was effective, she stated that Mother screened positive for THC for the first couple of months and screened negative for the last two months. *Id.* at 112. She testified she visited the home on March 25th, went into the back bedroom where a pack and play was set up, and smelled the very strong odor of THC in the bedroom. She indicated that Mother had just stopped screening and was screening clean at that time and that no other individuals lived in the home besides Father.

[9] With respect to visitation, FCM Stoner testified there was several instances of problems with Father at the visits including arguing with the service provider and not following the visit rules and at one point the police were called to a visit because Father was not cooperating and was yelling and cursing at the workers. When asked about other concerns, she testified the children “were fed an enormous amount of food and got sick during a visit” and “[t]here were several times that food was snuck in that contained dairy after we had spoke to them several times about the kids being lactose intolerant and the rashes on the kids due to the lactose intolerance.” *Id.* at 113. She stated that visits for Father were terminated, he refused to re-sign the visit rules of the service provider, and he had a couple of arguments with the visit worker. She indicated that, to her knowledge, Father and Mother intended to continue their relationship.

[10] FCM Stoner further testified that, when she took over the case, the children were delayed, “[e]specially the [two older children] in gross motor,” their speech was delayed, and they were receiving services. *Id.* at 114. She testified that she offered services to Father including “[s]creens, working with parent aides on parenting skills, and . . . AMENDS” which was “to address domestic violence in the home.” *Id.* at 115. She indicated that she attempted to communicate with Father several times regarding services, she did not make any progress, and Father “said he was going to wait till court.” *Id.* FCM Stoner testified that, if the children were found to be CHINS, she would recommend “[r]andom screens, AMENDS, parenting skills, [and a] parenting aide.” *Id.* at 116. She stated the children were placed in foster care and had

made drastic improvements after they were placed outside the home. She indicated that she did not believe Parents would cooperate with services without a court order. When asked why Mother's compliance was not enough to resolve the issues, she answered that Father would not fully cooperate and Mother tried to comply but Father held her back.

[11] On July 20, 2021, the trial court entered orders finding S.J., Le.J., Le.Y., and L.J. were CHINS. The court made findings regarding the report of domestic violence received by DCS, the assessment by FCM Flores and his observations of the children and the condition of the home, the children's developmental delays, the disclosure of drug use, the extent to which Parents participated in offered services, and Father's conduct during visits. The court also found that it did not find Mother's recantation or Parents' explanation for Mother's injuries to be credible based upon the evidence presented and their testimony. The court later entered dispositional orders. Parents appealed separately, and this Court consolidated the appeals.

Discussion

[12] Father argues this Court should vacate the determinations the children are CHINS. He asserts the conditions of the house had substantially improved and that "the only evidence of alleged domestic violence was one incident in September 2020, which both parents denied occurred." Father's Appellant's Brief at 19. He contends there was no evidence of ongoing marijuana use and there was no evidence he was unwilling to take corrective steps without the coercive intervention of the court. Mother asserts DCS did not show that L.J.

was seriously impaired or endangered and in need of the coercive intervention of the court. She also argues the court erred in authorizing the removal of L.J. from her care.

[13] Generally, the State must prove by a preponderance of the evidence that a child is a CHINS. *Matter of Eq. W.*, 124 N.E.3d 1201, 1208 (Ind. 2019). We do not reweigh the evidence or judge the credibility of witnesses and consider only the evidence which supports the trial court's decision and reasonable inferences drawn therefrom. *In re S.D.*, 2 N.E.3d 1283, 1286-1287 (Ind. 2014), *reh'g denied*. We apply the two-tiered standard of whether the evidence supports the findings and whether the findings support the judgment. *Id.* We will reverse a CHINS determination only if it was clearly erroneous. *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017). A decision is clearly erroneous if the record facts do not support the findings or if it applies the wrong legal standard to properly found facts. *Id.*

[14] Ind. Code § 31-34-1-1 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.

[15] The statute does not require a court to wait until a tragedy occurs to intervene. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is to protect children. *Id.*

[16] As for L.J.’s placement outside the home, DCS is required to request the court to authorize the filing of a CHINS petition, Ind. Code § 31-34-9-1, and the court is to consider the preliminary inquiry and the evidence of probable cause that is contained in the report of the preliminary inquiry or an affidavit of probable cause, and authorize the filing of a petition if the court finds probable cause to believe the child is a CHINS. Ind. Code § 31-34-9-2. Further, “[a] child may be taken into custody by a law enforcement officer under an order of the court.” Ind. Code § 31-34-2-1. *See also* Ind. Code § 31-34-2-3 (permitting a child to be taken into custody without a court order under certain circumstances including that a caseworker has probable cause to believe the child is a CHINS); Ind. Code § 31-34-5-1(c) (providing a petition alleging a child is a CHINS shall be filed before a detention hearing is held); Ind. Code § 31-34-21-5.5 (providing DCS “shall make reasonable efforts to preserve and reunify families as follows:

(1) If a child has not been removed from the child's home, to prevent or eliminate the need for removing the child from the child's home. (2) If a child has been removed from the child's home, to make it possible for the child to return safely to the child's home as soon as possible"); Ind. Code § 31-10-2-1 ("It is the policy of this state and the purpose of this title to . . . (6) remove children from families only when it is in the child's best interest or in the best interest of public safety").

[17] Here, the record shows that DCS filed a request for authorization to file a petition alleging L.J. was a CHINS together with a request to take custody of L.J. and a report of the preliminary inquiry on May 17, 2021. The following day, the court held a hearing and entered an Order on Initial/Detention Hearing finding that removal of L.J. was necessary to protect the child, it was in L.J.'s best interest to be removed from the home environment, and reasonable efforts to prevent L.J.'s removal were not required due to the emergency nature of the situation in that Mother had returned to work, leaving Father as the child's caregiver, there were issues of domestic violence not addressed by Father, and his behavior has caused visits and parent aide services to be stopped, and ordering that L.J. be placed outside the home. At the hearing, a case manager testified that DCS had concerns with L.J.'s placement in the home, Father was not participating in any services, there were concerns of substance abuse and prior domestic violence, Mother had returned to work leaving Father as L.J.'s primary caregiver, and the case manager performed a home visit at the end of March and noticed a strong presence of THC in the

home. The report of the preliminary inquiry provided that L.J.'s three siblings had been removed, Father was not under any services and was not drug screening, and there had been domestic violence in the home in the presence of the children. The report stated Father had been verbally abusive to service providers during visits and refused to help with the children and clean up after them during visits. It also provided that Father refused to re-sign the rules in order to resume visits, made it known that he did not want a parent aide in his home, had not had any random screens to monitor substance use, and refused to participate in meetings. The record supports the court's order that L.J. be placed outside the home.

[18] To the extent Parents do not challenge the trial court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[19] The trial court made findings regarding the report of domestic violence received by DCS, the observations of the children and the condition of the home, the children's developmental delays, the disclosure of drug use, the extent of Parents' efforts to participate in offered services, and Father's conduct. The court found "[i]t is concerning that Father appears to believe he has no responsibility for anything that has happened in his own home, whether it be the filthy conditions at the time of removal, his clear lack of anger management, or his unwillingness to learn how to be [an] adequate parent." Father's Appellant's Appendix Volume II at 80, 92. The record reveals that DCS

presented evidence regarding Parents' housing and the condition of the home, domestic violence in the home, Parents' substance abuse, the children's development, and Parents' interactions with DCS including their participation in services. The court was able to consider the testimony and evidence as set forth above and in the record and Parents' actions, omissions, and ability to provide for and protect the children. We conclude the judgment reached by the trial court is not clearly erroneous.

[20] For the foregoing reasons, we affirm the trial court's order.

[21] Affirmed.

May, J., and Pyle, J., concur.