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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF S.V., E.V. and B.V., Minor Children,	)	
J.V., Father, and C.V., Mother,	)	
Appellants-Respondents,	)	
vs.	)	No. 82A04-0910-JV-595
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause Nos. 82D01-0904-JC-154, 82D01-0904-JC-155, 82D01-0904-JC-156

February 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

C.V. (Mother) and J.V. (Father) appeal the determination their children are Children in Need of Services ("CHINS"). We affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Father have three children: five-year-old S.V., four-year-old E.V., and two-year-old B.V. When the CHINS petition was filed Mother and Father were living together with the children. Mother testified she and Father were legally married but separated; Father testified they had been divorced for two years. Mother is engaged to a man referred to in the record as "Nick," "Nicholas," or "N.S." (Appellants' Consolidated App. at 20.) According to the petitions, Nick cared for the children while Mother was at work.[1]

In April 2009, E.V. made allegations to a teacher's assistant of inappropriate sexual touching: "Uncle Nick hurt my pee-pee." (Tr. at 66.) E.V. then told Mother, in front of a caseworker, "Nick had hurt her nose and broke her hand, but that he had also hurt her pee pee." (*Id*. at 79.) Mother testified E.V. said "Nick had hurt her butt, broke her hand, broke her nose, and killed her." (*Id*. at 22.)

Nick submitted to a lie detector test and was asked questions concerning harm to E.V. He failed that test and was ordered not to have contact with the children. Subsequently, Father needed a medical procedure, and Mother could not help him due to complications of her pregnancy. They contacted Nick to stay at their home to assist them.

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[1] Neither party directs us to evidence in the record to support this allegation, but neither party challenges it. At this time, the children had been placed with Father, who had moved into Mother's home. DCS describes Father as "homeless," (Consolidated Br. of Appellee at 2), but offers no citation to the record. We remind both counsel that an argument on appeal may be waived for failure to provide citations to the record. *See* Ind. Appellate Rule 46(A)(8)(a) (contentions must be supported by citations to authorities, statutes, and appendix or parts of the record on appeal relied on).

On May 5, 2009, while Father was not home and Mother was asleep, two of the children wandered out of the house and down the street. They were not properly clothed and they crossed the street several times before arriving at a fast-food restaurant. The police were called, and a DCS case manager arrived to secure the children. E.V. had wandered away from home on prior occasions.

The Vanderburgh Department of Child Services (DCS) sought to have all three children declared CHINS, alleging E.V. had been the victim of a sex offense and that the physical and mental condition of all the children was seriously endangered by the inability of Father and Mother to provide necessary supervision. The trial court granted the petitions.

DISCUSSION AND DECISION

Ind. Code § 31-34-1-1 provides:

> A child is a child in need of services if before the child becomes eighteen (18) 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.

DCS had the burden to prove by a preponderance of the evidence the children are CHINS. *In re D.H.*, 859 N.E.2d 737, 742 (Ind. Ct. App. 2007).

When reviewing the sufficiency of the evidence, we consider only the evidence most favorable to the judgment and the reasonable inferences flowing therefrom. *Perrine v.*

Marion County Office of Child Servs., 866 N.E.2d 269, 273 (Ind. Ct. App. 2007). We will not reweigh the evidence or judge the credibility of witnesses. *Id*.

In *Hallberg v. Hendricks County Office of Family and Children*, 662 N.E.2d 639, 647 (Ind. Ct. App. 1996), DCS presented evidence the child had been sexually molested by her father. A doctor examined the child, and "nothing led him to believe that the allegations of sexual abuse were untrue." *Id*. The child testified her father had touched her "privates," *id*., and a caseworker testified the child told her the same thing. On that evidence the trial court found the child's mother was "unable to provide adequate supervision and protection of the children during any period of visitation by [the father]." *Id*. That finding was sufficient to support the conclusion that both children were CHINS. *Id*.

In the case before us the court heard evidence the children had been allowed to wander away from the home and the parents had asked the individual accused of molesting E.V. to help them care for the children. That evidence is sufficient to support the CHINS determination. We accordingly affirm.

Affirmed.

KIRSCH, J., and DARDEN, J., concur.