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**IN THE  
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF B.M., )  
CHILD IN NEED OF SERVICES )  
)  
T.M., )  
Appellant-Respondent, )  
)  
vs. )  
)  
MARION COUNTY DEPARTMENT OF )  
CHILD SERVICES )  
)  
Appellee-Petitioner, )  
)  
and )  
)  
CHILD ADVOCATES, INC., )  
)  
Co-Appellee (Guardian Ad Litem). )

No. 49A02-0906-JV-574

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn Moores, Judge  
The Honorable Danielle Gregory, Magistrate  
Cause No. 49D09-0901-JC-2034

**January 21, 2010**

## MEMORANDUM DECISION - NOT FOR PUBLICATION

**ROBB, Judge**

### Case Summary and Issues

T.M. (“Mother”) appeals the juvenile court’s order finding her daughter, B.M., to be a child in need of services (“CHINS”). Mother raises two issues for our review, which we restate as 1) whether the juvenile court abused its discretion in admitting evidence regarding a CHINS case involving Mother’s prior-born children; and 2) whether sufficient evidence supports the juvenile court’s finding that B.M. is a CHINS. Concluding the juvenile court did not abuse its discretion and sufficient evidence supports its finding, we affirm.

### Facts and Procedural History

S.M. was born to Mother in December 2005, and M.L. was born to Mother in June 2007. At birth M.L. tested positive for cocaine and marijuana, and thereafter, the Marion County Department of Child Services (“DCS”) substantiated allegations of substance abuse by Mother. Further, Mother did not have appropriate housing for the children. S.M. and M.L. were removed from Mother’s care, and in October 2007, both children were adjudicated CHINS. On May 28, 2008, the juvenile court entered a modified dispositional order ordering Mother to, among other things, 1) “[p]articipate in and successfully complete a homebased counseling program with the children . . .”; 2) “[s]ubmit to random drug testing as recommended by [a] substance abuse treatment program . . . and or as otherwise directed by the Court”; 3) “[p]rohibit the use of non-prescription drugs in the home, and prohibit anyone

to possess or use non-prescription drugs in the home”; and 4) complete an intensive outpatient program (“IOP”) to address substance abuse, “[c]ounseling including therapy for PTSD,” “Parenting Skills Classes,” and a “[p]sychiatric evaluation to determine if medications are required.” Appellant’s Appendix at 11. Mother completed five drug screens, one of which was positive for illegal drug use, and missed sixteen screens, although she had been advised that missed screens would be considered positive screens. Mother completed the psychiatric evaluation and home-based counseling, completed part but not all of the IOP, and did not participate in the parenting classes or the mental health treatment. Mother did participate voluntarily in narcotics anonymous meetings. On August 27, 2008, DCS filed a petition for involuntary termination of Mother’s parental rights (“TPR”) with respect to S.M. DCS did not initiate TPR proceedings with respect to M.L. because Mother had signed her consent for M.L. to be adopted by a foster parent.

On January 3, 2009, Mother gave birth to B.M. B.M. tested negative for drugs at the time of her birth, and Mother completed a drug screen that same day with negative results. On January 5, 2009, before Mother or B.M. were discharged from the hospital, B.M. was removed from Mother’s care without a court order “[b]ecause of [Mother’s] previous history” with DCS. Transcript at 42. On January 14, 2009, DCS filed a petition alleging B.M. was a CHINS. On that same day, the juvenile court ordered that B.M. continue in the temporary custody of DCS with supervised visitation by Mother. DCS referred Mother for further drug screens but received no indication that Mother completed any screens.

The juvenile court held a fact-finding hearing on April 14, 2009. DCS offered, and the juvenile court admitted into evidence over Mother's objection, certified court documents from S.M. and M.L.'s CHINS case, including the May 28, 2008, dispositional order and the August 27, 2008, TPR petition. The DCS case manager testified regarding Mother's lack of progress with court-ordered services in S.M. and M.L.'s case and her failure to complete drug screens. The case manager opined that B.M. was a CHINS because

DCS doesn't have any proof that [Mother] has maintained sobriety. . . . And it was a major concern with her first two children. It's still a concern with her third child. Especially since services weren't completed before.

Tr. at 19. The case manager further opined that if Mother were currently abusing drugs, she would pose a risk of physical harm to B.M. On May 4, 2009, the juvenile court issued its order finding B.M. to be CHINS. The juvenile court's findings of fact read, in relevant part:

45. [Mother] is aware that [DCS] recommends that she complete the six weeks of after care services for the IOP and the random drug screens; however, she does not agree to participate voluntarily.

\* \* \*

63. [Mother] poses a risk to [B.M.]'s health welfare and safety if she is engaged in drug use or is drinking excessively.

64. [DCS] is unable to verify [Mother]'s sobriety and this poses a risk to [B.M.].

Appellant's App. at 12.

Further, the juvenile court entered conclusions of law, including:<sup>1</sup>

1. [Mother] has an open [CHINS] case involving two prior born children named [S.M.] and [M.L.].
2. [DCS] substantiated allegations of substance abuse and neglect as to [S.M.] and [M.L.].

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<sup>1</sup> We observe that some of the paragraphs listed under the juvenile court's conclusions of law are actually factual determinations related to Mother's substance abuse problems and the effect thereof upon B.M. Therefore, they may be more accurately characterized as findings of fact.

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6. [Mother] has a substance abuse problem that requires treatment.
7. [Mother's] substance abuse problems have affected her ability to parent prior born children . . . and continue to affect her ability to appropriately parent [B.M.].
8. [Mother] has failed to complete the treatment ordered by the Court for both [S.M.] and [M.L.]'s case.

\* \* \*

10. [Mother] has not signed consents or been terminated for [S.M.]'s matter and therefore the Court's orders are still pending.

\* \* \*

28. To date, [Mother] has not enhanced her ability to parent her children, she has not rehabilitated from drug use, and therefore she remains a danger to [S.M.], whose case remains open, and [B.M.], an after born child.

\* \* \*

34. [Mother] needs the Court ordered services.
35. She has not demonstrated the ability to obtain the necessary services to prevent [B.M.] from being subjected to abuse and or neglect.
36. She has not demonstrated a willingness to participate in necessary services without the coercive intervention of the Court.

\* \* \*

40. It's clear that in this case the coercive intervention of the Court is necessary due to the lack of compliance with prior Court orders and [Mother's] unwillingness to complete those orders without a Court order.
41. The Court concludes that DCS has proven its case by a preponderance of the evidence and enters a True Finding. The Court adjudicates [B.M.] as a CHINS.

Id. at 13-14. On May 19, 2009, the juvenile court entered a dispositional order continuing B.M.'s placement in foster care, providing for visitation by Mother, and ordering Mother to complete various services. Mother now appeals.

### Discussion and Decision

#### I. Admission of Evidence

Mother argues the evidence regarding S.M. and M.L.'s CHINS case should not have been admitted in the present case because it was not relevant to whether B.M. is a CHINS.

The admission of evidence rests within the sound discretion of the juvenile court and is reviewed on appeal for an abuse of discretion. In re Involuntary Termination of Parent Child Relationship of A.H., 832 N.E.2d 563, 567 (Ind. Ct. App. 2005). An abuse of discretion occurs when the juvenile court's decision is clearly against the logic and effect of the facts and circumstances before it. Id.

The standard of relevancy in CHINS proceedings is provided by Indiana Rule of Evidence 401, which states: “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” DCS offered the court documents from S.M. and M.L.’s CHINS case “to prove the conditions that led to the removal of [Mother’s] first two children, have not yet been remedied.” Tr. at 12. The fact of unchanged conditions was of consequence to the juvenile court’s determination whether B.M. was endangered, and Mother’s failure to take advantage of services in the earlier case was of consequence to determining whether coercive court intervention was necessary to compel Mother to accept services regarding B.M. Therefore, although the earlier case could not be used specifically to show B.M. is a CHINS, it could be used indirectly to show Mother’s habitual patterns of conduct, which were relevant to the CHINS determination regarding B.M. As a result, the juvenile court did not abuse its discretion in admitting the evidence regarding the earlier CHINS case.

## II. CHINS Finding

### A. Standard of Review

When, as here, the juvenile court enters findings of fact and conclusions of law in a CHINS determination, we apply a two-tiered standard of review. In re J.V., 875 N.E.2d 395, 403 (Ind. Ct. App. 2007), trans. denied. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. In making this determination, we do not reweigh the evidence or reassess witness credibility. Id. We will reverse only if, considering only the evidence favorable to the juvenile court’s judgment, the evidence does not support the findings or the findings do not support the judgment. Id.

### B. Endangerment of B.M.

To have B.M. adjudicated a CHINS, DCS was required to prove by a preponderance of the evidence that (1) B.M.’s physical or mental condition was seriously impaired or seriously endangered as a result of Mother’s inability, refusal, or neglect to supply B.M. with necessary food, clothing, shelter, medical care, education, or supervision; and (2) B.M. needed care, treatment, or rehabilitation that B.M. was not receiving and was unlikely to be provided or accepted without coercive court intervention. See Ind. Code § 31-34-1-1 (setting forth circumstances under which child is a CHINS);<sup>2</sup> Ind. Code § 31-34-12-3 (preponderance of the evidence standard applies to CHINS finding). The CHINS statute does not require that

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<sup>2</sup> The CHINS petition alleged B.M.’s “physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of a parent, guardian or custodian to supply [B.M.] with necessary food, clothing, shelter, medical care, education or supervision; and [B.M.] needs care, treatment or rehabilitation that [B.M.] is not receiving and are unlikely to be provided or accepted without the coercive

the juvenile court wait until a tragedy occurs in order to intervene. Roark v. Roark, 551 N.E.2d 865, 872 (Ind. Ct. App. 1990). Rather, a child is a CHINS when he or she “is endangered by parental action or inaction.” Id. (emphasis in original).

Here, the juvenile court’s findings were supported by evidence that Mother had a long history of unresolved problems relating to substance abuse. Mother’s prior-born children were adjudicated CHINS when the second child was born testing positive for cocaine and marijuana. Thereafter, Mother was court-ordered to complete substance-abuse services and submit to drug screens, but Mother failed to complete the services, tested positive on one screen, and missed sixteen of twenty-one screens, despite being advised that missed screens would be considered positive screens. We are mindful of Mother’s argument that DCS bears the burden of proof and, therefore, Mother’s failure to demonstrate sobriety does not, in and of itself, support a finding that her substance abuse problem was ongoing. However, at issue is not simply Mother’s failure to demonstrate sobriety, but her refusal to comply with court orders designed to address a serious and substantiated substance abuse problem. Cf. In re T.H., 856 N.E.2d 1247, 1251-52 (Ind. Ct. App. 2006) (concluding father’s failure to complete drug and alcohol screens under voluntary service referral agreement did not support finding that children were CHINS, when no allegations of illegal drug use had been substantiated). We also acknowledge the juvenile court was faced with conflicting evidence insofar as both Mother and B.M. tested negative for drugs at the time of B.M.’s birth. However, we do not reweigh the evidence on appeal, and, as a result, sufficient evidence

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intervention of the Court . . . .” Appellant’s App. at 29.

supports the juvenile court's findings that Mother's substance abuse problems were unresolved and posed a danger to B.M.

Further, the juvenile court's findings regarding Mother's substance abuse problems, coupled with the long history of those problems, support the juvenile court's judgment that B.M. is a CHINS. See In re Involuntary Termination of Parent-Child Relationship of A.K., 755 N.E.2d 1090, 1097 (Ind. Ct. App. 2001) (parent's continued pattern of illegal drug use supported conclusion that continuation of parent-child relationship posed a threat to children's well-being). Although B.M. did not suffer any known injuries during the two days she was in Mother's care and did not test positive for drugs at her birth, DCS and the juvenile court need "not . . . wait until a tragedy occurs to intervene." Roark, 551 N.E.2d at 872. Rather, the juvenile court reasonably inferred, from Mother's long history of unresolved substance abuse problems and her noncompliance with court-ordered services, that coercive court intervention is necessary to ensure B.M. is raised in a safe, drug-free environment. We note the juvenile court's judgment is not a termination of Mother's parental rights; the juvenile court ordered visitation and services which, if completed by Mother, will assist her

in taking the necessary steps for reunification with B.M.

Conclusion

The juvenile court did not abuse its discretion in admitting evidence regarding the CHINS case involving Mother's prior-born children. Further, sufficient evidence supports the juvenile court's finding that B.M. is a CHINS.

Affirmed.

BAKER, C.J. and BAILEY, J., concur.