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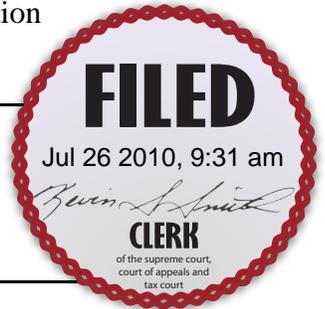
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF A.B., Minor Child,)
)
K.J., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner,)
)
and)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee-Guardian Ad Litem.)

No. 49A02-1001-JC-35

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Beth L. Jansen, Magistrate
Cause No. 49D09-0910-JC-48020

July 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

K.J. (“Mother”) appeals the trial court’s order determining that A.B. is a child in need of services (“CHINS”) and the dispositional order following that determination. Mother raises two issues, which we consolidate and restate as whether sufficient evidence supports the trial court’s determination that A.B. was a CHINS. We affirm.

The facts most favorable to the trial court’s order follow. On March 12, 1997, A.B. was born to Mother and was twelve years old on June 5, 2009 when the Marion County Department of Child Services (“MCDCS”) entered into a program of informal adjustment with Mother. Within this program, Mother agreed to maintain an appropriate home, obtain and maintain a legal source of income, provide MCDCS with documentation verifying her employment, obtain proper medical attention regarding her illnesses,¹ and engage in home-based counseling.

Mother subsequently provided a letter regarding employment, but MCDCS informed Mother that they needed “pay stubs and things of that nature,” which Mother was never able to produce. Transcript at 7. Mother did not obtain proper medical attention regarding her illnesses or continue to meet with medical and psychiatric personnel as directed. Mother failed to maintain an adequate home for A.B. The family

¹ At some point, Mother informed the MCDCS that she has post traumatic stress disorder, fibromyalgia, ADHD, and has had eight heart attacks. At one point, Mahogany Moore, a family case manager with MCDCS, took Mother to the emergency room because Mother stated that she had “a lump in her neck.” Transcript at 20.

case manager made two referrals for home-based counseling, but she never received notice from a counselor that Mother completed such counseling.

Bruce Joray, a therapist and clinical supervisor, was assigned to be the home-based therapist for Mother and A.B. in February 2009. During the first referral, Joray met with Mother only once, and Mother said that she did not need to meet with him and it was “not yet Court ordered.” Id. at 24. After a second referral and three weeks of no contact with Mother despite Joray’s willingness to travel to wherever Mother was located to provide services, the “home based program closed out with the family unsuccessfully” on November 30, 2009. Id. On October 16, 2009, the family case manager made a referral for supervised visits, but Mother did not participate in any visits.

On October 19, 2009, the MCDCS filed a Petition Alleging Child In Need of Services. In its petition, the MCDCS alleged that A.B. was a CHINS and that Mother was unable to provide A.B. with appropriate shelter because Mother and A.B. were evicted from their apartment and had “no place to go.” Appellant’s Appendix at 26. The petition also alleged that Mother had no means of caring for A.B. and had not taken advantage of services offered through MCDCS. At some point, A.B. was placed in foster care and began participating in individual therapy and had regular phone contact with Mother.

On October 27, 2009, the court held an initial hearing at which MCDCS informed the court that Mother was “home sick today” but requested a public defender. Id. at 10. On November 10, 2009, the court held a pretrial hearing. Mother attended this hearing and requested mediation which the trial court scheduled for November 17, 2009. Mother

failed to appear at the mediation. On November 24, 2009, the court held a pretrial hearing, and Mother was not present but was represented by counsel.

On December 15, 2009, the trial court held a fact finding hearing which Mother failed to attend. Mother's attorney indicated that Mother was in a shelter in Indianapolis and "she's got a fever of over 100 and did not want to run the risk of making everyone else here sick so she is not here today." Transcript at 1. Mother's attorney then stated: "Judge, I apologize, she was at a shelter, she has moved in with a friend here in Indianapolis." Id. After the hearing, the trial court found that MCDCS met their burden and concluded that A.B. was a CHINS. The trial court also stated "based upon what I've heard today, I'm ordering that [Mother] not be allowed to have phone contact with [A.B.] until further order of the Court." Id. at 28. Mother's counsel requested that visitation not be suspended. The trial court stated:

You know, I'm not really inclined to cut her any slack. She's not here. She leads a transient lifestyle. She doesn't maintain contact with her lawyer to the extent of this. She doesn't maintain contact with her family case manager and for forty minutes I have sat through what I consider to be a slam dunk. No visits until further order of the Court. No phone contact. That's the price that she needs to pay. All right. If and when she does show up, if and when she does see fit to see her child, someone file a motion and I will consider if she is worthy of seeing her child at that point.

Id. at 31.

That same day, the trial court issued a dispositional order in which the court stated:

[The family case manager] entered into a program of informal adjustment on or about June 6th of this year. Mother was expected to do a number of services under the IA including getting a job and showing proof of it but she never showed pay stubs, Mother was also to show proof of compliance

with medical needs of the child and she failed to do that, [Mother] was also to maintain a home for her and her child and she failed to do that. Additionally, she was to participate in and complete a program of home-based counseling. The [family case manager] had to make 2 referrals for that service and Mother NEVER successfully completed home-based.

There was a mediation scheduled in this matter and Mother DID NOT attend. [The family case manager] attempted to set up visits for [Mother] at children's bureau during the IA and the CHINS. The referral [sic] was made Oct. 16, 2009 and Mother has attended NO visits.

[A.B.] attends therapy, has phone call contact with [Mother] and is in foster care.

[The family case manager] has concerns with Mother [sic] ability to care for the child, the suitability of Mother in light of how she did not complete services under the IA and her lack of stability in housing is problematic.

The Court finds Mother's failure to attend is revealing of her desires and abilities to parent her child. Mother suffers from Fibromyalgia and the [family case manager] does not know if she is receiving medical care. [The family case manager] has not seen Mother since the last court hearing on Nov. 24.

Mother has stayed in Anderson visiting with a friend but has never told [the family case manager] that she lives there. The Court finds that Mother's lack of communication with the [family case manager] indicates that cohesive [sic] intervention of the Court is necessary. Mother now has transportation issues.

[The family case manager] has been on this matter since Nov. 2008 and because of Mother's transient lifestyle it has been difficult to assist her.

[The family case manager] tried to assist Mother in getting into a shelter here in INDY but was unable to as a result of the shelters being full.

Mother has also indicated that she has had 8 heart attacks, a lump in her neck, PTSD and [the family case manager] has made trips to the ER with her. [The family case manager] has concerns about Mother's mental health and her extreme mood swings. Mother has not provided to the [family case manager] proof as to how she is being treated for her many medical conditions.

The Court takes testimony from Mr. Joray who is stipulated as being a qualified home-based counselor who has worked with Mother. Mr. Joray was assigned to the family in Feb. 2009 and unsuccessfully closed out the matter shortly after that when [Mother] declined his services. He was then reassigned to this matter and the 2nd refferal [sic] was also closed out unsuccessfully on Nov. 30, 2009. It was closed out unsuccessfully as he had no contact with [Mother] for over 3 weeks. Home-based met with Mother on occasion in 3 different places, 2 differing apts. and the home of a friend.

* * * * *

Based upon the testimony the Court has received today the Court finds that the DCS has met their burden and shown by a preponderance of the evidence the petition is true. The Court finds CHINS. Court proceeds to dispo.

Court orders [Mother] to have no visitation and no phone contact with child until further order of the Court.

Appellant's Appendix at 14-15. The court's order also ordered that A.B. be placed with the Marion County Office of Family and Children, that her placement in foster care be continued, and that the plan for permanency was reunification with Mother. The court also issued a participation decree requiring Mother to obtain and maintain suitable housing, contact her caseworker every week, secure and maintain a legal and stable source of income, participate in a home-based counseling program and family counseling, complete a parenting assessment, and complete a psychological evaluation.

On December 17, 2009, Mother filed a motion to reconsider the portion of the trial court's order denying telephone contact between Mother and A.B. On December 21, 2009, the trial court denied Mother's motion and stated: "Court notes the Court is looking for ways to motivate [Mother] to attend Court hearings and complete services." Id. at 53.

The issue is whether sufficient evidence supports the trial court's determination that A.B. was a CHINS. When we review the sufficiency of evidence, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. In re A.H., 751 N.E.2d 690, 695 (Ind. Ct. App. 2001), trans. denied. We neither reweigh the evidence nor reassess the credibility of the witnesses. Id. The MCDCS was required to prove by a preponderance of the evidence that A.B. was a CHINS. Id.

When a court's orders contain specific findings of fact and conclusions of law, we engage in a two-tiered review. Hallberg v. Hendricks County Office of Family & Children, 662 N.E.2d 639, 643 (Ind. Ct. App. 1996). First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. We reverse the trial court's judgment only if it is clearly erroneous. Id. A judgment is clearly erroneous if it is unsupported by the findings and conclusions. Id. "In practical terms, however, we may look first to determine whether the judgment is supported by the findings. If it is not so supported, our review is concluded." In re T.H., 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006) (internal citations omitted). When deciding whether the findings are clearly erroneous, we consider only the evidence and reasonable inferences therefrom that support the judgment. Matter of E.M., 581 N.E.2d 948, 952 (Ind. Ct. App. 1991), trans. denied.

Ind. Code § 31-34-1-1 governs the CHINS determination and 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.

The CHINS statutes do 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 appears to argue that the trial court erred in its findings and conclusions relating to Mother’s housing, financial situation, and health.² Specifically, Mother appears to argue that the evidence showed that the family case manager was not aware whether Mother had an adequate home and that Mother presented the family case manager with a letter indicating that she was employed. Mother also argues that the

² Under the heading “Failure to Complete Services,” Mother states: “The record does support the finding that [Mother] did not complete home-based counseling nor did she participate in supervised visitation. Nonetheless, [Mother] did speak to A.B. over the phone regularly, until those calls were suspended by the Court.” Appellant’s Brief at 10 (citations omitted). To the extent that Mother argues that the failure to complete services was not supported by the record, we conclude that Mother’s argument is waived for failure to develop a cogent argument. See, e.g., Loomis v. Ameritech Corp., 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding argument waived for failure to cite authority or provide cogent argument), reh’g denied, trans. denied.

informal adjustment did not require her to take action to care for her own health. Lastly, Mother argues that there was no evidence as to what impact her living arrangements, financial situation, or health had on A.B.

With respect to Mother's housing situation, the record reveals that the Mother's attorney stated at the beginning of the hearing that Mother was in a shelter in Indianapolis, but then stated that she moved in with a friend in Indianapolis. Even though the informal adjustment required Mother to notify the family case manager of any change in address, the family case manager testified that she did not know where Mother was living at the time of the hearing. The family case manager also testified that Mother failed to maintain an adequate home for A.B. The home-based therapist testified that he met with Mother at three different places over the course of the referrals.

Regarding Mother's employment, the record reveals that Mother did not provide the MCDCS with pay stubs indicating that she was employed. When asked whether Mother provided MCDCS with documentation verifying her employment, the family case manager testified that Mother provided a "letter." Transcript at 7. MCDCS informed Mother that "pay stubs and things of that nature" were needed, and Mother never provided such documentation to MCDCS. Id.

Regarding Mother's health, to the extent that Mother argues that "the [informal adjustment] did not mandate [Mother's] handling of her own health; rather, it compelled her to care for A.B.'s health," we disagree. Appellant's Brief at 12. The informal adjustment stated that Mother "will obtain proper medical attention regarding her illnesses and will continue to meet with medical/psychiatric personnel, as directed by the

medical/psychiatric personnel and shall take all prescribed medications as prescribed.” Petitioner’s Exhibit 1 at 4. The family case manager testified that Mother did not obtain proper medical attention regarding her illnesses or continue to meet with medical and psychiatric personnel as directed. The family case manager also testified that she had concerns regarding Mother’s mental health.

In addition, the record reveals that Mother failed to attend a scheduled mediation and supervised visits. Further, during the first referral involving a home-based therapist, Mother told the therapist that she did not need to meet with him and it was “not yet Court ordered.” Transcript at 24. After a second referral and three weeks of no contact with Mother despite the home-based therapist’s willingness to travel to wherever Mother was located to provide services, the “home based program closed out with the family unsuccessfully” on November 30, 2009. Id. The family case manager testified that she would not feel confident placing A.B. with Mother and closing the case even if Mother had an appropriate home because:

[Mother] is not financially stable to care for herself or [A.B.]. Based on our previous IA, [Mother] has failed to complete those services that DCS has put forth for [Mother] to complete and she signed and said that she would complete. In addition, just working with [Mother] and seeing the adequate housing that we thought we, that was adequate, has fallen apart so we would like to see more stability with housing and income, and making sure that if we close this case, that it’s going to be successful.

Id. at 13.

Based upon our review of the record, we cannot say that the evidence does not support the trial court’s findings or that the findings do not support the court’s conclusions. Given the evidence and testimony presented at the fact-finding hearing, we

cannot say that the trial court's findings of fact, conclusions of law, and judgment were clearly erroneous. The evidence and findings of fact were sufficient to demonstrate that A.B.'s "physical or mental condition" is "seriously endangered," and that A.B. needed "care, treatment, or rehabilitation" that A.B. was not receiving and was "unlikely to be provided . . . without the coercive intervention of the court." See, e.g., Roark, 551 N.E.2d at 869-872 (holding that the evidence presented at a fact-finding hearing was sufficient to support the CHINS finding); Parker v. Monroe County Dep't of Pub. Welfare, 533 N.E.2d 177, 179 (Ind. Ct. App. 1989) (observing that the court does not have to wait until a tragedy occurs in order to take action and holding that the evidence supported the conclusion that the children were CHINS).

To the extent that Mother argues that the trial court's order was punitive in suspending phone calls between Mother and A.B., we disagree. Specifically, Mother argues that "the judge's own remarks demonstrate a punitive intention in suspending [Mother's] telephone calls to A.B., rather than a conclusion that suspending the phone calls would be in A.B.'s best interest." Appellant's Brief at 14. As previously mentioned, 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 at 805. While the trial court's order suspending visitation and phone calls may appear to be punitive to Mother, it is clear in light of the record that the court was attempting to motivate Mother to attend hearings and complete services which would be required for the stated goal of reunification. Under the circumstances, we cannot say that the trial court erred by ordering Mother to

have no visitation and no phone contact with A.B. until further order of the court in an attempt to motivate Mother to attend court hearings and complete services.

For the foregoing reasons, we affirm the trial court's determination that A.B. was a CHINS.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.