

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

and

J.S. (Mother),

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner

May 6, 2024

Court of Appeals Case No.

23A-JC-2909

Appeal from the Whitley Circuit Court

The Honorable Matthew J. Rentschler, Judge

Trial Court Cause No.

92C01-2308-JC-000050

Memorandum Decision by Judge Felix
Chief Judge Altice and Judge Bradford concur.

Felix, Judge.

Statement of the Case

[1] J.S. (“Mother”) and A.K. (“Father”) (collectively, “Parents”) are the adoptive parents of E.K. (the “Child”). Since being adopted in 2011, the Child has engaged in inappropriate and often violent behaviors, requiring law enforcement assistance on several occasions. Parents have worked with various service providers over the years to provide the Child with effective treatment and care. In July 2023, when the Child was set to be discharged from a behavioral center after attacking Father, Parents could not find a safe place for the Child, so they requested DCS’s help to find a suitable placement. DCS found a foster family for the Child and filed a petition alleging the Child was a child in need of services (“CHINS”). In August 2023, the juvenile court dismissed the petition at DCS’s request, and the next day, DCS told Parents that one of them needed to pick up the Child from foster care by 4:30 p.m. that day. When neither Mother nor Father picked up the Child by 4:30 p.m., DCS filed a second CHINS petition. After an evidentiary hearing, the juvenile court adjudicated the Child a CHINS as to Mother.¹ Mother now appeals and raises two issues for our review:

1. Whether the juvenile court abused its discretion by denying Mother’s motion to conform DCS’s second CHINS petition to the evidence; and

¹ Father does not join in this appeal.

2. Whether the juvenile court clearly erred by adjudicating the Child a CHINS under Indiana Code section 31-34-1-1.

[2] We affirm.

Facts and Procedural History

- [3] In 2011, after fostering the Child for approximately six months, Parents adopted him; he was two-and-one-half years old at the time. At birth, the Child had been diagnosed with fetal alcohol syndrome. As he grew, the Child struggled with impulse control and anger management. For instance, when the Child was four years old, he threw a block at one of his sibling's head, hitting his sibling above the eye; the sibling's injury required stitches. The Child's violent behavior escalated, including at least one instance when he tried to break a window on the second story of Parents' home when he was nine years old. As a result, Parents had him admitted to Parkview Behavioral Health. Afterward, Parents enrolled the Child in outpatient therapies and his violent behaviors began to level off and "become manageable." Tr. Vol. II at 13.
- [4] The Child was diagnosed with autism when he was nine years old, so Parents removed him from the public school system and enrolled him in the Indiana Applied Behavioral Analysis Institute (the "ABA Institute"). The Child graduated from the ABA Instituted after five years. After his graduation, the ABA Institute was to provide services to the Child in Fort Wayne Community Schools, but the school corporation would not allow the ABA Institute to do so, so it ceased providing services for him.

[5] In October 2020, when the Child was 12 years old, Parents divorced, and the dissolution court awarded Mother primary physical custody of the Child and his four siblings. Soon thereafter, the Child’s violent behavior became less manageable because he “figured out he could hurt [Mother] . . . to get what he wanted.” Tr. Vol. II at 13–14. In total, between July 2021 and June 2023, the Child’s violent behavior resulted in at least 14 calls to law enforcement. For example, in July 2021, law enforcement was called after the Child, among other things, punched and kicked Mother’s stomach while she was six months pregnant, which eventually caused premature active labor. In August 2021, the Child ran away from home because he did not want to go to bed. In February 2022, law enforcement was called after the Child used a closet rod to pound on the inside of his bedroom door; responding officers would not go in the Child’s room because they considered the closet rod a weapon. In March 2022, law enforcement was called after the Child threw a chair across a room at Mother. In April 2022, law enforcement was called after the Child kicked a hole in a wall; the Child threw a piece of drywall at a responding officer. In May 2022, law enforcement was called after the Child threw a 15-pound tub of cat food at Mother and beat Mother with a baby gate, injuring Mother. In October 2022, law enforcement was called on several different occasions after the Child became violent with Mother.

[6] In November 2022, Mother contacted DCS for help with the Child. DCS recommended wrap-around services and post-adoption care services. Mother subsequently engaged SAFY to provide post-adoption services for the Child

and sought wrap-around services for the Child through Crossroad Family and Child Services. Through SAFY, Mother also had contact with the Indiana Division of Disability and Rehabilitative Services. One of the service providers obtained Child Mental Health Initiative (“CMHI”) funding for the Child and investigated potential residential treatment facilities for him, but “most of the time he was turned down because he was too violent.” Tr. Vol. II at 40; *see also* Appellant’s App. Vol. II at 10.

- [7] In addition to the DCS recommended services, Mother also had the Child participating in therapy with a psychiatrist at the Center for Neurobehavior Services for at least five years. For approximately three to four years, Easterseals Arc provided respite care for the Child while Mother was at work.
- [8] On December 16, 2022, Parents moved the Child from Mother’s house to Father’s house, and the divorce court awarded primary physical custody to Father. Because Father’s home was located in a different county than Mother’s, all of the Child’s services ceased when he moved, and he lost his CMHI funding approval.
- [9] After the move and change in custody, Mother had parenting time with the Child on weekends. During one of these weekend visits in March 2023, Mother told the Child that she was going to take him to Father’s house because the Child refused to go to bed, so the Child “began attacking anything around him,” went outside, and ripped a light fixture off the garage, slicing his finger while doing so. Tr. Vol. II at 36–37. Law enforcement was called and calmed

the Child enough for him to get in Mother’s vehicle, but Mother had to stop at least three times on the way to Father’s house because the Child “was trying to bust the window out, he was spitting everywhere, he was trying to tear the lights out of the top of my van.” *Id.*

[10] Typically, while the Child was with Mother, his siblings—who at the time ranged in age from approximately 2 years old to 16 years old—would be with Father to reduce safety risks to them. Many of the Child’s violent outbursts at Mother’s home were precipitated by frustrations with his siblings, such as when the Child’s siblings did not want to play a game by the Child’s rules or when his youngest sibling would cry. The Child also engaged in inappropriate sexual behavior around his siblings, and Mother’s attempts to redirect or have him stop such behavior also resulted in the Child becoming violent. At least one of the Child’s younger siblings is scared of him, and his oldest sibling does not want him in the house.

[11] On June 17, 2023, law enforcement was called after the Child hit, scratched, and attempted to headbutt Father. The next day, the Child ran away from home after Father tried to punish the Child for being disrespectful. Law enforcement was called, and they, along with Father, took the Child to a local emergency room, from which the Child was then transported to Harsha Behavioral Center (“Harsha”). The Child had previous admissions to Harsha due to his violent behavior.

[12] Harsha was set to discharge the Child on June 29, 2023, and recommended outpatient treatment thereafter. However, Parents could not secure a safe place for the Child, so they asked DCS to help them find such a place. Thereafter, on July 3, 2023, DCS took custody of the Child and filed a petition alleging that the Child is a CHINS pursuant to Indiana Code section 31-34-1-1 (the “First Petition”). The Child remained at Harsha until DCS identified a foster placement for him. On July 18, 2023, the Child was discharged from Harsha and was placed with a foster family.

[13] On August 14, 2023, two months after Child was placed at Harsha, DCS and Parents had a settlement conference concerning the First Petition, and Mother requested that the Child be adjudicated a CHINS under Indiana Code sections 31-34-1-6 or -10. After that conference, DCS decided to request a dismissal of the First Petition because

the only reason that we felt that we were involved was to provide placement. [S]ervices that were in place . . . had been in place[] prior to our involvement and were available if our involvement ended. [The Child] had successfully been discharged from Harsha. Had maintained placement. And even though he had maintained the (inaudible) programming and even though he only had two days at North Side at that point, he had maintained school.

Tr. Vol. II at 65.

[14] On August 15, 2023, the juvenile court dismissed the First Petition at DCS’s request and over Parents’ objection. The next day, DCS contacted Mother and

Father to let them know the First Petition “had been dismissed and that they needed to make arrangements to pick [the Child] up from placement by 4:30 that afternoon.” Tr. Vol. II at 65. When DCS did not hear back from Parents by 2:30 p.m., DCS sent a reminder message and informed Parents that if they did not pick up the Child, “a new report would likely . . . need to be made.” *Id.* at 66. Mother responded to this message, telling DCS that she had surgery in July from which she was still recovering and that Father was the Child’s primary custodial parent. Neither Father nor Mother picked up the Child from foster placement. Consequently, DCS detained the Child again for lack of placement, and he remained with his foster family.

[15] On August 18, 2023, DCS filed another petition alleging that the Child is a CHINS pursuant to Indiana Code section 31-34-1-1 (the “Second Petition”). On September 11, 2023, Father admitted to the allegations in the Second Petition, and the juvenile court adjudicated the Child a CHINS as to Father under Indiana Code section 31-34-1-1.

[16] On October 30, 2023, more than four months since the Child resided with either Mother or Father, the juvenile court held an evidentiary hearing on the Second Petition as to Mother. Father admitted Child was a CHINS(1). One of the Child’s foster parents testified that when the Child first came to the foster home, he acted out “a lot”: “he would get angry and throw things and yell and clean off my counters.” Tr. Vol. II at 51. After about one month in the foster home, the Child began having less violent outbursts. The DCS permanency worker who was part of both petitions testified in relevant part that the only

services DCS has suggested for Mother since filing the Second Petition were (1) family counseling with Mother, her husband, and the Child’s siblings; and (2) family therapy with Mother, Father, and the Child. None of the services that DCS has recommended during this process are new to the family, and Mother and the Child have previously taken advantage of similar services.

Additionally, DCS chose to allow Parents to have only supervised visits with the Child because

there were concerns on both sides, on [Mother]’s side for her safety and safety of her children and then from our side is to how that interaction between [P]arents and [the C]hild would, would it be appropriate. . . . So we wanted a third party there to kind of monitor it, to assist if there was any situation that . . . needed to, you know, that came up.

Tr. Vol. II at 71–72.

[17] Mother also testified that she believes the Child “most definitely needs services,” that services are necessary in part to protect the Child’s siblings and herself from the Child, that she has done everything she can to provide services to the Child, and that she has “come up against a brick wall.” Tr. Vol. II at 42.

In addition, Mother testified:

The thought of [the Child] coming back into the home terrifies me. His disability does not allow things to get better. [T]he damage is done. All we can do is manage what we have and I have tried so hard to get the help to be able to manage what we have because I don’t want him to be gone. But I also don’t know how I can keep him safe, and I don’t know how I can keep the rest of the family safe from him. And for him to come home, I

would have to know that everybody could be safe and that I wouldn't be beat up and that I can turn my back away from my kids and know that he's not going to hurt them. And I don't know what that looks like.

Id. at 47.

But what do I do, I cannot press charges against him because the judicial system doesn't think that he could understand. I cannot get a referral from the Department of Education because . . . Fort Wayne Community Schools does not do that. The only way to get him in front of a judge to plead my case to get help that I am not able to get because a lot of these placements only take court order. I can't court order. The only other way to get him somewhere where someone can see him is [to do] the unthinkable and not pick up my son so that you will help. Because when I request help, you deny it and you can tell me that it's my responsibility, but I need help and I don't know how else to get it because I need everyone to be safe. Him included. He's not safe for himself.

Id. at 48.

[18] During closing argument, Mother made a motion pursuant to Indiana Trial Rule 15(B) to have the Second Petition be conformed to the evidence, namely, the evidence supporting a CHINS determination under Indiana Code section 31-34-1-6 (“CHINS(6)”) and section 31-34-1-10 (“CHINS(10)”). The juvenile court ultimately adjudicated the Child a CHINS under Indiana Code section 31-34-1-1 (“CHINS(1)”) and denied Mother's Trial Rule 15(B) motion. This appeal ensued.

Discussion and Decision

1. The Juvenile Court Did Not Abuse its Discretion by Denying Mother's Trial Rule 15(B) Motion

[19] Mother first contends that the juvenile court abused its discretion when it denied her Trial Rule 15(B) motion to conform DCS's petition to the evidence adduced at the hearing. Trial Rule 15(B), which applies to CHINS proceedings, *In re A.T.*, 219 N.E.3d 90, 98 (Ind. Ct. App. 2023) (citing *Maybaum v. Putnam Cnty. Off. of Fam. & Child.*, 723 N.E.2d 951, 954 (Ind. Ct. App. 2000)), *trans. not sought*, provides in relevant part as follows:

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure so to amend does not affect the result of the trial of these issues.

Ind. R. Trial P. 15(B).

[20] “[W]hile a CHINS petition ‘is an integral part of ensuring that the parents have notice of the allegations and an opportunity to contradict [DCS’s] evidence,’ the purpose of Trial Rule 15(B) ‘is to promote relief for a party based upon the evidence actually introduced at trial, notwithstanding the allegations set forth in the pleadings.’” *A.T.*, 219 N.E.3d at 99 (second alteration in original) (quoting *Maybaum*, 723 N.E.2d at 954). “We generally review a trial court’s decision to grant or deny an amendment to pleadings for an abuse of discretion.” *Id.*

(citing *Miller v. Patel*, 174 N.E.3d 1061, 1064 (Ind. 2021)). “An abuse of discretion occurs if the trial court’s decision was against the logic and effect of the facts and circumstances before the court.” *Wisner v. Laney*, 984 N.E.2d 1201, 1205 (Ind. 2012) (citing *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993)).

[21] Mother specifically argues that the juvenile court abused its discretion by not ordering the Second Petition to conform to evidence presented at the hearing concerning Indiana Code sections 31-34-1-6 and -10. Indiana Code section 31-34-1-6 provides that a child is a CHINS if

- (1) the child substantially endangers the child’s own health or the health of another individual; 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.

Indiana Code section 31-34-1-10 provides that a child is a CHINS if

- (1) the child is born with:
 - (A) fetal alcohol syndrome; . . . and
- (2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; or

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

[22] The juvenile court found that the facts presented at the evidentiary hearing satisfied both CHINS(6) and CHINS(10). However, the juvenile court denied Mother’s Trial Rule 15(B) motion and declined to adjudicate the Child a CHINS under either of these sections because it determined DCS had proven that the Child was a CHINS under Indiana Code section 31-34-1-1.

[23] Here, Mother requested the juvenile court adjudicate the Child a CHINS pursuant to CHINS(6), CHINS(10), or both because of the negative consequences to her based upon the CHINS(1) finding. Mother testified that she lost her employment as a special needs assistant when her employer learned that DCS substantiated a CHINS(1) allegation against her. At the hearing, DCS argued findings under CHINS(6) and CHINS(10) would or could negatively impact the child: “[I]t puts that child on that child protection index. Which then limits any future employment ability.” Tr. Vol. II at 78–79. DCS’s argument about the future consequences to the Child explains the court’s additional reasoning for declining to conform the pleadings to the evidence. The juvenile court “doubt[ed] that [Mother] desires the Court to *also* find that he is a CHINS(6) and/or (10) considering the potential negative impacts to [the Child].” Appellant’s App. Vol. II at 14 (emphasis in original).

[24] The plain language of Trial Rule 15(B) requires only that a court treat issues tried by the parties' consent despite their absence from the pleadings as if those issues had been raised in the pleadings; a motion is not necessary for the court to do so. Because the juvenile court here considered all three grounds for adjudicating the Child a CHINS, we cannot say it abused its discretion by denying Mother's motion.

2. The Juvenile Court Did Not Clearly Err by Adjudicating the Child a CHINS under Indiana Code section 31-34-1-1

[25] Mother next challenges the sufficiency of the evidence to sustain the juvenile court's conclusion that the Child is a CHINS under Indiana Code section 31-34-1-1. Indiana Code section 31-34-1-1 provides that in order to adjudicate a child a CHINS thereunder, DCS must prove by a preponderance of the evidence that

(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).

[26] As our Supreme Court has explained,

[j]uvenile court judges are often faced with the challenge of balancing multiple factors and multiple voices in a CHINS case. Judges must uphold the due process rights of parents, apply the proper law, and take into account recommendations and input from the court appointed special advocate (CASA), DCS, parents, step-parents, guardians, grandparents, the child, and often several attorneys. By their very nature, these cases do not fit neatly defined guidelines.

In re K.D., 962 N.E.2d 1249, 1255 (Ind. 2012). We will reverse a CHINS determination only if the juvenile court’s decision was clearly erroneous. *In re R.L.*, 144 N.E.3d 686, 689 (Ind. 2020) (citing *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017)). “A decision is clearly erroneous if the record facts do not support the findings or if [the juvenile court] applies the wrong legal standard to properly found facts.” *Id.* (quoting *D.J.*, 68 N.E.3d at 578). “[W]e neither reweigh the evidence nor judge witness credibility.” *Id.* (citing *D.J.*, 68 N.E.3d at 577–78). When, as here, a trial court enters findings and conclusions sua sponte, we review any issue not covered by the findings “under the general judgment standard,” which means we will affirm “on any legal theory supported by the evidence.” *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016)

(citing *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014)). Furthermore, we accept as true any findings that Mother does not challenge on appeal. See *R.M. v. Ind. Dep't of Child Servs.*, 203 N.E.3d 559, 564 (Ind. Ct. App. 2023) (citing *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992)), *trans. not sought*.

[27] Mother challenges the following:

34. This Court does find that all of the elements of a CHINS(1) are satisfied. Both of [the Child]'s parents clearly *refused to provide the child with necessary shelter*. They made the judgment [the Child] posed more of a danger and/or problem for them than the consequences of foregoing their parental obligation. With the knowledge that DCS would be obligated to provide for [the Child], his parents made the difficult choice to abandon him to DCS.

Appellant's App. Vol. II at 13 (emphasis in original).

[28] As we recently explained in *In re A.T.*, "abandonment" for purposes of Indiana Code section 31-34-1-1 "exists when there is such conduct on the part of a parent which evidences a settled purpose to forego all parental duties and relinquish all parental claims to the child."² 219 N.E.3d at 105 (quoting *In re Adoption of M.L.L.*, 810 N.E.2d 1088, 1092 (Ind. Ct. App. 2004)). For instance, in *A.T.*, the child, A.T., had been diagnosed with multiple mental health disorders and demonstrated problematic and violent behavior during the six years after her adoption. 219 N.E.3d at 94–95. A.T.'s parents repeatedly

² We decline DCS's invitation to reconsider this particular holding from *A.T.*

sought services for her, including emergency psychiatric stays, a residential treatment program, and DCS wrap-around services. *Id.* While still participating in the latter, A.T.’s parents brought her to a local DCS office and explained they wanted her to go to a facility; A.T. stated she did not feel safe at her parents’ house. *Id.* at 95. A.T.’s parents met with A.T.’s family-care team and agreed to a safety plan; however, before they could execute that plan, a DCS supervisor who was not part of A.T.’s family-care team advised her parents that they either had to take A.T. home with them or DCS “would charge them with abandonment.” *Id.* DCS then removed A.T. from the home and filed a petition two days later, alleging A.T. was a CHINS pursuant to Indiana Code section 31-34-1-1. *Id.*

[29] The juvenile court in *A.T.* determined in part that A.T. was a CHINS under Indiana Code sections 31-34-1-1. 219 N.E.3d at 96. In support of that adjudication, the juvenile court found that A.T.’s parents abandoned her. *Id.* at 105. On appeal we reversed that part of the juvenile court’s decision, concluding its abandonment finding was not supported by the record because the record “clearly demonstrate[d], and even the juvenile court’s factual findings recognize[d],” that A.T.’s parents sought DCS’s help to acquire “what they believed, *and what DCS ultimately determined*, was appropriate care for A.T.”; the parents “demonstrated a pattern of providing for A.T.’s needs, including seeking outside assistance when necessary”; and the parents “actively participated in therapy in a manner consistent with the recommendations of A.T.’s therapist.” *Id.* at 106 (**emphasis added**); *see also id.* at 105.

[30] The facts of this case are distinguishable from those in *A. T.* Most importantly, the parents in *A. T.* never actually refused to take A.T. home but instead formulated a plan with a team of DCS workers to get A.T. the help she needed. 219 N.E.3d at 95, 105–06. It was only after the DCS supervisor overrode that plan and removed A.T. from her parents’ home that DCS filed a CHINS petition. *Id.* at 95. Here, Mother refused to take the Child home with her twice: (1) after the Child completed his stay at Harsha, and (2) after the First Petition was dismissed. The record is also devoid of any evidence that Mother ever tried to provide shelter for the Child and instead relied on DCS to do that. As the juvenile court recognized, it was undoubtedly difficult for Mother to decide not to pick up the Child, but she still made that decision. Likewise, although Mother sought DCS’s help in the past to acquire wrap-around services and residential placement for the Child, that was not the impetus for the present circumstances; in fact, the last time Mother sought help from DCS before it filed the First Petition was at least six months prior. The alleged abandonment here was not the result of miscommunication among DCS workers. Additionally, DCS presented evidence that the Child no longer needs to be outside of Parents’ homes. By the time the Child was discharged from Harsha in mid-July 2023, Harsha was recommending only outpatient services for the Child. The foster parents, who were in their mid- to late-70s, were able to provide in-home care for the Child for months without observing seriously violent behavior directed at himself or others.

[31] What makes this case so difficult is that Mother has demonstrated a pattern of seeking assistance, including from outside sources, for the Child. Since DCS filed the Second Petition, Mother has engaged in all the services DCS has suggested she complete, including therapeutic services and supervised parenting time. Mother has also attended all child and family team meetings as well as at least some of the Child’s individualized education program meetings. Mother’s failure to pick up the Child from Harsha in June 2023 and from foster placement in August 2023 does not negate all the efforts she has made and continues to make to help the Child, but she has demonstrated that she has no intention of providing the Child with necessary shelter either now or in the future, Tr. Vol. II at 47. A parent cannot “mostly” provide care or provide only the care a parent is “willing to provide”; a parent cannot take on some obligations and leave others to the State without the consequences for that decision. Here, the State and the juvenile court determined that the Child was ready to be returned to a parent. Neither Mother nor Father accepted this responsibility. Thus, we cannot say the juvenile court clearly erred when it determined that Mother refused to provide necessary shelter to the Child and consequently adjudicated the Child a CHINS under Indiana Code section 31-34-1-1.

Conclusion

[32] In sum, the juvenile court did not abuse its discretion when it denied Mother’s Trial Rule 15(B) motion, and it did not clearly err when it adjudicated the Child

a CHINS under Indiana Code section 31-34-1-1. We therefore affirm the juvenile court on all issues raised.

[33] Affirmed.

Altice, C.J., and Bradford, J., concur.

ATTORNEY FOR APPELLANT

Elizabeth A. Deckard,
Bloom Gates Shipman & Whiteleather LLP
Columbia City, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General
David E. Corey
Supervising Deputy Attorney General
Indianapolis, Indiana