

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

In the Matter of L.J. (Minor Child), Child in Need of Services

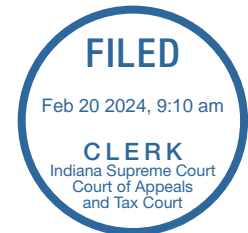
A.J. (Mother),

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner



February 20, 2024

Court of Appeals Case No.
23A-JC-1565

Appeal from the Vanderburgh Superior Court

The Honorable Brett J. Niemeier, Judge
The Honorable Renee A. Ferguson, Magistrate
The Honorable Beverly Corn, Referee

Trial Court Cause No.
82D04-2212-JC-2046

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

- [1] A.J. (Mother) appeals the trial court’s determination that her nine-year-old son L.J. (Child) is a child in need of services (CHINS). In making this determination, the trial court found that Mother both physically abused Child and neglected Child by failing to supervise him for prolonged periods of time. Mother argues that the abuse finding is based solely on inadmissible hearsay and that the inadequate supervision finding is not supported by the record. We conclude the alleged error in the abuse finding is harmless because sufficient, independent evidence supports the inadequate supervision finding. As Mother’s failure to supervise Child in turn supports the CHINS determination, we affirm.

Facts

- [2] Mother’s history with the Indiana Department of Child Services (DCS) dates back nearly 20 years and includes, among other things, four prior CHINS cases. The first two cases, initiated in 2005 and 2010, predated Child’s birth and only involved Child’s older sister (Sibling). The third CHINS case involved Sibling and Child. It began in 2015, after Mother’s third child, a newborn, died while in Mother’s care. Mother was intoxicated at the time, registering a blood alcohol concentration of 0.14%. All three of these CHINS cases closed successfully.

- [3] Mother's fourth CHINS case arose in 2018, after Mother struck Sibling and bit Sibling's ear in the presence of Child. As a result of the altercation, DCS removed Sibling and Child from Mother's care and filed petitions alleging the children were CHINS. Sibling went to live with "someone else" and never returned to Mother's care. Tr. Vol. II, p. 111. The CHINS case as to Child successfully closed in 2021.
- [4] Mother was next involved with DCS in September 2022, when DCS Family Case Manager (FCM) Sara Wood assessed a report of excessive alcohol consumption by Mother and related neglect of Child. FCM Wood interviewed Child, who confirmed that Mother had a drinking problem. However, Child also explained that he stayed with his maternal grandmother (Grandmother) most of the time. According to Child, most of his belongings were at Grandmother's home, and he felt safe and cared for there. FCM Wood attempted to contact Mother during the assessment, but Mother refused to cooperate. After ensuring that Child was safely in Grandmother's care, FCM Wood closed the assessment.
- [5] The current CHINS case—Mother's fifth—began in December 2022. Child was at Grandmother's home when FCM Wood received a report that Mother had been abusing and neglecting Child. At the same time, Mother called police alleging that Grandmother refused to return Child to Mother's care. As a result, FCM Wood interviewed Child at Grandmother's home in the presence of two police officers. The officers' body cameras recorded the interview.

- [6] During his interview with FCM Wood, Child reported that Mother whipped him with a “Hot Wheels track” toy the previous Thursday, whipped him another time with a phone charging cord, and choked him twice in the last few months. Tr. Vol. II, pp. 77-78. Child also reported that Mother left him home alone while she worked 12-hour, overnight shifts the previous Saturday and Sunday. Though there was food in the house, Child stated he did not know how to prepare it. Child added that he almost always goes to bed hungry at Mother’s home and is afraid Mother will whip him if asks for anything.
- [7] Ultimately, DCS took emergency custody of Child, placed him in relative care, and filed a petition alleging he was a CHINS due to Mother’s physical abuse and failure to supervise Child. After a detention hearing, the trial court determined there was probable cause to continue Child’s out-of-home placement.
- [8] Child soon underwent a forensic interview, during which he again described being physically abused by Mother. According to Child, Mother smacked, punched, and choked him on various occasions and once hit him in the testicles with a purse full of coins. Child also described Mother as drinking excessive amounts of alcohol and being abusive when she drinks.
- [9] Child later underwent a psychological evaluation, during which he reported that Mother had been “whoop[ing]” him “with various weapons” since he was five or six years old. Exhs. Vol. I, p. 8. According to Child, the “most painful” weapon used to punish him was “a purse filled with loose quarters.” *Id.* Child

also reported being left home alone for long periods of time without access to food he could prepare on his own.

[10] Child's psychological evaluation was conducted by Amber Perkins, Psy.D., a post-doctoral clinician employed through Groupworks Psychological Association. After the evaluation, Dr. Perkins prepared and signed a hearsay evaluation report in which she concluded: "It is the opinion of this examiner that [Child] will likely suffer substantial emotional or mental harm as result of testifying in court." *Id.* at 9. The report was also signed by Dr. Perkins's supervisor, Tony Sheppard, Psy.D., a licensed psychologist.

[11] Before the fact-finding hearing, DCS notified Mother that it intended to offer into evidence the statements Child made during the forensic interview and hearsay evaluation. DCS contended the statements were admissible under Indiana's Child Hearsay Statute, which requires, in pertinent part, that a "psychologist has certified that the child's participation in the proceeding creates a substantial likelihood of emotional or mental harm to the child." Ind. Code § 31-34-13-3(2)(C)(i).

[12] To satisfy the statute's certification requirement, DCS pointed to Dr. Sheppard's signature on Dr. Perkins's hearsay evaluation report. Mother, however, argued that Dr. Sheppard's signature alone was not sufficient, emphasizing that he neither conducted Child's psychological evaluation nor prepared the report thereon. After a hearing on the matter, the trial court concluded Dr. Sheppard's signature on the report was sufficient and that the

statements Child made during his forensic interview and psychological evaluation were admissible.

[13] At the fact-finding hearing, over Mother's objection, the trial court admitted into evidence the statements Child made during the forensic interview and psychological evaluation. The court also admitted, pursuant to the parties' stipulation, the police officers' bodycam footage of Child's statements to FCM Wood. Testifying in her own defense, Mother accused Grandmother of coaching Child's statements and denied the allegations of abuse and neglect.

[14] The trial court found Child's statements credible and Mother's denials not credible. The court therefore concluded, among other things, that Child's physical or mental health is seriously endangered by Mother's inability to provide the child with "necessary supervision" and "shelter free from violence." App. Vol. II, p. 134. Ultimately, the court adjudged Child a CHINS and, after a dispositional hearing, ordered Child to remain in his relative care placement while Mother participated in services. Mother appeals.

Discussion and Decision

I. Admissibility of Child Hearsay

[15] Mother first argues that the trial court erred by admitting into evidence Child's statements during the forensic interview and psychological evaluation. We conclude any error in the admission of this evidence was harmless.

[16] “The admission of evidence is a matter entrusted to the trial court’s sound discretion,” and “[w]e will reverse an evidentiary ruling only on a showing of an abuse of discretion. *In re A.M.*, 121 N.E.3d 556, 559 (Ind. Ct. App. 2019). But errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. *In re Des.B.*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014). To determine whether the admission of evidence affected a party’s substantial rights, we assess the probable impact of the evidence upon the finder of fact. *Id.*

[17] Here, the trial court determined Child is a CHINS for two reasons: Mother’s inability to provide Child with (1) “necessary supervision”; and (2) “shelter free of violence.” App. Vol. II, p. 134. Child’s statements during the forensic interview and psychological evaluation almost exclusively evidenced Mother’s acts of violence toward Child. And as explained below, DCS presented sufficient, independent evidence to prove Child lacked necessary supervision. Thus, assuming the trial court erroneously admitted the statements Child made during the forensic interview and psychological evaluation, the evidence did not impact the court’s ultimate CHINS determination. The alleged error therefore did not affect Mother’s substantial rights.

II. Sufficiency of the Evidence

[18] Mother next argues that DCS presented insufficient evidence to support the trial court’s CHINS determination. In a CHINS proceeding, “the State must 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). Here, DCS

alleged Child was a CHINS under Indiana Code § 31-34-1-1, which our Supreme Court has interpreted to require “three basic elements: that the parent’s actions or inactions have seriously endangered the child, that the child’s needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014).

[19] When reviewing the sufficiency of the evidence to support a CHINS determination, “[w]e neither reweigh the evidence nor judge the credibility of the witnesses.” *In re K.D.*, 962 N.E.2d at 1253. “We consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom.” *Id.* And “[w]e reverse only upon a showing that the decision of the trial court was clearly erroneous.” *Id.*

[20] The trial court determined Child is a CHINS, in part, because of Mother’s inability to provide Child with necessary supervision. This conclusion is supported by the police bodycam footage, admitted pursuant to the parties’ stipulation, on which Child told FCM Wood that Mother left him home alone for prolonged periods of time without food he can prepare. Mother’s only argument to the contrary is that “FCM Wood . . . did not speak with anyone else such as a neighbor to confirm whether the Child was left alone.” Appellant’s Brief, p. 30. We decline this request to reweigh the evidence. *See In re K.D.*, 962 N.E.2d at 1253.

III. Probable Cause for Removal

- [21] As for Mother’s argument that DCS lacked probable cause to remove Child from her care without a court order, the issue is moot.
- [22] The Indiana Code authorizes a DCS caseworker to temporarily take a child into custody without a court order when there is “probable cause to believe the child is a [CHINS]” and, among other things, “it appears that the child’s physical or mental condition will be seriously impaired or seriously endangered if the child is not immediately taken into custody.” Ind. Code § 31-34-2-3(1). Child, however, is no longer in DCS custody pursuant to this emergency-based statutory authority.
- [23] After being temporarily removed by DCS under Indiana Code § 31-34-2-3, the trial court timely held a detention hearing and ordered Child’s continued removal under Indiana Code § 31-34-5-3. Moreover, after being adjudged a CHINS, the court again continued Child’s removal via a dispositional decree issued under Indiana Code § 31-34-20-1. Mother did not challenge the trial court’s detention order, and she does not now challenge the court’s dispositional decree.
- [24] An issue is moot when no effective relief can be rendered to the parties before the court. *Matter of A.C.*, 198 N.E.3d 1, 9 (Ind. Ct. App. 2022), *trans. denied*. Because Child’s removal from Mother’s care is no longer based on DCS’s probable cause determination, no relief is available to Mother based on any

alleged error in that determination. *See id.* (finding trial court's detention order mooted parents' challenge to court's earlier detention order).

Conclusion

[25] We affirm the trial court's CHINS determination.

Altice, C.J., and Kenworthy, J., concur.

ATTORNEY FOR APPELLANT

John R. Worman
Evansville, Indiana

ATTORNEY FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana