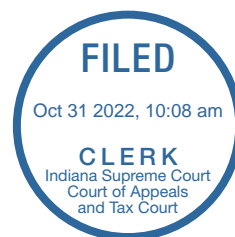


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Roberta L. Renbarger
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In RE a Child in Need of
Services M.F. (Child)

N.F. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

October 31, 2022

Court of Appeals Case No. 22A-
JC-991

Appeal from the Allen Superior
Court

The Honorable Beth A. Webber,
Magistrate

The Honorable Lori K. Morgan,
Judge

The Honorable Charles F. Pratt,
Senior Judge

Trial Court Cause No.
02D08-2109-JC-314

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, N.F. (Mother) appeals the trial court's adjudication of her minor child, M.F. (Child), as a Child in Need of Services (CHINS).
- [2] We affirm.

ISSUE

- [3] Mother presents this court with two issues on appeal, which we consolidate and restate as the following single issue: Whether the trial court erred by adjudicating Child to be a CHINS.

FACTS AND PROCEDURAL HISTORY

- [4] Mother and M.W. (Father)¹ are the biological parents to M.F., born on November 10, 2019. In 2021, Mother, Mother's boyfriend (Boyfriend), and Child lived at a friend's apartment in Allen County, Indiana. Mother's cousin (Cousin) also resided in that apartment. On August 30, 2021, Mother alleged that she left Child in Boyfriend's care, and when she got back home, Boyfriend informed Mother that when he was holding Child, his leg gave out, and he threw Child onto the floor to avoid falling on Child. According to Mother, Child only showed minor swelling, and she therefore did not seek medical

¹ Paternity has never been established, but he is the alleged Father. Father is incarcerated and does not participate in this appeal.

attention. Also, as per Mother's account, on the same day, she saw some oval bite marks on Child's body but was not alarmed by the injuries.

[5] At around 8:20 p.m. on September 1, 2021, Mother left Child in Boyfriend's and Cousin's care and went to pick up a friend. Mother returned after forty minutes and found Child drowsy on the couch. Again, Mother left the apartment at around 10:45 p.m. to drop off her friend and pick up her brother. When Mother arrived at her friend's house, she noticed two missed calls from Boyfriend. When she returned the call, Boyfriend asked Mother to come home immediately. When she picked up Child, his body was limp, he only had a slight pulse, and his eyes rolled to the back of his head. After calling 911, Mother carried Child out of the apartment, and Boyfriend followed her. Once outside, Mother saw a police officer in the parking lot and flagged him down. Officer Nicholas Lichtsinn (Officer Lichtsinn) of the Allen County Police Department observed what appeared to be vomit around Child's face and a mark on his foot that looked like a cigarette burn. Officer Lichtsinn contacted emergency medical services, and Child was transported to Parkview Hospital (Parkview).

[6] Dr. Jeffery Nickel (Dr. Nickel), who performed Child's initial diagnosis, determined that Child presented "acute respiratory failure" and the CT scans revealed "extensive hemorrhage with left subdural hemorrhage, [and] left supratentorial parafalcine hemorrhage []." (Appellant's App. Vol. II, p. 27). Child was observed to have "diffuse retinal hemorrhaging in both eyes consistent with shaken baby syndrome." (Appellant's App. Vol. II, p. 27). In

addition, Child noticeably had patterns of bruises on his chest, abdomen, back, left thigh, and foot.

[7] Child's CT scans "showed bleeding in the brain and shifting in the brain" and "was near brain death." (Transcript Vol. I, p. 142). He needed immediate surgical intervention. Neurosurgeon Dr. James Dozier (Dr. Dozier) removed part of Child's skull, "took out the blood clots, [] put in artificial coverings over his brain, [and] closed the skin" (Tr. Vol. I, p. 142). The swelling in Child's brain decreased after surgery; however, the incision became infected, and he needed additional surgery. According to Dr. Dozier, Child had a "pinched brain," and the "long-term effects" of such an injury impacted his "memory, [] coordination," and "vision." (Tr. Vol. I, p. 145). It is anticipated that Child will suffer from those issues for the rest of his life. Continued care for Child involves treatment from a neurologist, an ophthalmologist, an infectious disease specialist, as well as further neurosurgery for the replacement of the "bone plate" and corrective plastic surgery. (Tr. Vol. I, p. 146). Because Child did not have part of his skull, he had to wear a helmet at all times.

[8] On September 2, 2021, the Department of Child Services (DCS) assessment case manager Jordan Stephan (ACM Stephan) consulted Dr. Marissa Luoma (Dr. Luoma), to investigate the nature of Child's head and bodily injuries. Dr. Luoma reviewed Child's medical history, the photographs detailing Child's injuries, as well as Mother's explanation as to how Child's injuries occurred. Dr. Luoma determined that Child's injuries, which included "subdural hematoma that was severe enough to cause mass effect and severe neurological

symptoms” as well as “retinal hemorrhaging”, were most consistent with accidental injuries. (Tr. Vol. I, p. 42). However, based on the assemblage of Child’s injuries, Dr. Luoma determined that Mother’s account to Parkview medical staff that Child’s head injury occurred two days before Child’s hospital admission was not a feasible explanation because seizures would have likely occurred within hours of the injury, and therefore she concluded that the injuries were non-accidental.

[9] Based on Child’s severe head injury and the unexplained injuries on his body, DCS filed a CHINS petition, alleging that Child was a CHINS under Indiana Code sections 31-34-1-1; 31-34-1-2, and 31-34-12-4. Mother was provisionally ordered to engage in services. From October 2021 through March 2022, Mother participated in services, including counseling, home-based services, supervised visitation, and random drug screens. The trial court conducted fact-finding hearings on January 4, 2022, January 6, 2022, February 15, 2022, and concluded on March 15, 2022.

[10] On March 24, 2022, the trial court entered its Order adjudicating Child to be a CHINS. The trial court entered the following pertinent findings and conclusions thereon:

18. Dr. Marissa Luoma of Riley Children[s] Hospital [] concluded that the brain injury likely occurred the day [] [C]hild was brought to the hospital. She found [] [C]hild’s injuries to include an abusive head trauma. [Child’s] diffused retinal hemorrhages, she advised, are most commonly associated with abusive head trauma. She also observed multiple circular pattern bruises on [] [C]hild’s upper chest, abdomen, and left forearm,

and a circular black injury to the bottom of his right foot. She opined that [] [C]hild's array of injuries are rarely the result of accidental injury.

20. Dr. Luoma testified that [C]hild's brain injury required a mechanism of high energy acceleration decelerated with or without a blunt object. Shaking, a strike with an instrument, or a violent throw into a hard object are likely causes.

21. Dr. Louma [sic] met with [] [M]other. [M]other told Dr. Louma [sic] that on the Monday, August 30, 2021, [] [B]oyfriend was holding [] [C]hild when his leg gave out. He threw [] [C]hild away from him to avoid landing on [] [C]hild as he fell. Dr. Louma [sic] testified that in her expert opinion the explanation was not consistent with the mechanism required to cause [] [C]hild's brain injury. In addition[,] [] [C]hild would have been symptomatic within hours of the incident. By [] [M]other's account he did not display any symptoms until the evening of September 1, 2021.

* * * *

23. The black circular injury to [] [C]hild's foot, Dr. Louma [sic] testified, would have cause[d] [] [C]hild discomfort. However, when asked by Dr. Louma [sic], [] [M]other had not noticed nor did she know how the black injury on [] [C]hild's foot was inflicted. Dr. Louma opined that the foot injury was not consistent with self-inflicted injuries by children of that age.

* * * *

24. Dr. Luoma concluded that [] [C]hild's injuries were "indicative of non-accidental/inflicted trauma".

25. Dr. Jayesh Patel is a Parkview Hospital pediatric hospitalist. Dr. Patel was qualified as an expert. From his testimony, the court finds that [] [C]hild likely experienced more than one episode of injury. In addition [] [C]hild’s brain injury likely occurred the day he was brought to the hospital rather than on the preceding Monday as [] [M]other had explained. Seizures will likely follow within a few hours of the injury. Dr. Patel testified that in his expert opinion [] [C]hild sustained non-accidental injuries.

26. From the testimony of Dr. James Dozier, [] [C]hild’s neurosurgeon, the court finds that [] [C]hild will require additional surgery to replace the bone of the skull removed to address the swelling of the brain. In addition[,] the court finds from his testimony that [] [C]hild may experience long term issues as a result of his injuries including memory and coordination issues. He will require on-going medical attention including infectious disease care and ophthalmological care. He will have lifelong effects from his injuries.

27. Based on the constellation of [] [C]hild’s injuries Dr. Luoma concluded and this court finds that [] [C]hild’s injuries were non-accidental and were the result of abuse. Dr. Patel similarly opined.

* * * *

35. [] [M]other admitted that [Boyfriend] had texted her in [the] past advising that [] [C]hild was “damn near scared of me”.

* * * *

BASED ON THE FOREGOING, the Court further finds and concludes that:

* * * *

6. The expert medical testimony stands in clear contradiction to [] [M]other's explanation. The brain injury, the bite marks, the bruises and the wound to [] [C]hild's foot were not deemed accidental or self-inflicted but, [] rather than resulting from physical abuse.

7. [] [M]other's explanations for the bruises and the wound to the foot have been inconsistent. At first[,] she explained that the bite marks were inflicted at a time prior to August 30, 2021. She felt she addressed the issue by telling the persons who reportedly had responsibility for [] [C]hild to ensure that he had no further contact with the purported assailant. Later she testified that she had not seen the wounds until September 1, 2021.

8. [] [M]other also testified that she was unaware that [] [C]hild had sustained an injury to his foot.

9. When [] [C]hild sustained his various injuries he was either in [] [M]other's care or left by her in the care of [Boyfriend] and/or [Cousin].

10. Accepting [] [M]other's explanations arguendo, the court finds that she nevertheless permitted [Cousin] and [Boyfriend] to care for [Child] notwithstanding two prior incidents of injuries; the multiple bite marks and the unexplained injury to the foot.

11. She also permitted [Boyfriend] to care for [Child] after he texted her advising that [] [C]hild was afraid of [him] and after understanding that he felt [] she babied her son too much.

12. On the likely night of [] [C]hild's brain injury, September 1, 2021, she left [] [C]hild in the care of [Cousin] and [Boyfriend] at

around 8:20 p.m. When she returned [] [C]hild was on a couch, [Cousin] was in another room and [Boyfriend] was quickly exiting to another room. [] Nonetheless she again left [] [C]hild in [Boyfriend's] care.

13. From the testimony of Detective Matthew Cline of the Fort Wayne Police Department, the [c]ourt finds that [] [M]other is not a suspect in the criminal investigation of [] [C]hild's brain injury. In fact, [Boyfriend] has been convicted of that offense. However, there remains in this court's consideration [] [M]other's neglect in providing [] [C]hild with necessary supervision particularly after there was [sic] reasons to suspect that either [Boyfriend] or [Cousin] were not appropriate [caregivers]. Thus, the first elements of I.C. [§] 31-34-1-1 are factually established.

14. In addition, by the omission of her supervisory responsibilities to [] [C]hild, he sustained serious bodily injuries. Thus, the first elements of an adjudication under I.C. [§] 31-34-1-2 are factually met.

15. Absent a finding of the rebuttable presumption for a finding that the child is in need of services under I.C.[§] 31-34-12-4, the evidence must also support a finding that the child needs care, treatment, or rehabilitation that the child is not receiving; and is unlikely to be provided or accepted without the coercive intervention of the court must be factually proven.

16. In this case, [] [M]other has fully cooperated with [home-based] services and supervised visitation. She is regarded by her [home-based] case worker and the [DCS'] caseworker as a compliant and cooperative person.

17. [] [M]other has secured employment and an apartment. . . .

18. However, [] [M]other has not completed therapy as provisionally ordered. She has acknowledged that she suffers from depression and possibly post-traumatic stress disorder (PTSD). She has not secured therapy independently.

19. For the safety and wellbeing of her child this court concludes that she must receive the level of therapeutic intervention to address not only her depression but, also, the reasons she chose to disregard and offer invalid explanations for the serious injuries her child sustained. She has not accepted responsibility for placing a child in the care of those who, by her own testimony, permitted [] [C]hild to be physically abused. Nor is there evidence that she has received and benefited from services designed to assist her in ensuring the future safety of her son. In a case in which a child is not likely to suffer lifelong challenges from his injuries, a less strict review as to whether the coercive intervention of the court is necessary may be warranted. Here, however, [] [C]hild came close to death. He will have to deal with long terms [sic] consequences of his injuries. He will likely need supportive emotional and physical care. Those significant demands on a parent who (a) did not have the foresight to preclude individuals from [] [C]hild's direct care who she believed were responsible for some of his injuries, and (b) is not receiving treatment for depression is gravely concerning. Clearly[,] she has addressed the economic issues associated with her daily life. However, the housing and employment were not the causes of this child's injuries. The lack [of] proper protection and supervision by [] [M]other were causal factors. The underlying issues associated with her choices have not been fully addressed and given the current status of this case, will not likely be addressed without the coercive intervention of the court.

20. In addition to the foregoing, [] while a portion of [] [C]hild's injuries may have been resolved by the conviction of [Boyfriend], other injuries including the bruising and the dark wound on [] [C]hild's foot are not clearly explained nor is a perpetrator

named. Those injuries were serious and were not accidental. They were inflicted when under the care and responsibility of [] [M]other and would not have resulted but for her act or failure to act. The presumption that [] [C]hild is a child in need of services under [I.C. §] 31-34-12-4 is also sustained.

(Appellant's App. Vol. II, pp. 26-32) (internal citations omitted).

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

DISCUSSION AND DECISION

I. *Standard of Review*

[12] Mother contends that the trial court abused its discretion in finding Child to be a CHINS. Where, as here, a trial court's order contains specific findings of fact and conclusions of law, we engage in a two-tiered review. *Freese v. Burns*, 771 N.E.2d 697, 700 (Ind. Ct. App. 2002), *trans. denied*. First, we determine whether the evidence supports the findings, and then we determine whether the findings support the judgment. *Id.* We will not set aside the findings or judgment unless they are clearly erroneous. *Matter of N.C.*, 72 N.E.3d 519, 523 (Ind. Ct. App. 2017). Findings are clearly erroneous when there are no facts in the record to support them; a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.* While we defer to the trial court's findings, we do not defer to its conclusions. *Id.* Those issues not covered by the findings are reviewed by a general judgment standard, and the judgment may be affirmed if it can be sustained on any grounds supported by evidence. *Id.*

II. *Analysis*

[13] On appeal, Mother argues DCS failed to produce sufficient evidence that she was responsible for Child's injuries, that Boyfriend was incarcerated, and that coercive intervention was no longer necessary. Before proceeding to the merits of Mother's argument, however, we note that Mother does not specifically challenge any of the trial court's specific findings. Therefore, the unchallenged findings stand as correct. *McMaster v. McMaster*, 681 N.E.2d 744, 747 (Ind. Ct. App. 1997) (unchallenged trial court findings are accepted as true).

[14] In this case, DCS alleged that Child was a CHINS pursuant to Indiana Code section 31-34-1-1 which provides that a child under the age of eighteen is a CHINS under these situations:

(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.

[15] Child was also alleged to be a CHINS in accordance with Indiana Code section 31-34-1-2, which requires DCS to prove all the same elements as under Indiana Code section 31-34-1-1, except that instead of demonstrating neglect, DCS must show that the child’s physical or mental health is seriously endangered due to an injury caused by a parent’s act or omission. Mother only challenges the trial court’s determination that its coercive intervention was necessary. However, DCS also invoked Indiana Code section 31-34-12-4 (Presumption Statute) under which a rebuttable presumption is raised that the child is a CHINS because of an act or omission of the child’s parent, guardian, or custodian if competent evidence of probative value is introduced by DCS that

(1) the child has been injured;

(2) at the time the child was injured, the parent, guardian, or custodian:

(A) had the care, custody, or control of the child; . . .

(3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian; and

(4) there is a reasonable probability that the injury was not accidental.

As soon as this showing is made, the rebuttable presumption that a child is a CHINS applies to all the statutory CHINS elements, including the “coercive intervention” element. *See Ind. Dep’t of Child Servs. v. J.D.*, 77 N.E.3d 801, 809 n.3 (Ind. Ct. App. 2017), *trans. denied*.

[16] On the day Child was transported to the hospital, Mother had left Child in the care of Boyfriend and Cousin. Mother's explanation that Child's head injury was accidental and had occurred two days prior to his hospital admission was not a plausible explanation because medical evidence and expert opinion from two doctors negated that account. Dr. Luoma indicated that Child's severe brain injury "required a mechanism of high energy acceleration decelerated with or without a blunt object. Shaking, a strike with an instrument, or a violent throw into a hard object" as the likely causes. (Appellant's App. Vol. II, p. 27). Dr. Luoma therefore determined that Mother's account that Boyfriend's leg gave out and that he had to throw Child onto the floor to avoid landing on Child was not consistent with the mechanism needed to cause such a severe brain injury. (Appellant's App. Vol. II, p. 27). Also, Dr. Patel, who treated Child at Parkview, contended that Child's severe brain injury likely occurred the day he was rushed to the hospital, rather than in the preceding days. He stated that seizures would have likely occurred a few hours after the injury, and in his expert opinion, Child's critical head injury was not accidental.

[17] As with Child's other injuries, with the foot wound being the most significant one, Officer Lichtsinn believed that the mark was a cigarette burn. Dr. Luoma testified that the black circular injury on Child's foot would have caused Child to have great discomfort, yet, when Mother was questioned, she claimed that she had not noticed or was unaware of the foot injury. The trial court entered findings consistent with this evidence. Based upon Child's multiple unexplained injuries, we conclude that the trial court did not clearly err in

determining that Child's injuries were not accidental and occurred while in Mother's care. *See In re A.H.*, 913 N.E.2d at 306 (“[A] child is a CHINS when he or she is endangered by parental action or inaction.”). Given that DCS met its burden on the presumption, which the trial court could have reasonably concluded was not rebutted, the trial court's determination that coercive intervention of the court element as to Child was also supported by the evidence. *See J.D.*, 77 N.E.3d at 809 n.3.

[18] Even though the Presumption Statute also establishes the coercive intervention element of the CHINS adjudication, Mother contends that the conditions that gave rise to DCS's involvement were remedied before the fact-finding hearing because Boyfriend was incarcerated, and she had a protective order against him, therefore, coercive intervention is not needed. We note that “[t]he purposes of a CHINS case are to help families in crisis and to protect children, not punish parents.” *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). Therefore, for a child to be a CHINS, DCS must prove not only that one or the other of the parents suffer shortcomings, but also that the parents are unlikely to meet a child's needs absent coercive court intervention. *Id.*

[19] During the time Child was in Mother's care, Child suffered multiple injuries which were ignored by Mother. As noted above, on the day that Child was admitted to the hospital, medical staff observed several lesions on his chest, abdomen, back, left thigh, and foot, which were at various stages of healing. As the trial court found, “while a portion of [] [C]hild's injuries may have been resolved by the conviction of [Boyfriend]”, given the multiplicity of Child's

other injuries which were not clearly “explained nor a perpetrator named”, suggested that they were not accidental, and further supported an inference that Mother was slow to seek health care treatment for him. (Appellant’s App. Vol. II, p. 32).

[20] Lastly, we note that considering Child’s fragile health, it is essential that any caregiver possess the knowledge to meet his medical requirements. Child’s foster mother (Foster Mother) testified that Child needed exceptional care because the “bone flap” which had been removed during the emergency surgery had not yet been replaced and “any sort of bonk or bump to his head” could set his recovery backward. (Tr. Vol. I, p. 104). She explained that Child needs constant supervision and has numerous doctor appointments each month. FCM Megan McCracken (FCM McCracken) testified that because Child was medically fragile, Foster Mother had to undergo medical training before Child was placed in her care. While Mother was engaged in services, FCM McCracken claimed that Mother had not undergone similar medical training. Because Mother had not undergone training on how to handle the medical needs of Child, DCS was concerned about her ability to meet Child’s needs. FCM Brianna Wolfe (FCM Wolfe) testified that when a child is medically fragile, DCS treats such a case with “caution” because they have to ensure that a caregiver has appropriate medical training and is meeting the child’s medical needs. (Tr. Vol. I, p. 236). As there is a concern that Child will not receive the care that he needs without the coercive intervention of the trial court, Mother has failed to establish that DCS did not carry its burden on the issue of coercive

intervention. *See In re Ju.L.*, 952 N.E.2d 771, 783 (Ind. Ct. App. 2011)
(mother's actions endangered child necessitating coercive court intervention
and thus CHINS adjudication affirmed). We therefore conclude that the trial
court appropriately adjudicated Child as a CHINS.

CONCLUSION

- [21] Based on the above, we hold that the trial court properly adjudicated Child to
be a CHINS.
- [22] Affirmed.
- [23] Bailey, J. and Vaidik, J. concur