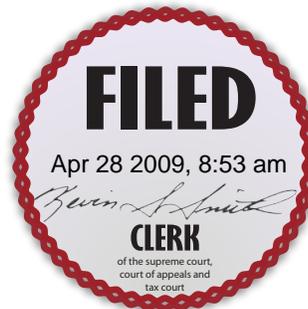


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

LILABERDIA BATTIES
Marion County Public Defender Agency
Batties & Associates
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

ELIZABETH A. GAMBOA
Department of Child Services,
Johnson County Office
Franklin, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: J.O., CHILD IN)
NEED OF SERVICES,)

K.O.,)

Appellant/Respondent,)

vs.)

No. 49A04-0809-JV-515

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee/Petitioner)

and)

CHILD ADVOCATES, INC.)

Appellee/Guardian Ad Litem)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0803-JC-9958

April 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent K.O. (“Mother”) appeals from the juvenile court’s determination that her child J.O. is a child in need of services (“CHINS”), contending that the finding is not supported by sufficient evidence. We affirm.

FACTS AND PROCEDURAL HISTORY

J.O. was born on January 8, 2008. In February of 2008, Mother took J.O. to the hospital because she became ill every time she was fed and was running a fever of 100.8° F. J.O. was diagnosed with a respiratory infection and remained in the hospital for a week. When J.O. was released, Mother took her home but returned her to the hospital the next day, again with a fever of 100.8° F. At some point, the Marion County Department of Child Services (“MCDCS”) became aware of allegations of neglect, specifically that Mother was not able to properly care for J.O.

On February 28, 2008, parent care training was started at the hospital due to concerns regarding Mother’s ability to supervise and care for J.O. On February 29, 2008, Stacy Plummer from MCDCS met with Mother, her mother Kristy Tweedy, and Candy Wilson, a family friend. Although Mother had told hospital staff that she was living with friends, she told Plummer that she planned to move back in with Tweedy and Wilson. Plummer was concerned about this arrangement because Wilson had earned two prior substantiated complaints and still had an open case with MCDCS and Tweedy “had an open case” in Johnson County which Plummer believed was related to neglect. Tr. p. 10. Plummer

recommended that J.O. be placed in foster care and that Mother receive home counseling to “help with some parenting skills.” Tr. p. 11. On March 4, 2008, MCDCS filed a petition seeking to have J.O. declared a CHINS and requesting custody and supervision of J.O. Beginning in April of 2008, Mother began meeting with Amanda Richey of St. Vincent New Hope Community Outreach, who supervised her two hours of weekly visitation with J.O.

On August 20, 2008, a fact-finding hearing was conducted on MCDCS’s CHINS petition. At the hearing, Richey did not recommend reuniting J.O. with Mother at that time. Richey testified that J.O.’s medical needs were “intense” and required frequent bathing as well as dietary restrictions due to food allergies. Tr. p. 26. Richey opined that she “would like more time to monitor [Mother’s] ability to care for [J.O.’s] needs given the nature of the referral.” Tr. p. 26. Moreover, Richey expressed concern over the number of persons who had been in Mother’s home, especially those spending the night, the character of some of those persons, and the fact that Mother did not have a steady income. Richey expressed concerns about Mother’s honesty and her failure to enroll in school, despite having told Richey several times that she would enroll and having had four months to do so. Although Mother testified that J.O. had eczema for which she required medicine, indicating some appreciation of the medical care required, Mother denied that J.O. had any special dietary needs. Mother also testified that she was not employed but earned approximately ninety dollars per week babysitting. On August 27, 2008, the juvenile court found J.O. to be a CHINS.

DISCUSSION AND DECISION

Mother contends that the evidence is insufficient to support the juvenile court's determination that J.O. is a CHINS. The MCDCS has the burden of proving by a preponderance of the evidence that a child is a CHINS. *See* Ind. Code § 31-34-12-3 (2007); *In re M.W.*, 869 N.E.2d 1267, 1270 (Ind. Ct. App. 2007). When determining whether sufficient evidence exists in support of a CHINS determination, we consider only the evidence favorable to the judgment and the reasonable inferences raised by that evidence. *Id.* This Court will not reweigh evidence or judge witnesses' credibility. *Id.*

The juvenile court found that J.O. was a CHINS pursuant to Indiana Code section 31-34-1-1 (2007), which provides as follows:

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 the child:
 - (A) is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

The CHINS statute, however, does not require that a court wait until a tragedy occurs 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.* The purpose of a CHINS adjudication is not to punish the parents, but to protect the children. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*.

Mother contends that there was no evidence in the record to support the juvenile court's findings that J.O.'s physical or mental condition was severely impaired due to

Mother's action or inaction or that J.O. was not receiving care or treatment that was unlikely to be provided by Mother without coercive intervention. We disagree. The juvenile court found that J.O. required extensive medical attention and that Mother was unable to properly care for her. This finding is supported by evidence that J.O.'s medical needs were "intense" and that she had food allergies and required a special diet, but that, despite parent care instruction and several months of working with Richey, Mother was either unaware of or did not acknowledge that J.O. even had any special dietary needs. Moreover, the trial court found that neither Mother nor Tweedy had health insurance that covered J.O. In our view, especially given the possibility that J.O.'s food allergies contributed to the need to hospitalize her in the first place, such findings support a conclusion that J.O.'s physical condition would be seriously impaired or endangered by Mother's inability, refusal, or neglect to provide her with adequate medical care in the event of reunion.

Moreover, we conclude that the juvenile court's conclusion that J.O. was in need of services unlikely to be provided by Mother without the coercive intervention of the court is supported by the record. The juvenile court found that Tweedy, who testified that she often cared for J.O. by herself, also had a five-year-old open CHINS case in another county and that Richey was concerned about several persons who visited the home Mother and Tweedy still shared at the time of the hearing. Instead of taking measures to improve her living arrangements, Richey testified that Mother had lied to her regarding persons who had spent the night at her home, denying that they had. Moreover, despite several months of MCDACS involvement, Mother has done little to place herself in a better financial position to properly

care for J.O. The juvenile court properly found that Mother was unemployed, only earned ninety dollars per week, and was not enrolled in any educational program. Indeed, despite frequent assurances to Richey that she would enroll in an educational program and having had four months to do so, Mother had not enrolled as of the hearing. In short, there is sufficient evidence to conclude that Mother had done little or nothing to improve her living conditions or her ability to care for J.O. in the absence of court intervention. We conclude that sufficient evidence exists to establish that J.O.'s physical or mental condition would be endangered by reunification with Mother and that she would not receive proper care from Mother without court intervention. As such, the record supports the juvenile court's conclusion that J.O. is a CHINS.

The judgment of the juvenile court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.