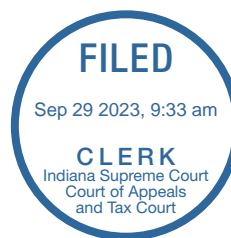


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Matthew J. McGovern
Fishers, 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 the Matter of:

R.R. and N.R. (Minor Children)
and

S.R. (Mother) and R.R. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

September 29, 2023

Court of Appeals Case No.
23A-JC-666

Appeal from the Orange Circuit
Court

The Honorable Larry W. Medlock,
Special Judge

Trial Court Cause No.
59C01-2209-JC-109
59C01-2210-JC-121

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

- [1] The Orange Circuit Court adjudicated R.R. and N.R. as Children In Need of Services (“CHINS”). S.R. (“Mother”) and R.R. (“Father”) appeal the adjudication and argue that the trial court’s order is not supported by sufficient evidence.
- [2] We affirm.

Facts and Procedural History

- [3] Mother and Father (collectively “Parents”) are not married but live together and have been involved in a romantic relationship for over five years. During that time, Parents have had significant involvement with DCS due to incarceration and substance abuse issues. Parents’ parental rights to one child were terminated and two other children were adopted by relatives. Mother gave birth to Parents’ fourth child, R.R., on September 26, 2021. Father established his paternity to R.R. R.R.’s maternal grandmother was involved in caring for R.R.
- [4] Less than one year later, Mother gave birth to N.R. on August 31, 2022. DCS removed N.R. from Parents’ care the day after he was born due to concerns that both Mother and the baby were suffering from withdrawal. Mother was agitated, jittery, and unable to maintain a conversation with the family case manager. N.R. was lethargic and needed constant monitoring from hospital staff. Father was asleep in Mother’s hospital room, and staff had a difficult time waking him up.

- [5] On September 5, DCS filed a petition alleging that six-day-old N.R. was a CHINS because both Mother and N.R. appeared to be suffering from substance abuse withdrawal, Mother had not had prenatal care, and Mother refused drug screens for herself and the baby. Parents also attempted to leave the hospital with N.R. against medical advice. Hospital staff tested N.R.'s urine when he was two days old. The baby's urine tested positive for methamphetamine and amphetamine, and based on the results of the urine screen, exposure would have occurred twelve to forty-eight hours prior to birth. *Id.* at 84. N.R.'s umbilical cord sample also had positive results for methamphetamine, amphetamine, and cannabinoids. DCS placed N.R. with his paternal grandmother, who had custody of three of his four siblings.
- [6] In October, DCS filed a petition alleging that R.R. was a CHINS. R.R. was returned to Parents' care on some date after September 27. In addition to Parents' suspected substance abuse, a DCS family case manager visited their home and observed safety concerns outside the home, including that the deck of the home was structurally unsound. Parents refused to submit to drug screens and would not allow DCS access to their home. When one-year-old R.R. was removed from Parents' care, the child was dirty and had developmental delays. R.R. was also placed with paternal grandmother.
- [7] After the CHINS petitions were filed, Parents continued to deny the family case managers access to their home and refused to submit to drug screens. The trial court held the fact-finding hearings on both petitions on December 16, 2022, and January 5, 2023. During the hearings, Mother claimed that she had not

used illegal substances since 2020. Mother admitted that one-year-old R.R. did not have a pediatrician and had not seen a doctor while in her care. Mother also stated that she “did [her] own pre-natal care.” Tr. P. 61. Father had not established paternity of N.R. on the date of the hearing but he admitted that N.R. was his child. *Id.* at 66-67. Father also testified that he used methamphetamine in the past but had not used for approximately two years. *Id.* at 69. Father admitted to occasional marijuana use. *Id.*

[8] The DCS family case manager testified that her interaction with Parents had been difficult and unproductive. Parents were “verbally aggressive,” and the case manager only met with Parents when accompanied by a supervisor or law enforcement. *Id.* at 132. The case manager believed that Parents’ behavior and demeanor during their meetings supported the conclusion that Parents continue to use illegal substances. *Id.* Parents refused to engage in services and during the child and family team meetings were only able to focus on the fact that the children have been removed from their care. Parents have accused DCS of kidnapping their children and have threatened to sue DCS. *Id.* at 133.

[9] On January 30, the trial court adjudicated the children as CHINS because of Parents’ substance abuse issues and refusal to submit to drug screens. In the March 10, 2023, dispositional order, the court ordered Parents to remain in communication with the family case manager, allow the case manager or other service providers to make visits to their home, maintain safe and suitable housing, refrain from the use or possession of illegal substances, complete

parenting and substance abuse assessments, complete psychological evaluations, and submit to random drug screens.

[10] Parents now appeal the CHINS adjudication.

Discussion and Decision

[11] A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). [Indiana Code section 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 . . . to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:

(A) when the parent ... is financially able to do so; or

(B) due to the failure, refusal, or inability of the parent ... 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.

[12] When we review a CHINS adjudication, we neither reweigh the evidence nor judge the credibility of the witnesses, and we will consider only the evidence

and reasonable inferences that support the trial court’s decision. *K.D.*, 962 N.E.2d at 1253. Importantly, in family law matters, we generally grant latitude and deference to trial courts in recognition of the trial court’s unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied*.

[13] It is well established that the purpose of a CHINS adjudication is to protect the children, not punish the parents. *K.D.*, 962 N.E.2d at 1255. Therefore, the focus of a CHINS proceeding is on “the best interests of the child, rather than guilt or innocence as in a criminal proceeding.” *N.E.*, 919 N.E.2d at 105. For this reason, the acts or omissions of one parent can cause a condition that creates the need for court intervention. *Id.*

[14] Finally, courts should consider the family’s condition not just when the case was filed, but also when it is heard to avoid punishing parents for past mistakes when they have already corrected them. See *Gr.J. v. Ind. Dep’t of Child Servs. (In re D.J.)*, 68 N.E.3d 574, 580-81 (Ind. 2017). This “guards against unwarranted State interference in family life, reserving that intrusion for families ‘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 1283, 1287 (Ind. 2014) (quoting *Lake Cnty. Div. of Family & Child. Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[15] In their brief, Parents argue that the trial court adjudicated the children as CHINS based on their previous substance abuse and that the court used the

CHINS proceeding to punish them for their past mistakes. And Parents assert that the trial court's order lacks findings addressing their current ability to care for their children.

[16] Our review of the record convinces us that the trial court reasonably believed that Parents were continuing to use illegal substances. N.R. tested positive for methamphetamine, amphetamine, and cannabinoids at birth. Despite that clear evidence, Mother claimed throughout these proceedings that she did not use any of these substances while she was pregnant with N.R. DCS presented evidence that hospital personnel expressed concern to Parents that N.R. was experiencing substance abuse withdrawal and might need treatment to address withdrawal symptoms. But Parents "declined to allow [N.R.] to be tested and treated for substance withdraws stating again that it was their right to refuse their child to be tested and treated." Appellants' App. p. 175.

[17] DCS and hospital personnel suspected that both Parents were under the influence of illegal substances due in part to their erratic behavior. Parents also refused to submit to drug screens and would not cooperate with DCS service providers.¹ In the dispositional order, the court found that DCS has offered Parents services, and they "have received numerous services in their previous

¹ At the dispositional hearing, the court indicated that it would return the children to Parents' care if they "took some drug screens" and showed the court that they "were clean." Tr. p. 186. And in its findings of fact, the court indicated that if Parents were "willing to submit and produce clean drug screens over a reasonable period of time, the Court may be inclined to terminate this case somewhat promptly." Appellant's App. p. 150.

DCS cases to remedy substance use, but have not been able to do so. [Parents] decline to provide drug screens or participate in offered services advising it is their right not to engage.” *Id.*

[18] Parents also refused to allow DCS service providers into their home. DCS was concerned about the safety and suitability of Parents’ home because the front porch was structurally unsound and R.R. was dirty when she was removed from the home. Parents also had never taken one-year-old R.R. to a doctor or pediatrician and R.R. exhibited developmental delays related to eating solid food. Tr. pp. 133-34.

[19] DCS proved, by a preponderance of the evidence, that Parents’ continued drug use and refusal to participate in substance abuse treatment has seriously impaired and/or endangered their children’s physical or mental condition. And DCS proved that the coercive intervention of the court was necessary because Parents refused to cooperate with DCS, refused to participate in services, and refused to allow DCS into their home. *Cf. D.J., 68 N.E.3d at 580-81* (concluding that the findings did not support the trial court’s conclusion that the Parents were unlikely to attend to the children’s care without the court’s coercive intervention where the Parents had cooperated with DCS, participated in services, and remedied the conditions that led to the children’s removal).

[20] For all of these reasons, we conclude that the trial court’s order adjudicating the children as CHINS is supported by sufficient evidence.

[21] Affirmed.

Vaidik, J., and Pyle, J., concur.