

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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In the Matter of L.P., Minor  
Child Alleged to be a Child in  
Need of Services;

S.P. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

October 28, 2022

Court of Appeals Case No.  
22A-JC-1062

Appeal from the Clark Circuit  
Court

The Honorable Vicki L.  
Carmichael, Judge

The Honorable Joni L. Grayson,  
Magistrate

Trial Court Cause No.  
10C04-2108-JC-81

**Tavitas, Judge.**

## Case Summary

- [1] S.P. (“Mother”) appeals the trial court’s adjudication of Child as a child in need of services (“CHINS”). Mother argues that the Department of Child Services (“DCS”) presented insufficient evidence to support the CHINS adjudication. Finding the evidence sufficient, we affirm.

### Issues

- [2] Mother raises one issue on appeal, which we restate as whether DCS presented sufficient evidence to support the CHINS adjudication.

### Facts

- [3] Child was born on March 5, 2015, to Mother and J.W. (“Father”).<sup>1</sup> Child participated in therapy as a part of DCS services that Child was “already enrolled in.” Tr. Vol. II p. 21. On June 25, 2021, Mother and C.W. (“Boyfriend”) were driving Child to a therapy session when the three were involved in a “hit and run accident” caused by Boyfriend (the “car accident”). *Id.* at 6. The vehicle belonged to Mother. At the time of the accident, Mother had a protection order against Boyfriend, and Boyfriend had a warrant for bond revocation and possession of methamphetamine.
- [4] Jeffersonville Police Department Officer Jonathan Herring responded to the car accident and believed Mother was “under the influence of heroin most likely.”

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<sup>1</sup> Father does not participate in this appeal.

*Id.* at 10. Officer Herring observed that Mother appeared “pretty disoriented” and “so out of it” that she needed to be transported to the hospital. *Id.* at 7, 10. Another officer administered Narcan to Mother at the scene of the car accident. Meanwhile, Child “was very shaken up [and] seemed pretty upset by everything that was going on.” *Id.* at 10.

[5] Officer Herring also spoke to Boyfriend, who “acknowledge[d] that he shouldn’t have been driving” and that he “snorts [] heroin.”<sup>2</sup> *Id.* at 8. Boyfriend also “acknowledge[d] that he was placing [Child] in danger when he was driving that way” and that “he is considered [Child’s] dad.” *Id.* Officer Herring believed Boyfriend was under the influence of heroin at the time because Boyfriend “kept nodding off and [had] pin-point pupils.” *Id.* at 9. Officer Herring also administered Narcan to Boyfriend, to which Boyfriend was “pretty responsive.” *Id.*

[6] Later that day, Family Case Manager (“FCM”) Kenneth Arachikavitz spoke with Child, who did not appear to be injured. Child reported “that [Boyfriend] was driving the car, [Mother] was asleep in the car [, and] . . . that they hit a couple of cars . . . .” *Id.* at 14. Child also “said [Child] was very scared and did not feel safe with [Boyfriend] and [Mother] at that time because . . . [Child] could have gotten hurt.” *Id.* at 14-15.

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<sup>2</sup> Officer Herring read Boyfriend his *Miranda* rights, and Boyfriend agreed to speak to Officer Herring.

- [7] FCM Arachikavitz also spoke with Child’s maternal grandmother (“Grandmother”), who lived with Child and Mother, that same day. Grandmother “had concerns of [Mother’s] drug use in the past and . . . didn’t want [Mother] driving because [Mother] had either been to the methadone clinic that day or was suspected to be under the influence.” *Id.* at 15.
- [8] After speaking with Child and Grandmother, FCM Arachikavitz spoke with Mother at the hospital. FCM Arachikavitz and the hospital staff “tried waking [Mother] up several times,” but Mother was not responsive. *Id.* The hospital staff administered Narcan to Mother and “at that point [Mother] immediately woke up and was alert” but continued to “doze off a lot” during the interview. *Id.* at 16. Mother said that “[Mother] had used methadone, which [Mother] is legally prescribed, that day” and that Mother’s drowsiness was caused by an increase in her methadone dosage. *Id.* Mother denied taking any illegal drugs but refused to take a drug screen. When asked about the car accident, Mother did not remember getting in the car or “getting [Child] in the car.” *Id.*
- [9] On August 25, 2021, DCS filed its petition alleging Child to be a CHINS (“CHINS petition”). DCS alleged that: (1) Child was involved in the car accident caused by Boyfriend driving while intoxicated; (2) Mother appeared “to be under the influence” after the car accident and was administered two doses of Narcan; (3) Mother was “charged with [n]eglect of a dependent and other charges from the” car accident; (4) Mother denied using illegal drugs but refused to submit to a drug screen; (5) Mother “did not remember getting in the car[,] and [Mother] did not remember [Child] being in the car”; and (6) Child

“reported being very scared” after the car accident. Appellant’s App. Vol. II. p. 31. DCS sought to provide “in-home” services for Child, i.e., Child would remain in Mother’s custody. Tr. Vol. II. p. 38.

[10] DCS requested Mother take drug screens on ten occasions between the filing of its CHINS petition and December 2021. Mother refused to take a drug screen on three occasions and tested positive for fentanyl in November and in December.<sup>3</sup> Mother denied that she used fentanyl. Mother again told DCS she used prescribed methadone, but Mother declined to release records to substantiate her claim that she had a methadone prescription. Mother also declined DCS’s offer to participate in DCS services, including Family Preservation services and Family Recovery Court.

[11] The trial court held a fact-finding hearing on January 13, 2022. FCM Tiffany Underhill testified that she believed Mother was “an appropriate caregiver” but that Mother “needs help.” *Id.* The trial court adjudicated Child as a CHINS and found the following:

- 1) On June 25, 2021 [Mother] and [Child] were passengers in a vehicle that was involved in an accident. At the time of the accident, the operator of the vehicle and [Mother] were impaired.
- 2) [Mother] has submitted to at least 2 drug screens for [DCS] which show [Mother] had fentanyl in her system,

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<sup>3</sup> Mother stated during the disposition hearing that she refused two of the drug tests because Child was in the hospital at the time for an illness unrelated to the car accident.

for which [Mother] does not have [a] prescription. Additionally, [Mother] has refused to submit to a screen on at least 3 occasions.

- 3) Family Case Manager Tiffany Underhill has offered services to benefit [Child] and the family. [Mother] has not engaged in services offered by DCS and has not shown a willingness to cooperate to address the underlying concerns.
- 4) [Mother] placed [Child] in an inherently dangerous situation when she allowed [Child] to be transported in a vehicle while the operator and [Mother] were impaired. [Mother's] continued substance use and unwillingness to engage in services or cooperate with DCS to address the underlying concerns places [Child's] mental or physical health in serious danger.
- 5) There is a reasonable probability that [Child's] physical or mental condition is seriously endangered and that the services that [Child] needs are unlikely to be provided without the coercive intervention of the Court.

Appellant's App. Vol. II pp. 87-88.

[12] The trial court held a dispositional hearing on February 10, 2022. Mother stated that she received prescribed methadone daily at a methadone clinic, and Mother agreed to release drug screens taken by the clinic. The trial court continued the dispositional hearing to March 31, 2022. The trial court declined to order Mother to participate in a substance abuse assessment or random drug screens contingent on Mother "continu[ing] her compliance with the

methadone clinic and allow[ing] [DCS] to have access to” Mother’s drug screen records from the methadone clinic.<sup>4</sup> Tr. Vol. II p. 87. Mother now appeals.

## Discussion and Decision

[13] Mother challenges the sufficiency of the evidence to support the trial court’s adjudication of Child as a CHINS. CHINS proceedings are civil actions; thus, “the State 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); *see* Ind. Code § 31-34-12-3. On review, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.J.*, 68 N.E.3d 574, 577-78 (Ind. 2017). “As to the issues covered by the 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 1283, 1287 (Ind. 2014). We review the remaining issues under the general judgment standard, which provides that a judgment “will be affirmed if it can be sustained on any legal theory supported by the evidence.” *Id.* (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). We will reverse a CHINS determination only if it is clearly erroneous. *D.J.*, 68 N.E.3d at 578.

[14] DCS must prove three elements for a juvenile court to adjudicate a child a CHINS: (1) the child is under the age of eighteen; (2) that one of eleven different statutory circumstances exist that would make the child a CHINS;<sup>5</sup>

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<sup>4</sup> The other details of the dispositional order are not relevant to this appeal.

<sup>5</sup> These eleven different statutory circumstances are codified in Indiana Code Section 31-34-1-1 to 11.

and (3) the child needs care, treatment, or rehabilitation that he or she is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court. *Id.* at 580.

[15] Here, the trial court found Child was a CHINS under the general category of neglect as defined in Indiana Code Section 31-34-1-1, which 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.

[16] “[T]he purpose of a CHINS adjudication is to protect children, not [to] punish parents.” *N.E.*, 919 N.E.2d at 106. A CHINS adjudication is not a determination of parental fault but rather is a determination that a child is in need of services and is unlikely to receive those services without intervention of the court. *Id.* at 105. “A CHINS adjudication focuses on the condition of the



child . . . . [T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* (citations omitted). “A CHINS finding should consider the family’s condition not just when the case was filed, but also when it is heard.” *S.D.*, 2 N.E.3d at 1290.

### ***I. Factual Findings***

[17] Mother argues that DCS presented insufficient evidence that Mother was under the influence of illegal drugs at the time of the car accident. Specifically, Mother argues that the testimony of Officer Herrington and FCM Arachikavitz was too speculative for the court to draw a reasonable inference that Mother was under the influence of illegal drugs at the time. We disagree.

[18] Other evidence corroborates Officer Herrington’s and FCM Arachikavitz’s testimony. At the scene of the car accident, Mother appeared “disoriented” and “out of it.” Tr. Vol. II pp. 7, 10. At the hospital, Mother repeatedly “doze[d] off” until Narcan was administered to her. *Id.* at 16. Mother denied taking illegal drugs but refused to take a drug screen. Mother also declined to release records substantiating her claim that she was prescribed a higher dose of methadone. And Grandmother shared Officer Herrington’s and FCM Arachikavitz’s belief that Mother appeared to be under the influence of drugs. Mother also has a history of substance abuse, tested positive for fentanyl on two occasions after the CHINS petition was filed, and refused to take a drug screen on three other occasions. From this evidence, the trial court could reasonably infer that Mother was under the influence of illegal drugs during the car accident, and we will not reweigh the evidence here.

[19] Mother also argues that DCS presented insufficient evidence that Mother knew Boyfriend was intoxicated before he began driving. This was not, however, listed as a finding by the trial court. Mother, however, was responsible for the safety of Child. The vehicle belonged to Mother, and it was Mother's responsibility to ensure Child was driven safely to Child's therapy session. Under these facts and circumstances, the trial court could have reasonably found that Mother was aware or should have been aware of Boyfriend's condition before allowing him to drive.<sup>6</sup>

## *II. Legal Conclusions*

[20] Mother argues DCS presented insufficient evidence for the court to find that: (1) Child was endangered; (2) Child's needs were not being met; and (3) the coercive intervention of the court was necessary. We disagree.

[21] DCS presented sufficient evidence for the trial court to conclude that Child was endangered. On June 25, 2021, Mother was under the influence of illegal drugs and allowed an intoxicated Boyfriend to drive Child to Child's therapy session, resulting in a car accident that could have seriously injured Child. Boyfriend "acknowledge[d] that he was placing [Child] in danger." *Id.* at 8. And after the accident, Mother could not remember that Child was in the car. Mother required Narcan on several occasions to remain awake and attentive after the car accident. Mother's substance abuse placed the Child in danger. Further, in

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<sup>6</sup> Mother does not challenge the trial courts remaining findings of fact and, unchallenged findings are "accepted as correct." *In re To.R.*, 177 N.E.3d 478, 485 (Ind. Ct. App. 2021) (citing *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992)), *trans. denied*.

the six months between the car accident and the fact-finding hearing, Mother twice tested positive for fentanyl, and Mother declined to take a drug screen on three occasions. *See In re K.W.*, 178 N.E.3d 1199, 1213-14 (Ind. Ct. App. 2021) (holding that parent's drug usage and repeated refusal to submit to drug screens at DCS's request supported endangerment finding). The trial court, accordingly, did not err in concluding Child was endangered.

[22] DCS also presented sufficient evidence for the trial court to conclude Child's needs were not being met. Mother's impairment contributed to Child's inability to attend her therapy session on the day of the car accident when Mother allowed Boyfriend to drive Child while intoxicated. Grandmother expressed concern about Mother's substance abuse and did not want Mother to drive Child on the day of the car accident. Further, while under the influence, Mother did not remember Child was in the car during the car accident. The trial court did not err in finding Mother's substance abuse prevented her from meeting Child's needs.

[23] Finally, DCS presented sufficient evidence for the trial court to conclude that Child's needs would not be met without the coercive intervention of the court. Mother tested positive for fentanyl on two occasions after DCS filed its CHINS petition. And until the trial court ordered Mother to release records of her drug screens from the methadone clinic, Mother refused to consistently participate in drug screens and assure DCS that she was able to provide sober care for Child. Mother also declined to participate in DCS services targeted at family

preservation and substance abuse recovery. Under these facts, the trial court did not err in concluding coercive intervention was necessary.

[24] Mother argues FCM Underhill’s testimony that Mother is an “appropriate caregiver” but that Mother “needs help” is insufficient to support the trial court’s conclusion that Child’s needs were not being met and that the coercive intervention of the court was required. DCS only sought to provide in-home services, and FCM Underhill’s testimony only demonstrates that DCS did not think it was necessary to remove Child from Mother. The testimony does not undermine a conclusion that Mother’s substance abuse prevented Child’s needs from being met or that coercive intervention was necessary to assure Mother provided Child with sober care. The trial court, accordingly, did not clearly err in adjudicating Child a CHINS.

## **Conclusion**

[25] DCS presented sufficient evidence to support the CHINS adjudication. Accordingly, we affirm.

[26] Affirmed.

Brown, J., and Altice, J., concur.