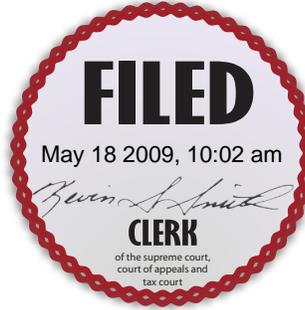


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: H.J.,)
A CHILD IN NEED OF SERVICES,)
)
A.J., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 49A02-0811-JV-1055

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0805-JC-23662

May 18, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent A.J. (Mother) appeals the juvenile court's order finding her minor son, H.J., to be a child in need of services (CHINS). Mother argues that there is insufficient evidence supporting the CHINS finding. Finding no error, we affirm.

FACTS

On May 24, 2008, Mother and thirteen-year-old H.J. got into an argument. Mother smacked H.J. in the mouth and the back of the head. H.J. turned to run away and she grabbed his shirt, ripping the shirt and scratching the boy. H.J. ran outside and Mother followed him, eventually scratching a teenage girl who was talking to H.J. Later that evening, Mother was arrested and later charged with battery on the minor female. On May 28, 2008, appellee-petitioner Marion County Department of Child Services (DCS) filed a petition alleging H.J. to be a CHINS. In addition to detailing the May 24 incident, the petition explained that the family had prior history with DCS, specifically, a case of substantiated physical abuse in February 2005.

Mother was released from jail on June 11, 2008,¹ after which she lived in three different homeless shelters over a period of several months. At the time of the CHINS hearing, Mother was living in the basement of a home. The basement consisted of one room that was approximately twenty square feet in area. At that time, Mother was

¹ The battery charges were still pending at the time of the CHINS hearing.

unemployed and receiving \$100 to \$150 from her father on a weekly basis. She was also taking part in home-based counseling to assist her in finding a job.

The juvenile court held a hearing on the CHINS petition as to Mother² on October 10, 2008. That same day, the court granted the petition and found H.J. to be a CHINS, finding and concluding as follows:

Following her release, [Mother] bounced between three different homeless shelters, being evicted from one following an altercation with another resident.

[Mother] presently lives in the basement of a duplex.

[Mother] has struck [H.J.] on the head and mouth on multiple occasions in the past.

[Mother] formerly was a [Certified Nursing Assistant], but is presently unemployed.

[Mother] receives approximately [sic] \$100 per week from her father.

[Mother] is presently involved in homebased [sic] counseling that is helping [Mother] seek employment.

[Mother] does not have stable housing for her son.

[Mother] is presently unable to support her son without the coercive intervention of the court.

Appellant's App. p. 12-13. The permanency plan was reunification with Mother, who now appeals.

DISCUSSION AND DECISION

² On July 29, 2008, the juvenile court found H.J.'s father to be in default and found H.J. to be a CHINS as to him. Father is not taking part in this appeal.

Mother argues that there is insufficient evidence supporting the trial court's order determining H.J. to be a CHINS. In considering the evidence supporting a CHINS determination when the trial court made findings of fact and conclusions of law, we apply a two-tiered standard of review and may not set aside the findings of judgment unless they are clearly erroneous. Parmeter v. Cass County Dept. of Child Servs., 878 N.E.2d 444, 450 (Ind. Ct. App. 2007). We first consider whether the evidence supports the factual findings and then whether the findings support the judgment. 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 trial court's ability to assess witness credibility and do not reweigh the evidence, instead considering the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Id. While we defer substantially to findings of fact, we do not do so to conclusions of law. Id.

A child under the age of eighteen is a CHINS if:

- (1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; 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 § 31-34-1-2. DCS has the burden of proving by a preponderance of evidence that a child is a CHINS. I.C. § 31-34-12-3.

Here, DCS offered evidence that Mother has repeatedly struck H.J. in the head and mouth. This physical abuse has been substantiated in the past and Mother admitted at the CHINS hearing that, during the incident that led DCS to file the CHINS petition, she hit H.J. on the head and ripped his shirt when he ran away from her. Furthermore, after she was released from a week in jail for allegedly scratching a minor female, Mother bounced between three different homeless shelters. At the time of the CHINS hearing, she was living in a one-room basement, which she testified was not a permanent living arrangement. Mother admitted that her thirteen-year-old son “needs to have his own bedroom.” Tr. p. 29-30. Additionally, although Mother was attempting to find a job, she was unemployed and relying on money from her father. She testified that she needed to have a job before she would be ready and able to support her son. Her case manager testified that Mother did not have the employment needed to support H.J. and that at the time of the hearing, DCS was helping her to find housing and employment.

We find that this evidence supports the juvenile court’s conclusion that H.J. is a CHINS, and Mother’s arguments to the contrary merely amount to requests that we reweigh the evidence, which we may not do. We applaud Mother’s willingness to engage in home-based counseling and her attempts to find employment, and we hope that she continues to participate in all required services. We hope that she achieves stability in her life and finds a way to manage her anger and frustration in ways that do not involve physically striking her child. When and if she is able to do so, she will be reunited with her son.

The judgment of the juvenile court is affirmed.

MAY, J., and BARNES, J., concur.