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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF M.T. and K.T., Minor Children in Need of Services,	)	
T.J., Father,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-1009-JC-1137
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Diana Burleson, Magistrate
Cause Nos. 49D09-1003-JC-14281, 49D09-1003-JC-14282

May 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

T.J. (Father) appeals the adjudication of his children, M.T. and K.T. (collectively "the Children"), as children in need of services (CHINS). He also appeals a dispositional order requiring him to complete services due to the CHINS adjudication. We affirm.

FACTS AND PROCEDURAL HISTORY

On March 29, 2010, the Department of Child Services (DCS) received a report that the Children were being physically abused by their mother, P.T. (Mother). Father requested the Children be placed with him, but that request initially was denied due to mutual protective orders between Father and Mother arising from a domestic violence incident. Nevertheless, after a preliminary hearing, the juvenile court placed the Children with Father and his mother, L.B., pending the outcome of the CHINS investigation.

As part of the placement, the court ordered Father to submit to a drug test and participate in home-based counseling. Father tested positive for marijuana on April 3, 2010, before his children were temporarily placed with him, and again on May 27, 2010, three weeks after they started living with him. The Family Case Manager referred Father to Mosaic for random drug screens. Father did not obtain the drug screens as directed, claiming he did not have transportation to Mosaic. Father initially participated in home-based counseling, but by the time of the dispositional hearing, he was regularly missing appointments and not returning phone calls.

On August 26, 2010, the Children were adjudicated CHINS and placed with Father and L.B. The court ordered Father to submit to three random drug screens and participate in

home-based counseling services.[1]

DISCUSSION AND DECISION

Father first argues the State did not present sufficient evidence to prove the Children were CHINS. The juvenile court found, in pertinent part:

> 5. In March of 2010, DCS became involved in this case because [M]other called the police department for help getting her children returned from [M]other's aunt. The aunt or the grandmother had picked up the kids from school without [Mother's or Father's] permission.
> 6. One of the children had bruising on her neck that was caused by [Mother].
> 7. [Mother] admitted to hitting her children and choking them.
> 8. [Mother]'s mother, [B.T.] has taken pictures of marks on the girls' necks as a result of their mother's abuse. She took the pictures to show her daughter what she does to her daughters when she is drunk.
> 9. [Father] has voluntarily participated in services for the past couple of months although he admits that he has "slacked" in the past few weeks.
> 10. Early in this case [F]ather tested positive for marijuana, but [F]ather has not submitted to random drug screens even though a referral has been made to Mosaic.
> 11. Since this case was filed, [F]ather has lost his job.
> 12. The children were initially removed from [M]other's care and placed in relative care.
> 13. On May 6, 2010, the Court ordered the children placed with [F]ather who is living with his mother, L.B.

(App. at 79-80.) In addition to its findings, the trial court ordered Father to "have three consecutive clean [drug] screens" and to "work with [the] Home Based [counselor]." (*Id*. at 30.)

A CHINS proceeding is civil in nature, so the State must prove by a preponderance of

[1] Mother admitted the Children were CHINS. As she does not participate in this appeal, we limit our discussion to facts relevant to Father.

the evidence that a child is a CHINS as defined by the juvenile code. *In re N.E. v. IDCS*, 919 N.E.2d 102, 105 (Ind. 2010). The CHINS petition in the instant case was filed pursuant to Ind. Code §§ 31-34-1-1 and -2, which state, respectively:

> Sec. 1. 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.
>
> Sec. 2. (a) 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 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.
>
> (b) Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

A CHINS adjudication "focuses on the condition of the child," and not the culpability of the parent. *In re N.E.*, 919 N.E.2d at 105. The purpose of finding a child to be a CHINS is to provide proper services for the benefit of the child, not to punish the parent. *Id*. at 106.

When 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 County DCS*, 878 N.E.2d 444, 450 (Ind. Ct. App. 2007), *reh'g denied*. We first consider whether the evidence supports the findings and then whether the findings support the judgment. *Id*. We may 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; we instead 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*.

The State presented sufficient evidence to support the juvenile court's findings,[2] and those findings support the CHINS adjudication. Testimony by the Family Case Managers and a representative from JUS Harmony[3] indicated Father failed to comply with requests to set appointments with Mosiac for regular drug screens after testing positive for marijuana before the Children were placed with him. Father missed appointments and was not available for phone calls regarding home-based counseling and other services. Father lost his job

[2] Father does not contest any particular finding, but bases his argument on our holding in *In re K.D., K.S., v. ICDS*, 942 N.E.2d 894 (Ind. Ct. App. 2011). In the instant case, we held a party had a due process right to dispute another party's admission that a child is a CHINS. In this case, Father was not denied that right, as he was present at the final two hearings and gave testimony. Thus *In re K.D.* is inapposite.

[3] "JUS Harmony" is a faith-based not-for-profit organization offering counseling and assessment services in Indianapolis. "JUS Harmony," http://jusharmony.org/ (last accessed May 13, 2011).

during the pendency of the proceedings. Father's argument is an invitation to reweigh the evidence, which we cannot do. *See id*. Therefore, we affirm the CHINS adjudication.

Father also argues the juvenile court erred when it ordered him to "participate in home[-]based counseling and random drug testing where there was no showing that these services were needed." (Br. of Appellant at 14.) He cites *A.C. v. Marion Co. Dept. of Child Servs*., 905 N.E.2d 456 (Ind. Ct. App. 2009), in which we held: "Although the juvenile court has broad discretion in determining what programs and services in which a parent is required to participate, the requirements must relate to some behavior or circumstance that was revealed by the evidence." *Id*. at 464. The juvenile court ordered Father to submit to drug testing and participate in home-based counseling. The evidence demonstrated Father had twice tested positive for illegal drugs, and those results justify the court's order for continued testing. At the dispositional hearing, the Family Case Manager testified the home-based counseling would address parenting techniques, budgeting techniques, and anger management issues. The Family Case Manager indicated Father needed to learn anger management techniques due to his history of domestic violence with Mother, and parenting and budgeting techniques were necessary because he had not previously had primary physical custody of the Children. The court directed the home-based counselor to provide an assessment to determine if the Children needed counseling due to Mother's physical abuse. Father's argument is again an invitation to reweigh the evidence, which we cannot do. *See Parmeter*, 878 N.E.2d at 450. Therefore, Father has not demonstrated the juvenile court

erred when it ordered Father to complete services following the CHINS adjudication.

CONCLUSION

There was sufficient evidence to support the juvenile court's findings, and those findings support the adjudication of the Children as CHINS. The evidence also supports the juvenile court's order of services for Father. Accordingly, we affirm.

Affirmed.

BAKER, J., and BRADFORD, J., concur.