

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

In the Matter of
P.B., M.B., L.B., De.B., C.B., and Je.A. (Minor Children),
Children in Need of Services,

and

R.L. (Mother), D.B. (Father), and J.A. (Father),
Appellants-Respondents

v.

Indiana Department of Child Services,
Appellee-Petitioner

March 6, 2024

Court of Appeals Case No.
23A-JC-1994

Appeal from the Wabash Circuit Court

The Honorable Jack A. Tandy, Senior
Judge

Trial Court Cause No.

85C01-2305-JC-17
85C01-2305-JC-18
85C01-2305-JC-19
85C01-2305-JC-20
85C01-2305-JC-21
85C01-2305-JC-22

Memorandum Decision by Judge Kenworthy
Judges May and Vaidik concur.

Kenworthy, Judge.

Case Summary

- [1] R.L. (“Mother”) is the mother of six children, all of whom were adjudicated children in need of services (“CHINS”) in 2023. D.B. is the father of the five oldest children; J.A. is the father of the youngest child. Mother, D.B., and J.A. jointly appeal the CHINS adjudication raising one issue: Did the Indiana Department of Child Services (“DCS”) present sufficient evidence to demonstrate the children were CHINS? Determining there was sufficient evidence, we affirm.

Facts and Procedural History

- [2] Mother and D.B. had five children during their seventeen-year relationship: De.B., born in 2007; L.B., born in 2008; P.B., born in 2016; C.B., born in 2020; and M.B., born in 2021. The family lived in several places over the years: Arizona, where Mother’s oldest child from another relationship lived; southern Indiana; Indianapolis; and eventually Wabash. Mother and D.B.’s relationship

ended in late 2021, but they continued to co-parent and operate a food truck and restaurant in Indianapolis together. Mother and the children stayed in various hotels after the relationship ended.

[3] By summer 2022, D.B. had moved to Wabash to live with his girlfriend and the three school-age children (De.B., L.B., and P.B.) joined him. De.B.—a high schooler—and L.B.—a middle schooler—were enrolled in the Wabash City Schools District. P.B. attended kindergarten at a local catholic school. The plan was for D.B. to “make sure the boys are steady right now,” and for Mother to “focus more on the business” and getting “herself together where she was.” *Tr. Vol. 2* at 166. But Mother and the younger children (C.B. and M.B.) soon followed them to Wabash. J.A. resided with Mother part time in a rented duplex. When D.B. and his girlfriend broke up late in 2022, D.B. moved back to Indianapolis to be closer to the business and the school-age children went to live with Mother so they could continue attending school, leaving all five children with Mother in Wabash.

[4] Mother and J.A.’s child, Je.A., was born in March 2023. DCS began an investigation in April when Je.A.’s umbilical cord blood test returned positive for marijuana. Mother told Family Case Manager (“FCM”) Valerie Eiler it was “ridiculous” someone had reported Je.A. was a drug-exposed infant because “she has used marijuana in states where marijuana is legal.” *Id.* at 105. Mother had two positive drug screens in April, including one that was positive for methamphetamine. DCS had “a lot of issues trying to get the family to comply” during the investigation. *Id.* at 106.

[5] DCS received three additional reports in May. First, DCS received a report of educational neglect. The school-age children had multiple tardies and unexcused absences in the spring semester and their grades slipped enough they were at risk of retention. Second, DCS received a report expressing concern for De.B.'s mental health. De.B. had become withdrawn, "was having some bad thoughts," and wanted to finish the school year online. *Id.* at 92–93. And third, DCS received a report about illegal substance use in Mother's home. In investigating these reports, DCS learned the family had prior DCS involvement in Orange County for educational neglect, Mother was facing two charges of neglect of a dependent in another county, and De.B. had witnessed J.A. threaten to harm himself while wielding a large knife in the front yard of Mother's home.

[6] DCS filed petitions in mid-May alleging all six children were CHINS due to parental inability, refusal, or neglect to supply the children with necessities;¹ parental acts or omissions seriously endangering the children;² and living in the same household as a parent charged with neglect of a dependent.³ As to the school-age children, DCS specifically alleged educational neglect.⁴ And as to

¹ Ind. Code § 31-34-1-1 (2019).

² I.C. § 31-34-1-2(a) (2022).

³ I.C. § 31-34-1-2(c). This subsection defines a child as a CHINS if the child lives in the same household as an adult who has been charged with and is awaiting trial for committing, among other offenses, neglect of a dependent against another child who lives in the household.

⁴ See I.C. §§ 31-34-1-1; 20-33-2-6 (2005) (compulsory school attendance statute).

Je.A., DCS alleged he was born with a controlled substance in his body.⁵ DCS developed a safety plan with Mother and D.B. and did not immediately remove the children. Mother had arranged for De.B. to finish the spring semester online and D.B. agreed to return to Wabash for the last two weeks of the semester to be a sober caregiver in Mother's home and to ensure De.B. did his online schoolwork and L.B. and P.B. made it to school each day on time. D.B. said he stayed in Mother's home per the safety plan, but De.B. said D.B. came to Wabash sometimes to visit but did not stay in Wabash "for any prolonged period of time" that spring. *Tr. Vol. 3* at 30.

[7] At the initial hearing two weeks later, the trial court expressed surprise that DCS was asking for an in-home CHINS based on the allegations in the petitions. FCM Eiler explained that De.B. and L.B. needed to go to summer school to pass on to the next grade. Further, when DCS investigated a recent report that police were called to Mother's home because she was intoxicated and passed out while she was the sole adult caregiver, Mother "was very open" and acknowledged "she has a problem and . . . she wants help." *Tr. Vol. 2* at 21. FCM Eiler expressed DCS' position about an in-home CHINS:

So at this point, the recommendation is requesting that the kids remain in Wabash County, that they can do their summer school, and [DCS] can get Family Preservation in place to work

⁵ I.C. § 31-34-1-10 (2017).

with the family, as well as [De.B.] and [L.B.] getting into some mental health services through one of the local providers[.]

Id. at 22–23. The court approved DCS’ request for an in-home CHINS and made it clear the children were to remain in Mother’s home.⁶ DCS immediately made a referral for Mother, both fathers, and all six children for Family Preservation Services (“FPS”). FPS encompasses substance use treatment, home-based services, and individual counseling, among other things.

[8] About one month later, DCS filed a request to take custody of the children. Since the initial hearing, summer school had ended and De.B. had been absent two days out of twelve. The parents had not consistently cooperated with FPS, were not completing drug screens to establish there was a sober caregiver in the home, and did not make the children available to DCS for welfare checks. At the time of the request, DCS “had 3 different stories from 3 different people on where all the children are residing.” *Id.* at 33. In addition, Mother had a positive drug screen and had been evicted from her home, with approximately two weeks to move. D.B. was already living in Indianapolis, and Mother was moving to the Indianapolis area to live with a friend. D.B. requested his five children be placed with him. The trial court agreed, authorizing their placement with D.B. “as long as the placement is a real placement, and they’re really there, and [the] home is approved by the DCS, and [D.B.] submit[s] to

⁶ D.B. had indicated he was planning to take the children with him back to Indianapolis at the conclusion of the initial hearing.

random drug screens.” *Id.* at 64–65. Je.A. was placed with his paternal grandparents. Mother was allowed to have contact with the children if she submitted random drug screens. “If they test positive . . . her parenting time shall be supervised. If she tests negative, no.” *Id.* at 65. There were no restrictions on J.A.’s parenting time as long as his parents “know what he’s doing” with Je.A. *Id.* at 68.

[9] In early July, DCS filed a second request to take custody of the children. DCS learned the parents were not abiding by the terms the trial court had imposed on Mother’s visitation with the children. On one such occasion, Mother and J.A. were traveling to Wabash with Je.A. to move Mother’s belongings. J.A. attempted to jump from the vehicle while it was still moving, and Mother called 911. J.A. was unconscious on the side of the road when emergency personnel arrived. J.A. was transported to the hospital and Mother continued to Wabash alone with Je.A. DCS requested D.B.’s children be removed from his care but recommended Je.A. remain with his paternal grandparents. The trial court approved De.B., L.B., and P.B.’s placement with a cousin; C.B. and M.B.’s placement with an aunt; and Je.A.’s continued placement with his paternal grandparents.

[10] The trial court held a fact-finding hearing on July 25, 2023. FCM Eiler testified to the events described above. Megan Price, DCS Services Manager for the FPS provider, testified she received a referral on May 26—the day after the initial hearing. When the provider receives a referral, it assigns a Family Preservation technician who immediately tries to contact the family and begin

working with them to schedule initial assessments and make sure basic needs are being met. Alexis Cramer was the Family Preservation technician for this family and began working with them in late May. Cramer met with the family approximately five times. Appointments usually last one hour, but the longest appointment Cramer had with the family was forty minutes, and some were as short as five minutes. In the one month before Mother moved from Wabash and the referral was closed, they made a “routine safety plan just for like mental health” but created no other goals. *Tr. Vol. 2* at 151. Cramer said the progress “should have been more.” *Id.* at 152.

[11] Mother testified she moved to Wabash to be closer to her school-age children and stayed after D.B. left so they could continue in Wabash schools. Then “[s]lowly but surely” the family started to struggle because they had “no family, no friends, no community support in Wabash whatsoever.” *Id.* at 92, 94.

Mother said she often felt alone and needed help from the children’s fathers:

I think that I am guilty of neglecting myself. And in doing so, I had not much to give out. But this is why I was to the point where the fathers have stepped up. We are working better than we ever have. . . . I am starting treatment where I get a chance to focus on me, and I haven’t got to do that in 29 years.

Id. at 221. Moving from Wabash closer to Indianapolis made finding and complying with services complicated and she felt DCS “focuses on what you don’t do instead of what you do” and FCM Eiler had a “lack of compassion.” *Id.* at 221–22. Mother said when the children were placed out of her home, “I kind of felt like I was being punished at that point. Why stay sober?” *Id.* at

227. She had wine four or five days before the fact-finding hearing and although she did not know the exact date, Mother last used marijuana a few days after the children's removal because she "got pretty defiant after [DCS] took the kids" and "felt like giving up." *Id.* at 230–31. She had a medical marijuana card in Arizona because of a car accident and has "probably medicated a long time." *Id.* at 230.

[12] D.B. testified he works long hours at his business because he saves money if he does most of the work. The restaurant is open until 3 a.m. during the week and 5 a.m. on the weekends and the food truck is usually booked four days a week. But he said he "would never let [his] work come before [his] family" and would be willing to "sacrifice some of that money and hire people" if necessary. *Id.* at 172. He said he uses marijuana when he is in "legal states." *Id.* at 175. He last used "probably like a month ago" in Illinois and travels to Illinois "[p]robably like once every couple months." *Id.* Although D.B. had previously used marijuana with Mother and believed she once had a problem with alcohol, he had no current concerns about Mother's substance or alcohol use. Throughout the CHINS proceedings, D.B. refused or failed to take several drug screens. He admitted he let Mother take the lead on getting De.B. into mental health treatment and "just supported . . . what her plan of action was." *Id.* at 180. When L.B. said he was having trouble focusing, D.B. deferred to Mother, who did not want to "go that route as far as like any type of medication or anything," even though D.B. thought the failure to follow through hurt L.B.'s school performance. *Id.* at 168. And he deflected responsibility for the boys'

attendance issues by saying he was not living in Wabash during the spring semester and did not “feel like [he] was getting all of the information on what was going on at the house.” *Id.* at 169.

[13] J.A. testified the knife incident in April was not a suicide attempt; “it was just a lot going on [that] . . . kind of led to . . . a bad place . . . in that moment.” *Id.* at 201. He had recently lost his job, he was a new father, and he and Mother had argued so he “was on edge because of all of those factors.” *Id.* As for the incident in the car, J.A. had “seizure-like movements” and felt he had to get out of the car. *Id.* at 202. He had scheduled appointments to look into the reasons for that event. J.A. believed with respect to his mental health “that there is some work to do for sure.” *Id.* at 205. But he said he was “taking those steps currently[,]” having recently started therapy. *Id.* After leaving Wabash, J.A. stayed with his parents but could not continue staying there after Je.A. was placed with them. He was unemployed and had been “kind of mov[ing] around wherever need be . . . searching for a place.” *Id.* at 206.

[14] Finally, De.B.—sixteen-years-old at the time—testified. He said the family lived in hotels from late 2021 to spring 2022 and although he was supposed to be attending school online, “we weren’t doing it.” *Tr. Vol. 3* at 4. They changed hotels frequently and all the children were often in one room because Mother was working in an adjoining room giving “[t]opless massages . . . whenever she would get a call.” *Id.* at 4–5. When he first moved to Wabash, his grades were good but “things really fell off” in the second semester after he moved in with Mother and J.A. because “just a lot [was] going on.” *Tr. Vol. 2*

at 250. He felt safe with Mother and J.A. but “didn’t enjoy it.” *Tr. Vol. 3* at 19. Mother and J.A. fought every day “[v]ery, very loud” and “we have like 8 siblings there. So it’s just a lot all the time.” *Id.* at 2–3. Plus, he “was feeling depressed and . . . had suicidal thoughts” so he just “didn’t go” to school even though Mother told him he had to go, or she would get in trouble. *Id.* at 8.

[15] De.B. explained, “[M]y mom is an alcoholic, so I mean she drinks, she passes out.” *Id.* at 11. He said she drinks every day, starting in about 2016 with wine, then vodka. “[W]hen we first moved to Wabash, . . . she did stop drinking. . . . But it was February, March, she picked up drinking again, and it’s just been like that since then.” *Id.* at 12. De.B. described the incident when police were called to the house shortly before the initial hearing: he saw Mother passed out on the bed with vomit on her while Je.A. was next to her crying. He moved Je.A. to his crib and gave him a bottle. After talking with his half-sister, he called the police. When Mother woke up, “she was acting dramatically[;] [y]elling at [him] and saying [he] was the devil.” *Id.* at 11.

[16] De.B. said Mother also “has problems with marijuana” and he felt her alcohol and substance use had made it hard for her to care for him and his siblings the way she should. *Id.* at 13. De.B. had not seen J.A. drink alcohol or smoke marijuana, and he had not seen D.B. drink alcohol often but had seen him use marijuana. De.B. described Mother as “very erratic” and said, “[S]he needs help. . . . [S]he is a good person, but she’s not the greatest mother. And I think . . . just for my siblings and for me it’s just best [if she] gets . . . help before any of us are being watched by her[.]” *Id.* at 16, 26. He thought Mother should have

voluntarily gotten help before this, but “she hasn’t got help [and h]opefully, if she’s ordered to, she will.” *Id.* at 28.

[17] The trial court issued an order adjudicating the children as CHINS. The trial court determined DCS had failed to prove the children were CHINS under Indiana Code Section 31-34-1-2(c) because Mother’s criminal charges had been disposed of through pretrial diversion, and decided the educational neglect allegations on their own did not support a CHINS adjudication. “However, the evidence of the older children’s issues in school coupled with the general chaotic lifestyle they have had to endure support adjudicating them as [CHINS].” *Appellant’s App. Vol. 3* at 44. Accordingly, the trial court adjudicated the children as CHINS under Indiana Code Section 31-34-1-1, concluding:

The parents have been unable to meet the basic needs of the children and the children’s physical and mental conditions are seriously endangered. The parents have demonstrated an inability or unwillingness to address the needs of the children without the intervention of the Court.

Id. at 45.⁷ The parents now jointly appeal.⁸

⁷ Although noting Je.A. had tested positive for a controlled substance at birth, the trial court made no specific finding that Je.A. was a CHINS pursuant to Indiana Code Section 31-34-1-10. The trial court also made no specific finding as to the general allegation under Indiana Code Section 31-34-1-2 that parental acts or omissions were seriously endangering the children.

⁸ The trial court held the dispositional hearing on August 25; at its conclusion, the court instructed DCS to submit a proposed order within seven days and appointed appellate counsel for parents. Parents’ Notice of

Standard of Review

- [18] When we review a trial court’s determination that a child is in need of services, “[w]e neither reweigh the evidence nor judge the credibility of the witnesses.” *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). Instead, “[w]e consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom.” *Id.*
- [19] The trial court here entered findings of fact and conclusions thereon *sua sponte*.⁹ In such case, we review issues covered by the findings with a “two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment.” *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). We review any issues not covered by the findings under the general judgment standard, meaning we will affirm the judgment if it can be sustained on any legal theory supported by the evidence. *Id.* at 123–24. We will reverse a CHINS determination only if it is clearly erroneous. *D.J.*, 68 N.E.3d at 578. Clear error is “that which leaves us with a definite and firm conviction that a mistake has been made.” *Masters v. Masters*, 43 N.E.3d 570,

Appeal was filed on August 26. Because the dispositional order—the final order in a CHINS proceeding—had not yet been issued on that date, the Notice of Appeal was technically premature and parents forfeited their rights to appeal. *See In re D.J.*, 68 N.E.3d 574, 578–79 (Ind. 2017). This premature filing does not divest us of jurisdiction, however, and the trial court has since entered a dispositional order. Given the “important parental interest at stake,” we chose to decide this case on the merits despite the forfeiture. *Id.* at 580.

⁹ Unlike CHINS dispositional decrees, no statute expressly requires formal findings in a CHINS fact-finding order, *see* I.C. § 31-34-19-10 (2008), and none of the parties requested findings under Trial Rule 52(A).

575 (Ind. 2015) (quoting *Egley v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)).

Sufficient evidence supports the trial court's CHINS determination.

[20] Parents challenge the sufficiency of the evidence to support the trial court's determination the children are CHINS. 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. *K.D.*, 962 N.E.2d at 1253; *see* I.C. §§ 31-34-1-1 to -11 (describing circumstances under which a child is a CHINS); I.C. § 31-34-12-3 (1997) (imposing preponderance standard). Here, the trial court adjudicated the children as CHINS under Indiana Code Section 31-34-1-1, the general neglect provision. Our Supreme Court has interpreted this provision to require proof of “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). When determining whether a child is a CHINS under Section 31-34-1-1, and particularly when determining whether the coercive intervention of the court is necessary, the court “should consider the family’s condition not just when the case was filed, but also when it is heard.” *Id.* at 1290.

[21] The purpose of a CHINS inquiry is to protect children, not punish parents. *K.D.*, 962 N.E.2d at 1255. Therefore, a CHINS adjudication focuses on the child’s condition rather than the parents’ culpability. *In re N.E.*, 919 N.E.2d

102, 105 (Ind. 2010). Because the CHINS proceeding focuses on the status of the child alone, a separate analysis of each parent is not required; the acts or omissions of one parent can cause a condition that creates the need for court intervention. *Id.* at 106.

[22] The trial court determined the children are CHINS because the parents' various issues have left them unable or unwilling to meet the children's needs and those needs are unlikely to be met without the intervention of the court. Parents argue otherwise, alleging they were already taking the necessary steps to address the issues raised by DCS without the court's intervention. This argument is essentially a request to reweigh the evidence in the parents' favor, a request we must decline. *See K.D.*, 962 N.E.2d at 1253.

[23] First, we note parents do not challenge any of the trial court's findings of fact, and we therefore take them as true. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992). Accordingly, we accept as true the following unchallenged findings: (1) Mother has substance abuse issues; (2) D.B. "is well-intentioned toward his children, but appears to be too busy with work to devote sufficient time and attention to the children [and] has deferred too many decisions and responsibility to Mother who is overwhelmed"; (3) J.A. has mental health issues; and (4) parents have "in general not [been] responsive to participation" in services DCS offered such that "nothing substantive happened" since DCS became involved. *Appellant's App. Vol. 3* at 43–44.

[24] Second, evidence from the fact-finding hearing, especially De.B.’s testimony, supports the trial court’s conclusion that the children need care unlikely to be provided without the coercive intervention of the court. Mother’s substance use, D.B.’s disengagement, and J.A.’s mental health issues combined to leave the children’s needs for stability, education, and treatment unmet. Moreover, parents’ lack of cooperation or progress with services shows the coercive intervention of the court is necessary to encourage and assist the parents to meet those needs.

[25] The children were exposed to Mother’s substance and alcohol use. Je.A. was born with a controlled substance in his blood. De.B. testified Mother and D.B. had smoked marijuana in the home. The few drug screens Mother took were positive, and Mother explained she stopped taking screens—even when her visitation with the children depended on screening—because she felt like she was being punished so “[w]hy stay sober?” *Tr. Vol. 2* at 227. De.B. also testified Mother drank alcohol daily—on at least one occasion to the point of passing out when she was the sole adult in the house. D.B. deferred responsibility for the children to Mother while he focused on their business, leaving Mother feeling overwhelmed in a town where she had no family or community support. The children were also exposed to Mother and J.A.’s near-constant arguments. This “chaotic lifestyle,” as the trial court referred to it, left the children in need of consistent shelter, supervision, and support for their education and mental health.

[26] “When determining whether coercive intervention is necessary, the question is whether the parents must be coerced into providing or accepting necessary treatment for their child.” *In re N.E.*, 198 N.E.3d 384, 390 (Ind. Ct. App. 2022) (internal quotation omitted). The record is replete with instances of parents’ failure to address their own and the children’s issues. Mother and D.B. seemed unaware of the extent of the school-age children’s struggles at school or how to effectively address them. The family did not avail itself of the services and assistance available through FPS. The record also shows Mother and D.B. did not cooperate with DCS, such as by violating the safety plan and failing to make their children available to DCS for welfare checks. And the parents defied even trial court directives; after the children were removed from Mother’s care, Mother did not take drug screens as directed and both fathers allowed her to visit with the children anyway. Prior to the fact-finding hearing, Mother had identified but not yet started treatment for her substance use and alcohol problem and J.A. had only recently started therapy to address his mental health issues. This course of conduct shows the family’s condition had not markedly improved as of the fact-finding hearing and parents are unlikely to meet the children’s needs in the absence of coercive intervention by the court.

Conclusion

[27] Sufficient evidence supports the trial court’s judgment that the children are CHINS.

[28] Affirmed.

May, J., and Vaidik, J., concur.

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