**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANT:

**ROBERTA L. RENBARGER**
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

**MITCH GERBER**
DCS Allen County Office
Fort Wayne, Indiana

**ROBERT J. HENKE**
DCS Central Administration
Indianapolis, Indiana

---

# IN THE
# COURT OF APPEALS OF INDIANA

---

| | | |
|---|---|---|
| IN RE: The Matter of A.G. and A.M., | ) | |
| | ) | |
| A.M., | ) | |
| | ) | |
| Appellant-Respondent, | ) | |
| | ) | |
| vs. | ) | No. 02A04-1104-JC-180 |
| | ) | |
| ALLEN COUNTY DEPARTMENT OF CHILD SERVICES, | ) | |
| | ) | |
| Appellee-Petitioner. | ) | |

---

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
Cause No. 02D08-1101-JC-8 and 9

---

**October 24, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Judge**

Appellant-respondent Father appeals the juvenile court's determination that his minor son, A.M., was a Child in Need of Services (CHINS). Father claims that the evidence was insufficient to support the CHINS adjudication because the "only allegations were that the parents had an argument while the children were in the home." Appellant's Br. p. 11. Finding the evidence sufficient, we affirm the judgment of the juvenile court.

FACTS

A.M. was born to Mother on February 23, 2010, and Father is A.M.'s biological father. A.G., Mother's daughter, was born on December 28, 2001, and Manuel Gualpa is A.G.'s father. Mother and Gualpa had been married to each other at some point, but they eventually divorced.

On December 15, 2010, Mother and Father were living together with both of the children. At some point, Mother and Father began arguing in the kitchen. During that argument, Mother attempted to use her cell phone to call the police. However, as the two were struggling, the phone struck Mother and cut her on the lip. Both of the children were in the house at the time, and A.G. subsequently went to a neighbor's residence and contacted the police.

Mother and Father had a history of arguing and fighting that has resulted in the police being called to the home on a number of occasions. Fort Wayne Police Officer

Gregory Addison responded to the call and saw the laceration on Mother's lip. At that time, Mother informed Officer Addison that Father hit her.

On December 20, 2010, Mother signed a Safety Plan that was initiated by the DCS. The Safety Plan indicated that Mother would not subject her children to a living environment involving domestic violence and that she would be moving in with her mother. Mother also told DCS caseworker, Amanda Gonzalez, that Father had anger issues. Although Mother moved out temporarily, she eventually moved back in with Father.

Father refused to sign a Safety Plan on two occasions that included a directive that he refrain from committing acts of domestic violence. Mother and Father also refused to participate in various services that were offered through the DCS that were geared towards addressing and resolving the parents' domestic abuse issues.

On January 31, 2011, the DCS filed a petition in the juvenile court, alleging that both children were CHINS because Father and Mother engaged in the domestic violence episode in December while the children were present in the same room and that Mother sustained a cut on her lip as a result of the incident.[1] It was also alleged that Mother and Father have a history of engaging in domestic violence and that Father had refused to sign the Safety Plan that directed him to refrain from participating in acts of domestic violence.

[1] DCS also made allegations against Mother and Gualpa. Neither are parties to this appeal.

At a hearing on March 14, 2011, Mother admitted to the allegations. Following the presentation of evidence, the juvenile court found that the DCS proved the allegations in the petition, and determined that both A.G. and A.M. were CHINS. Father now appeals the adjudication as to A.M.

## DISCUSSION AND DECISION

### I. Standard of Review

When, as here, a juvenile court enters findings of fact and conclusions of law in a CHINS decision, we apply a two-tiered standard of review. Parmeter v. Cass Cnty. DCS, 878 N.E.2d 444, 450 (Ind. Ct. App. 2007). We first consider whether the evidence supports the findings and then whether the findings support the judgment. Id. We will not set aside the findings or judgment unless they are clearly erroneous. Id. Findings are clearly erroneous when the record contains no facts to support them either directly or by inference, and a judgment is clearly erroneous if it relies on an incorrect legal standard. Id. We give due regard to the juvenile court's ability to assess witness credibility and do not reweigh the evidence. Instead, we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Id. We defer substantially to findings of fact but not to conclusions of law. Id.

### II. Father's Claims

As set forth above, Father claims that the evidence was insufficient to support the juvenile court's finding that A.M. was a CHINS. Father contends that the CHINS

adjudication cannot stand because there was no evidence "that either parent was abusing the children physically or mentally." Appellant's Br. p. 5.

In resolving this issue, we initially observe that a CHINS proceeding is a civil action; therefore, the State must prove by a preponderance of the evidence that a child is a CHINS as defined in the juvenile code. In re N.E. v. IDCS, 919 N.E.2d 102, 105 (Ind. 2010). The question in a CHINS adjudication is not parental fault, but whether the child needs services. Id. at 103. Our CHINS statutes do not require that a court wait until a tragedy occurs to intervene. In re A.H., 913 N.E.2d 303, 305 (Ind. Ct. App. 2009).

We also note that, because a CHINS determination concerns the status of the child, the juvenile court is not required to determine whether a child is a CHINS as to each parent. It must only be established whether the statutory elements have been proven. Id. The acts or omissions of one parent can cause a condition that creates the need for court intervention. Id. at 105. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent.

A child is a CHINS if before the child becomes eighteen 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, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; 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.

Ind. Code § 31-34-1-1; see also N.E., 919 N.E.2d at 103.

At the hearing, Mother admitted that the children were CHINS. Tr. p. 6, 8. And both Mother and Father acknowledged that there was a physical altercation in front of the children that resulted in an injury to Mother. Mother reported that Father had anger issues, and it was established that Mother had contacted the police on several earlier occasions regarding domestic disputes with Father and other partners. Also, as pointed out above, Father refused to execute the Safety Plan that prohibited him from engaging in acts of domestic violence. It was only after the DCS initiated the CHINS proceedings that Father agreed to sign it. And even after agreeing to the terms of the Safety Plan, Father nonetheless refused to participate in DCS services.

When considering the evidence that was presented at the hearing, the juvenile court reasonably concluded that the events of December 15, 2010, amounted to an episode of domestic violence that occurred when the children were present in the house. Nothing in Indiana Code section 31-34-1-1 requires the DCS to prove the elements of the criminal offense of domestic battery before it may become involved.

The children had been exposed to arguments or domestic violence as a result of the frequent calls that were made to the police, and the children were present in the home on this particular occasion when Mother was crying and explaining to Officer Addison that she wanted to leave the house. In short, these episodes were sufficient to establish

that the children's mental conditions were endangered, which is enough to sustain a CHINS determination. See In re N.E., 919 N.E.2d at 106 (observing that the children were properly adjudicated CHINS when it was established that Mother failed to protect her children from ongoing domestic violence between herself and the alleged father of her youngest child in the presence of the children); see also In re R.P., 949 N.E.2d 395, 402 (Ind. Ct. App. 2011) (observing that physical injury is not a requirement to adjudicate a child a CHINS, if his or her mental condition is endangered).

In essence, Father is inviting us to impermissibly reweigh the evidence and reassess the credibility of the witnesses. Thus, we conclude that the evidence was sufficient to support the CHINS adjudication.

The judgment of the juvenile court is affirmed.

KIRSCH, J., and BROWN, J., concur.