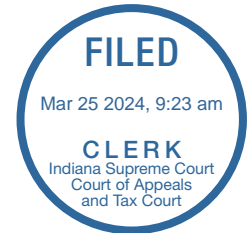


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

R.B. (Father),
Appellant-Respondent

v.

Indiana Department of Child Services,
Appellee-Petitioner

March 25, 2024

Court of Appeals Case No.
23A-JC-2314

Appeal from the Jackson Superior Court
The Honorable Bruce A. MacTavish, Judge

Trial Court Cause No.
36D02-2301-JC-1

Memorandum Decision by Judge Crone

Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

- [1] R.B. (Father) appeals the trial court’s order adjudicating his minor child I.B. (Child) to be a child in need of services (CHINS). He claims that the evidence is insufficient to support the trial court’s adjudication. We disagree and therefore affirm.

Facts and Procedural History

- [2] Child was born in November 2006. Child’s mother is deceased. On January 3, 2023, police executed a search of Father’s home in Freetown and found drugs and paraphernalia. Police contacted the Indiana Department of Child Services (DCS) to report suspected child abuse or neglect. Family case manager (FCM) Barbara Osborn responded to the report.¹ When she arrived at Father’s home, Father, Child, and Child’s stepmother were on the front porch. Police informed FCM Osborn that Father’s family was not supposed to be living there and that the home did not have functioning utilities, including electricity and plumbing.

¹ In the transcript, the FCM’s surname is spelled “Osborne.” In the DCS court filings, it is spelled “Osborn.”

Police accompanied FCM Osborn into the home and provided lighting because there was no electricity.

[3] When FCM Osborn entered the home, she “was struck by the smell of animal feces[,] human waste[,] and ... trash.” Tr. Vol. 2 at 6. She had to walk through the home in pathways between piles of trash. In the kitchen, “animal feces [were] smeared across the floor[,]” the sink was “piled full of discarded trash,” and there were mouse droppings. *Id.* at 7. There was a dog cage “with dried feces all [over] the bottom of it.” *Id.* The bathroom was filled with trash, and the toilet was inoperable. In Child’s bedroom, there was clothing and trash piled on the floor, and there were partially empty bottles of alcohol. There was also a dog in a cage, and the “bottom of the dog cage was covered in animal feces.” *Id.* The floor of the bedroom felt “sp[o]ngy.” *Id.* The other two bedrooms were also filled with piles of clothing and trash.

[4] Police found methamphetamine that they believed belonged to Father and stepmother and marijuana that they believed belonged to Child. Police arrested Father and stepmother for child neglect and possession of illegal drugs. Father was “belligerent” and refused to provide a drug screen, but he admitted that “his drug screen would not be clean.” Appellant’s App. Vol. 2 at 18.

[5] FCM Osborn determined that Child should be detained. When she asked Father for his preferred placement for Child, Father “wanted [Child] to stay with [stepmother] but both he and [stepmother] were being arrested, [and] he wanted [Child] to go” to Child’s paternal grandmother. Tr. Vol. 2 at 7. Before

going to his paternal grandmother's, Child went into the family home "to gather up his belongings." *Id.* at 9.

[6] DCS filed a verified petition alleging that Child was a CHINS. FCM Osborn unsuccessfully attempted to do a follow-up home visit with Child's paternal grandmother. FCM Osborn went to the house in person and sent several voice messages and texts, but paternal grandmother refused to respond. As a result, DCS sought and was granted a court order to remove Child from paternal grandmother's care and obtained court approval to place Child with his maternal grandparents. Police did not find Child at paternal grandmother's but found him with Father at a different residence.

[7] FCM Mitchell Hein was assigned as case manager. DCS learned that Child had not attended school since at least January 2022. Maternal grandparents enrolled Child in school. Eventually, DCS obtained court approval to enroll Child in a GED program. DCS also learned that Child had been in a car accident in March 2022 and suffered serious injuries, including a brain aneurysm. Child had received physical and cognitive therapy. However, in July 2022, Child had blood in his urine, and his doctors ordered him to obtain a CT scan. The hospital attempted to contact paternal grandmother to set up the scan for over six months without success. Child's maternal grandparents brought him up to date on his medical appointments.

[8] In July 2023, the trial court held a factfinding hearing. FCM Osborn testified regarding the conditions of the home on January 3, 2023. She testified that she

believed the family was living there because all their clothing and belongings were there. FCM Hein testified that the reasons for Child's removal from the home, namely the home conditions and Father's child neglect charge, had not been remedied. FCM Hein testified that Father had not visited with Child since the date of removal, even though visitation had been offered. FCM Hein believed that Father was no longer living at the Freetown address, but he did not know where Father was currently living.

[9] Father testified that since the March 2022 accident and before Child was placed with maternal grandparents, Child had stayed with his paternal grandmother rather than with him because "I don't have my life together to have [Child] home with me." *Id.* at 14. Father claimed that he, Child, and stepmother were at the Freetown home on January 3, 2023, only to remove personal belongings and feed the dogs. He testified that if the case was dismissed, he would prefer that Child live with his paternal grandmother. When asked about the partially empty alcohol bottles in Child's bedroom, Father testified that he would not know about any alcohol or drugs in Child's bedroom because "I don't go in his room, he don't go in my bedroom, you know, he's 16 years old[,] we have that kind of agreement, he's not a little kid." *Id.* at 16. Father admitted that he did not actively supervise Child when Child lived with him because "I can[t] stand over top of him all the time, no I can't." *Id.* Father also testified that he did not have any knowledge of Child's medical appointments. He testified that paternal grandmother had had power of attorney over Child.

[10] Paternal grandmother testified that Child had been living with her since he came home from the hospital in March 2022 and before he was placed with his maternal grandparents. According to her, Child was at the Freetown home on January 3, 2023, to help “his dad work on a car, and it got late[,] and he decided to stay but he failed to tell [her].” *Id.* at 18-19. As for Child’s medical care, paternal grandmother testified that she took him to four or five medical appointments after Child was released from the hospital. She explained, “[A]nd then after [Father] got out of jail and my [power of attorney] that I had had expired, then I left it up to [Father,] but he left it up to me, so I took [Child] to a few” appointments. *Id.* at 19. She testified that she did not have a power of attorney over Child on January 3, 2023. When asked about Child’s school enrollment, she testified that when Child came home from the hospital, she “didn’t have the time to get him in there yet.” *Id.* at 21. She further testified, “I was getting him ready to go back to school but like I said I worked till 4:30, five o’clock, so I hadn’t had the chance to get him back in there.” *Id.* at 21-22.

[11] The trial court issued an order adjudicating Child a CHINS as defined by Indiana Code Section 31-34-1-1. In support, the trial court found that Child “was living in unsanitary and unsafe conditions without working utilities and running water[,]” “has not been enrolled in school [since] January 2022 at least[,]” and “had not [been] receiving needed medical attention due to an accident [Child] had been in.” *Appealed Order* at 1.

[12] In August 2023, the court held a dispositional hearing and found that Child needed to reside in a safe and stable home free from abuse and neglect. The

court ordered Father to cooperate with DCS, maintain safe and stable housing, refrain from using illegal substances, submit to random drug screens, complete parenting and substance abuse assessments, and follow all treatment recommendations. This appeal ensued.

Discussion and Decision

[13] Father argues that there is insufficient evidence to sustain the CHINS adjudication. As we review his argument, we are mindful that appellate courts generally “grant latitude and deference to trial courts in family law matters.” *In re E.K.*, 83 N.E.3d 1256, 1260 (Ind. Ct. App. 2017), *trans. denied* (2018). “This deference recognizes a trial court’s unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony,” in contrast to an appellate court’s ability to review only a cold transcript. *Id.* In determining whether sufficient evidence supports a CHINS determination, “we do not reweigh evidence or judge witness credibility.” *In re D.J.*, 68 N.E.3d 574, 577 (Ind. 2017). Instead, “[w]e consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom.” *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012).

[14] “Because a CHINS proceeding is a civil action, 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). Pursuant to Indiana Code Section 31-34-1-1, a Child is a CHINS where sufficient evidence establishes the following elements:

(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.

(Emphasis added.) In sum, the evidence must establish 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).

[15] “[T]he purpose of a CHINS adjudication is to protect children, not punish parents.” *N.E.*, 919 N.E.2d at 106. Our supreme court has cautioned that “[n]ot every endangered child is a child in need of services, permitting the State’s *parens patriae* intrusion into the ordinarily private sphere of the family.” *S.D.*, 2 N.E.3d at 1287. “State intrusion is warranted only when parents lack the ability

to provide for their children.” *In re N.C.*, 72 N.E.3d 519, 524 (Ind. Ct. App. 2017). “Moreover, 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 juvenile court ‘should consider the family’s condition not just when the case was filed, but also when it is heard.’” *Id.* (quoting *S.D.*, 2 N.E.3d at 1290).

[16] Father does not dispute the unsafe and unsanitary conditions of the Freetown home. Rather, Father asserts that DCS failed to prove that he seriously impaired or seriously endangered Child’s physical or mental condition because there “was no evidence that the Child was currently living in the home with poor conditions and there was no evidence disputing the fact that the Child had been living with the paternal grandmother.” Appellant’s Br. at 9. The evidence shows that Father, Child, and Child’s stepmother were present at the home when FCM Osborn responded to the police report of abuse and neglect. FCM Osborn testified that due to the presence of clothes and belongings in the home, it appeared that the family was living there. Indeed, there is no dispute that the family’s dogs were being kept there. Neither Father nor Child reported to FCM Osborn that Child was then living with his paternal grandmother. When it was time for Child to go to his paternal grandmother’s, he went into the home to retrieve his belongings. Based on conflicting testimony, the court found that Child lived with Father and stepmother at the Freetown house. Father’s argument is a request for us to reweigh the evidence, which we must decline.

[17] In addition to the poor housing conditions, Father apparently delegated responsibility for Child to paternal grandmother, but her power of attorney expired before DCS became involved in the case. During the nine months that she claimed Child lived with her, she did not enroll him in school or take him for a recommended CT scan. In fact, Child had not attended school since at least January 2022, which preceded the date of the accident, indicating that Child's failure to attend school was not based solely on the injuries he received in the March 2022 accident. We conclude that sufficient evidence supports the trial court determinations that Child's physical and mental condition were seriously impaired or endangered as a result of Father's inability, refusal, or neglect to provide Child with necessary shelter, medical care, education, and supervision.

[18] Father also claims that DCS failed to prove that coercive intervention was necessary. He asserts that at the time of the factfinding hearing, "DCS had no information about Father's current address or suitability of Father's home." *Id.* at 10. At the hearing, Father testified that he preferred that Child live with his paternal grandmother. Father testified that Child was too old to be supervised. Further, Father had not visited Child since Child had been removed from his care. We conclude that sufficient evidence supports the trial court's determination that Child was not receiving needed care and treatment that were unlikely to be provided without the coercive intervention of the court. We affirm the CHINS adjudication.

[19] Affirmed.

Bailey, J., and Pyle, J., concur.

ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana