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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: M.D., N.D., L.H., H.S.,)
AND S.S., CHILDREN IN NEED OF SERVICES,)

JOSEPH DAMRON, BERTHA STUTLZ,)
RICHARD HUNT, PATRICK BYRD, and)
BARBARA STULTZ,)

Appellants-Respondents,)

vs.)

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.,)

Co-Appellee (Guardian ad Litem).)

No. 49A04-0602-JV-99

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Beth Jansen, Magistrate
Cause No. 49D09-0508-JC-33964-65

September 1, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellants-respondents Joseph Damron, Bertha and Barbara Stultz, Richard Hunt, and Patrick Byrd (collectively, the parents) appeal the juvenile court's determination that M.D., N.D., L.H., H.S., and S.S. were children in need of services (CHINS). Specifically, the parents challenge the juvenile court's conclusion that the children's physical or mental condition is endangered, as well as the determination that court intervention was necessary for the care, treatment or rehabilitation of the children. Concluding that the evidence was sufficient to support the CHINS determination, we affirm the judgment of the juvenile court.

FACTS

When appellee-petitioner Marion County Department of Child Services (DCS) filed a CHINS petition on August 30, 2005, the evidence showed that four adults and five children were living in a two-bedroom home on Foltz Street in Indianapolis. The residents included Bertha Stultz, the mother of M.D., N.D., and L.H., Barbara Stultz and her children, H.S. and S.S. In addition, Damron, who was believed to be the father of M.D. and N.D., and Hunt, the alleged father of L.H., also lived at the residence. All of the children were under the age of eighteen.

Hunt had been previously convicted of sexual misconduct with a minor and was required to register as a sex offender for a period of ten years. Patrick Byrd, the alleged

father of H.S. and S.S., was incarcerated in Tennessee. However, no documents establishing proof of his paternity had been produced.

The only means of income for the residents was child support that Bertha was receiving from Damron and some government assistance funds that Barbara Stultz received. On August 20, 2005, the DCS became involved with the children and decided to conduct an investigation following reports of parental abuse and neglect. The initial report also alleged that the children were living with a registered sex offender and that an adult was doing drugs in front of the children. The Stultzes each had prior histories with the DCS involving instances of abuse and neglect of the children.

DCS case manager Bessie Collins arrived at the residence and noticed that a large quantity of animal feces was scattered throughout the yard. The animal waste covered some of the toys that were outside. Collins observed that the residence was extremely cluttered with what appeared to be piles of dirty clothes, bedding, furniture, and baby paraphernalia. Collins noticed that there was hardly enough room to walk through the residence. Collins also observed that the only toilet in the residence did not flush when the toilet handle was depressed. Thus, the residents used a bucket to flush the toilet.

On August 24, 2005, Collins confronted Hunt with information that she had obtained from the sex offender registry showing that Hunt lived at the Foltz Street residence. Hunt admitted that he was residing with the Stultzes and their children. The evidence showed that Hunt had been arrested in March 2005 on a parole violation for living with the children.

Just prior to the filing of the CHINS petition, Damron, a resident of Georgia, had

exercised parenting time with N.D. and M.D. He had recently returned them to the Stultz home just prior to the DCS's investigation. While Damron was aware that Hunt was living in the residence, he did not know that Hunt was a convicted sex offender. When Damron learned that Hunt was a registered sex offender he did not show any concern because someone told him that it "didn't have anything to do with children." Tr. p. 102.

When the DCS filed CHINS petitions with regard to all of the children, Hunt was no longer on parole. In the petition, the DCS alleged that Barbara Stultz had failed to provide her children with adequate housing because the children's living conditions were "filthy and deplorable." Appellants' App. p. 69. The DCS also asserted that the children's physical or mental conditions were endangered because Hunt was residing with them. Similar allegations were made with regard to the other children, and the DCS asserted that Damron failed to demonstrate an ability and willingness to parent his children.

Following a hearing on the CHINS petition on November 16, 2005, the juvenile court found all of the children to be CHINS. In relevant part, the conclusions of law provided as follows:

2. The children's physical or mental condition is seriously endangered as a result of the inability, refusal or neglect of a parent to supply one or more of the children with necessary shelter or supervision. The shelter and supervision provided to the children is physically insufficient and not free of endangering persons.
3. Although Mr. Hunt provided Ms. Stultz and this Court with proof he was released from parole he still serves as an endangering factor given the circumstances and nature of his conviction and subsequent incarceration for the crime of sexual misconduct with a minor. He also serves as an endangering factor for the well-being of the children in the home considering the home is a small two bedroom home with at least three

adults and five children residing there. Release from parole does not equate with an adult convicted of sexual misconduct with a minor being suitable to have unfettered access to children especially in light of the cramped size of this home and the five young children residing there.

4. The unwillingness of Bertha and Barbara Stultz to give correct information as to who they allowed in their home and around their children leaves this Court with the conclusion that they knew the living arrangement was of a questionable nature and on that that would again give rise to concerns of DCS. These actions were taken even after prior, less restrictive services had been offered. As a result of the Stultz sisters' continued involvement with Mr. Hunt, their prior involvement with MCDCS and the nature of the living arrangement, the children need care, treatment and rehabilitation that they are not likely to receive without the coercive intervention of the Court.
5. The Court is NOT making a general policy as to prohibiting convicted sex offenders from residing in homes with their children or other, non-related children. The Court makes these findings and conclusions as to this case only, based upon the evidence and testimony heard and the Court's ability to judge the witnesses before it and their credibility and demeanor.

Appellants' App. p. 194-97. The parents now appeal.

DISCUSSION AND DECISION

I. Standard of Review

In reviewing the grant of a CHINS petition, we first note that when a parent fails to fulfill his or her duty to provide for the physical and mental well-being of a child, the State has authority, pursuant to its *parens patriae* power, to intervene. When parental neglect, abuse or abandonment has been established, the State has a compelling interest in protecting the welfare of the child. Wardship of Nahrwold v. Dep't of Pub. Welfare, 427 N.E.2d 474, 477 (Ind. Ct. App. 1981). The burden is on the State to prove by a preponderance of the evidence that a child is in need of services. In re E.M., 581 N.E.2d

948, 952 (Ind. Ct. App. 1991). In accordance with our CHINS statute, Indiana Code section 31-34-1-1:

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.

Next, we note that when—as here—a party requests findings of fact and conclusion of law, this court will not set aside the findings or judgment unless they are clearly erroneous. In re A.H., 751 N.E.2d 690, 695 (Ind. Ct. App. 2000). In order to find that the trial court's judgment was clearly erroneous, this court must determine that the evidence did not support the findings or that the findings did not support the judgment. Id. Findings of fact are clearly erroneous “when there is no substantial evidence of probative value to support the findings.” In re E.M., 581 N.E.2d at 952. Additionally, we will not reweigh the evidence or judge the credibility of the witnesses but will consider only the evidence and the reasonable inferences to be drawn therefrom that support that judgment. A.H., 751 N.E.2d at 695.

II. The Parents' Arguments

The parents assert that a number of the juvenile court's findings of fact and conclusions of law were not sufficient to support the CHINS determination. Specifically, the parents contend that the evidence was insufficient because the DCS failed to show that the

children's physical or mental condition was seriously endangered in light of the parents' inability, refusal, or neglect to provide their children with necessary shelter or supervision. The parents also claim that the juvenile court's conclusion that the children were in need of care or treatment that they were not receiving and were not likely to receive without court intervention was clearly erroneous.

Notwithstanding the parents' challenges to various findings, the evidence established that there were four adults and five children living in a small two bedroom home where the only toilet in the home did not properly function. Tr. p. 31-33, 101. Hence, the residents used buckets of water to flush the toilet. Id. at 31. DCS caseworker Collins found animal feces on the children's toys that were scattered in the yard. Id. at 28-29. Moreover, the DCS caseworkers found that the residence was excessively cluttered with piles of clothes, furniture, and other clutter, leaving almost no room to walk through the house. Id. at 52-53.

The evidence also showed that Byrd was incarcerated and unable to supervise his children. Id. at 37. And, while Damron attacks several findings that were made with regard to his alleged neglect of the children, the evidence established that he did not make any attempt to explore the living conditions of the residence when he returned the children to Bertha. Specifically, Damron did not determine if the children had adequate bedding or other necessities, and he only saw the kitchen area of the residence. Id. at 96. However, even assuming that Damron could not have known of his children's living conditions and was simply complying with child visitation requirements under a dissolution decree, the evidence nonetheless established that the children's living conditions were deplorable. Moreover, the

evidence showed that the only source of income that the residents received was child support that Bertha received and some governmental assistance funds. Given these circumstances, any error that the juvenile court may have committed regarding a finding of Damron's alleged neglect of the children was harmless with regard to these proceedings because the evidence demonstrated that the children's physical or mental conditions were seriously endangered. In essence, the evidence presented at the hearing satisfied the requirements of our CHINS statute and the juvenile court could reasonably conclude that there was a serious risk posed to the children because they were not receiving the care and treatment they required without the intervention of the court. As a result, we conclude that the findings and judgment made by the juvenile court were not clearly erroneous.¹

The judgment of the juvenile court is affirmed.

VAIDIK, J., and CRONE, J., concur.

¹ In light of our conclusion that the juvenile court properly entered a CHINS finding based upon the filthy and deplorable living conditions of the residence and the parents' failure to provide necessities for the children, we need not address the propriety of the juvenile court's emphasis on the evidence that the children were living with Hunt, a registered sex offender, whose probation had expired before the CHINS petition was filed in this case. In any event, we decline to conclude that a child must be declared a CHINS merely because he or she resides with an individual whose name appears on a sex offender registry.