

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:
Ju.F., Ja.F., S.F., and K.F.
(Minor Children),
Children In Need of Services,
J.F.,
Appellant-Respondent,

v.

Indiana Department of
Child Services,
Appellee-Petitioner.

October 3, 2022

Court of Appeals Case No.
22A-JC-1024

Appeal from the Monroe Circuit
Court

The Honorable Stephen R. Galvin,
Judge

Trial Court Cause Nos.
53C07-2112-JC-654
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53C07-2112-JC-657

Weissmann, Judge.

[1] J.F. (Mother) appeals the trial court’s determination that her four children are children in need of services (CHINS). She argues the evidence failed to show her children were endangered by her drug abuse and mental health problems or that state intervention was necessary to ensure the children’s wellbeing. Finding sufficient evidence in the record for the trial court’s CHINS determination, we affirm.

Facts

[2] Mother has four children, Ju.F., Ja.F., S.F., and K.F. (collectively, Children), who ranged in age from 10 months to 17 years in late 2021. Each child has a different father, all of whom either are dead, incarcerated, or otherwise absent.

[3] The Department of Child Services (DCS) first became involved with Mother and Children in early 2021. Due to persistent truancy and missed appointments with Children’s therapist, DCS provided Mother an “informal adjustment”¹ to address “issues with school attendance, [provide] education support, and to improve home conditions.” Exhs. p. 30. Under the informal adjustment, Mother agreed to complete substance abuse and psychological assessments, submit to random drug screens, and follow the assessment’s recommendations.

¹ An informal adjustment is “an agreement between DCS and the family allowing the family to participate in DCS services without [the child] being formally declared a CHINS.” *Matter of E.K.*, 83 N.E.3d 1256, 1263 (Ind. Ct. App. 2017); *see* Ind. Code § 31-34-8-1 (authorizing DCS to offer programs of informal adjustment).

Mother successfully completed the program and DCS dismissed the informal adjustment after six months.

[4] Towards the end of 2021, Children were staying with their grandmother (Grandmother) when DCS, alongside law enforcement officials, responded to an unrelated report at Grandmother's home. When they arrived, Grandmother was asleep, holding Mother's youngest child, then 10 months old. After waking Grandmother, DCS quickly determined that she was under the influence of drugs and called Mother to pick up Children. Due to Mother's past contact with DCS, the investigator informed Mother that she would be screened for drugs before Children would be released to her. Mother consented to a rapid result drug screen.

[5] Upon her arrival, Mother was immediately hostile toward DCS workers. Over the next two hours, she threatened to blow up DCS offices, shoot DCS case managers, and alleged that the only reason DCS was involved was due to Children's race. At the same time, Mother got into a verbal argument with her brother that quickly progressed to physical threats. Brother threatened to "knock [Mother's] teeth down her throat," to which Mother responded that she would stab Brother. Police intervened before any physical violence occurred. Mother had no knives or weapons on her. The children became distressed from these events. One child ran upstairs and started repeatedly banging his head against the wall.

- [6] Before Mother’s drug screen results were available, she admitted to using methamphetamine that morning and then driving Children to Grandmother’s home. Mother, however, denied ever using drugs near Children and claimed she did not know that Grandmother used drugs while caring for Children. Mother’s drug screen came back positive for methamphetamine and amphetamine.
- [7] DCS removed Children from Mother’s care and petitioned to find each child to be a CHINS. A family case manager later met with Mother to discuss steps for regaining custody of Children as well as treatment for Mother’s drug abuse and mental health challenges, which included a diagnosis of bipolar disorder. Mother was “somewhat receptive” to DCS’s recommendations. Tr. Vol. II, p. 74.
- [8] In March 2022, the trial court held the first joint fact-finding hearing in Children’s CHINS cases. Mother had consistently tested positive for methamphetamines until three weeks before the hearing, when she submitted her first negative results. Her last drug screen was positive only for THC. DCS refused to recommend Children’s return to Mother’s home until she was drug free for at least 60 to 90 days. After hearing evidence of Mother’s behavior at Grandmother’s house and Mother’s history of drug abuse and mental illness, the trial court delayed ruling until the youngest child’s father could be contacted.

[9] A month later, the trial court held another fact-finding hearing. And although the father was unresponsive, the hearing revealed that Mother had submitted negative drug screens for another four weeks and had sought professional services for her drug use and mental health problems. In response, DCS removed some of the recommended services and requirements Mother needed to complete to have Children returned. But unpersuaded by Mother's recent progress and focusing on her history of addiction and mental illness, the trial court found Children to be CHINS.

[10] The trial court ordered Mother to submit to random drug screens, comply with the recommendations from her drug abuse and psychological assessments, and maintain suitable housing and income to ensure a safe and stable environment for the return of her children.

Discussion and Decision

Mother contends the evidence does not support the trial court's determination that Children were endangered by Mother's actions or that the court's coercive intervention is necessary. We disagree.

[11] The trial court adjudicated Children as CHINS under Indiana Code § 31-34-1-1. A CHINS determination under this statute "requires proof of three basic elements: [1] the parent's actions or inactions have seriously endangered the child; [2] the child's needs are unmet; and [3] 'perhaps most critically,' those

needs are unlikely to be met unless the State intervenes.”² *D.S. v. Dep’t of Child Servs.*, 150 N.E.3d 292, 295 (Ind. Ct. App. 2020) (quoting *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014)). These requirements focus “on the condition of the child alone, not on the culpability” of the parents. *D.S.*, 150 N.E.3d at 295. DCS must prove the requirements by a preponderance of the evidence. Ind. Code § 31-34-12-3.

[12] In its CHINS order, the trial court sua sponte entered conclusions of law and supporting findings of fact. To the issues covered by these findings, “we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment.” *In re S.D.*, 2 N.E.3d at 1287.

[13] When reviewing CHINS judgments, “we neither reweigh the evidence nor judge the credibility of the witnesses.” *Id.* (quoting *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012)). “Instead, ‘we consider only the evidence that supports the

² In full, the statute 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.

trial court's decision and reasonable inferences drawn therefrom.'" *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).

Harm to Children

- [14] Mother argues that DCS failed to prove Children were ever harmed by her actions. She claims DCS presented no evidence that she ever used drugs in front of Children or that they were ever affected by her drug use. The record reveals otherwise.
- [15] Mother left children with Grandmother, who was impaired from drug use. When alerted to this problem by DCS, Mother compounded the danger by showing up to collect Children while herself under the influence of methamphetamine and amphetamine. Tr. Vol. II, pp. 32, 36-37. Her tumultuous behavior towards her brother and DCS workers so distressed one of her children that he fled upstairs and began repeatedly ramming his head against the wall. This evidence amply supports the court's conclusion that Children have been adversely affected by Mother's drug use.
- [16] Instead of acknowledging this harm, Mother relies on the lack of evidence that Children personally observed Mother's drug use. As Mother notes, the presence of marijuana in the home and a parent's use of marijuana outside the presence of children, without more, has been found insufficient to prove serious endangerment for CHINS purposes. *See, e.g., Ad.M. v. Ind. Dep't of Child Servs.*, 103 N.E.3d 709, 710 (Ind. Ct. App. 2018); *D.S.*, 150 N.E.3d at 293. However,

both of those cases also recognized an exception for when “the [caregivers were] impaired by substance abuse while the children were in their care.” *Id.* (citing *Ad.M.*, 103 N.E.3d at 714). That is precisely what happened here. Mother admitted to driving Children while she was under the influence of methamphetamine. Tr. Vol. II, p. 36. Then she left Children in the care of Grandmother—who also was under the influence of methamphetamine. Indeed, DCS found Grandmother asleep but holding Mother’s youngest child, a 10-month-old toddler, who could have suffered any number of injuries from falling or inattention. When a caregiver is under the influence of illegal drugs, they “essentially abandon [the children] without any responsible supervision.” *In re J.L.*, 919 N.E.2d 561, 564 (Ind. Ct. App. 2009).

[17] Just because Children never observed Mother using drugs does not mean her drug use has not impacted them. Mother’s inability to recognize the impact her drug use and mental illness have on Children supports their classification as CHINS. *See, e.g., id.* at 563-64 (exposure to “an environment of illegal drug use” endangered child’s wellbeing); *In re K.P.G.*, 99 N.E.3d 677, 684 (Ind. Ct. App. 2018) (“[Mother’s] untreated mental illness left her unable to make critical decisions concerning [child’s] care and treatment.”).

Coercive Intervention of the Court

[18] While we commend Mother’s recent success at sobriety, we cannot say the court erred in finding need for court intervention. A court should exercise its “coercive authority” in declaring a child a CHINS “where parents lack the

ability to provide for their children,’ not merely where they ‘encounter difficulty in meeting a child’s needs.’ *In re S.D.*, 2 N.E.3d at 1287 (quoting *Lake Cnty. Div. of Fam. & Child. Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

The need for coercive intervention must extend beyond just the “early” phase of the CHINS process and into the fact-finding and dispositional hearings. *In re D.J.*, 68 N.E.3d at 581.

[19] Six months before DCS filed the CHINS petitions, DCS and Mother went through an informal adjustment to address concerns over Children’s wellbeing. She received treatment and medications for her substance abuse and mental health problems, attended counseling, and passed random drug screens. Yet, only a few months later, Mother was back to using methamphetamine, leading to the CHINS allegations. The failure of this prior informal attempt undercuts Mother’s arguments that she can improve the situation for Children and remain drug free without the Court’s coercive authority. *See Matter of E.K.*, 83 N.E.3d 1256, 1263 (Ind. Ct. App. 2017) (noting that an informal adjustment is a potential alternative to a formal CHINS adjudication).

[20] As the trial court put it, Mother’s substance abuse disorder assessment “outlined a substantial history of mental health and substance abuse issues.” App. Vol. II, pp. 62, 66. Mother has struggled with drug abuse, and particularly methamphetamine use, for nearly a decade. Exhs., p. 3. And she has a substantial history of untreated mental health problems and trauma requiring professional help. *Id.*; Tr. Vol. II, p. 80. Given these factors we cannot say the trial court erred in finding Children are in need of services.

[21] Finding the trial court's determination that Children are CHINS not clearly erroneous, we affirm.

May, J., and Crone, J., concur.