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FILED
Sep 16 2009, 9:07 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF L.A.,	)	
	)	
K. A. (Father),	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 34A05-0906-JV-336
	)	
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	
	)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0901-JC-11

September 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

K.A. ("Father") appeals from the trial court's determination that his minor child, L.A., is a Child in Need of Services ("CHINS"). Specifically, he contends that the evidence is insufficient to support the CHINS determination. Concluding that the evidence is sufficient to support the CHINS determination, we affirm.

Facts and Procedural History

Father and T.G.[1] are the parents of L.A., who was born on August 16, 2004. On January 9, 2009, the Howard County Department of Child Services ("DCS") received a report from a secondhand source that L.A. "had been given a bath a couple of days ago (2-3) and was black and blue around her vaginal area" and "may have been molested by her father." Ex. 1. Melissa Marner, a family case manager with the DCS, and an officer of the Kokomo Police Department ("KPD") went to Father's house later that day but were unable to establish any contact. On January 11, 2009, the KPD was informed by a concerned citizen that Father was making methamphetamine and exchanging methamphetamine for sex with an unknown female. The source was told that the unknown female "woke up hearing the child, [L.A.], begging 'please daddy stop.'" Appellant's App. p. 3; Ex. 1. The source said that L.A. has "massive bruising in the genital area." Appellant's App. p. 3.

The DCS and the KPD were unable to locate Father and L.A. until January 12, 2009. On that date, family case manager ("FCM") Heather Mehring, upon information from the KPD, found Father and L.A. at a relative's house. FCM Mehring explained to

[1] Father and Mother do not live together, and Mother is not a party to this appeal.

Father the information the DCS had received and, pursuant to a court order, removed L.A. for a forensic interview and a medical examination.

Tonda Cockrell, a KPD detective, conducted the forensic interview. L.A. told Detective Cockrell that "somebody had touched her ya-ya," referring to her vaginal area.[2] Tr. p. 27. L.A. stated that the incident occurred at her house and that she was afraid to discuss it. She did not want to talk about the incident and, when asked, communicated that she did not feel safe in her house.

After the forensic interview, FCM Mehring took L.A. to a hospital for a medical examination. FCM Mehring witnessed the examination and said that L.A. was "very red, sore, in her vaginal area." *Id.* at 47. Earlier, around January 4, 2009, Sharon Combs, L.A.'s maternal grandmother, had also seen L.A.'s vaginal area to be very red. When Combs told Father that she thought it warranted medical attention, Father told Combs to take L.A. to a doctor since she had more time than him.

Detective Cockrell spoke with Father after her interview with L.A. In that conversation, Father told Detective Cockrell that he first learned L.A. had been molested eight days before the interview.[3] He told Detective Cockrell that he had left L.A. with Samantha Word ("Word" or "Sam"), a woman who stayed with him periodically, and when he came back, L.A. answered affirmatively when he asked if Word had "stuck her

[2] Initially, Detective Cockrell believed L.A. said that her "daddy" had touched her ya-ya. The trial judge had been given this information before granting removal of L.A. Later, Detective Cockrell and FCM Mehring each reviewed the interview tape and determined that L.A. had said "somebody" had touched her ya-ya. Tr. p. 27, 49-50. Regardless of the identity of the perpetrator, the trial judge clarified at trial that she would have approved the removal based on L.A.'s statement that the touching had occurred at home and that she was afraid to go home. *Id.* at 52.

[3] Although Father contests this fact and instead claims that he first learned that L.A. had been molested just one or two days before the interview, Tr. p. 183-84, we remain mindful of our standard of review, which directs us to consider only the evidence most favorable to the trial court's judgment.

finger inside her." *Id.* at 29. When asked why he had not reported the incident to the KPD, Father responded that "he felt that this was [retaliation] by Sam because he'd kicked her out." *Id.* Father later testified at trial that he had not taken L.A. to the doctor after he learned of the molestation because he "didn't have time." *Id.* at 184. Earlier in the day before L.A.'s interview with Detective Cockrell, Father executed guardianship papers giving guardianship of L.A. to his son and his wife with the intent of preventing the DCS from removing L.A. *Id.* at 184-85; Ex. 3.

On January 13, 2009, FCM Marner conducted another interview with L.A. At that interview, L.A. said that Word had touched her ya-ya. When asked if someone had told her to say that, L.A. nodded and said Father had. After the interview, L.A. asked FCM Ashley Hale to draw pictures with her. L.A. drew a picture of Word with L.A. and told FCM Hale that "she didn't like Sam because Sam was mean and that this picture was a picture of Sam touching her ya-ya and then she had to touch Sam's." Tr. p. 73. L.A. told FCM Hale that the incident occurred in L.A.'s bedroom.

Word testified at trial, and Detective Cockrell also testified regarding an interview she had conducted with Word. Word testified that she stayed with Father and L.A. for up to a week at a time and that she engaged in sex with Father in exchange for drugs. During the interview, Word told Detective Cockrell that in mid-December, while giving L.A. a bath, she "saw some pretty significant bruising to [L.A.'s] vaginal area." *Id.* at 33. She did not confront Father about it because he was "unstable and violent," *id.* at 12, and she did not report it to the police because she "was a little scared . . . and still wanted to be high," *id.* at 21.

Word also testified that she had seen Father use methamphetamine "too many [times] to count."[4] *Id.* at 9. Word had been using methamphetamine for about a year and a half, and with one exception, all of her uses had been with Father. Word testified that when L.A. walked into the kitchen while Father was smoking or shooting up with methamphetamine, he would tell her to go into the living room. L.A. would stay in the room, and he "just let her stand there while he did it." *Id.* at 10.

At the close of the fact-finding hearing, the trial judge found L.A. to be a CHINS for two reasons. First, Father "has been using illegal drugs, specifically meth, in the home and around the child." *Id.* at 191. Second, "the evidence is clear . . . that someone has inappropriately touched this child," "it occurred in the home," and "the child felt unsafe or was scared to return to the home." *Id.* at 192. In the Order on Fact Finding Hearing, the court found L.A. to be a CHINS as defined by Indiana Code section 31-34-1-1 based on the following findings of fact:

> 1. The child has been the victim of some sort of sexual molest as described below and the child was in the care and custody of the child's father when this occurred.
> 2. The father, after learning from his daughter that she had been molested, failed to take appropriate action by having his daughter examined by medical providers and failed to report the incident to law enforcement or child protective services.
> 3. The father engaged in a history of illegal drug use with an eighteen year old female while in the presence of the child on repeated occasions by ingesting methamphetamine.
> 4. The child disclosed to law enforcement and DCS personnel that she was scared to return to the father's home.

Appellant's App. p. 39. The court also found L.A. to be a CHINS as defined by Indiana Code section 31-34-1-3 based on the following finding of fact: "1. The child disclosed to

[4] Word also testified that Father used narcotic pain killers.

law enforcement and DCS personnel on more than one occasion that she had been touched inappropriately in a sexual manner in her vaginal area." *Id.* Thereafter, the court held a dispositional hearing in which the DCS was awarded wardship of L.A., with responsibility for her supervision, care, and placement. Father now appeals.

Discussion and Decision

Father contends that the evidence is insufficient to support the trial court's determination that L.A. is a CHINS under Indiana Code sections 31-34-1-3(a) and 31-34-1-1. The DCS has the burden of proving by a preponderance of the evidence that a child is in need of services. *In re T.S.*, 881 N.E.2d 1110, 1112 (Ind. Ct. App. 2008). Upon review of a trial court's CHINS determination, we consider only the evidence most favorable to the judgment and the reasonable inferences therefrom. *Id.* We will neither reweigh the evidence nor reassess the credibility of the witnesses. *Id.* Here, the trial court made findings of fact and conclusions of law in adjudicating L.A. a CHINS. Where a trial court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* We will set aside the trial court's judgment only if it is clearly erroneous. *Id.*

I. Indiana Code Section 31-34-1-3(a)

First, Father contends that the evidence is insufficient to support the trial court's determination that L.A. is a CHINS under Indiana Code section 31-34-1-3(a), which provides:

> A child is a child in need of services if, before the child becomes eighteen (18) years of age:
>
> (1) the child is the victim of [an enumerated] sex offense . . . ; 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.

In its CHINS petition, the DCS specifically alleged that L.A. is a victim of a sex offense under Indiana Code sections 35-42-4-2 (deviate sexual conduct), 35-42-4-3 (child molesting), 35-42-4-9 (sexual misconduct with a minor), or 35-46-1-3 (incest).

Father argues that the DCS must prove the elements of the sex offense against a particular perpetrator. Appellant's Br. p. 12-14. Father is incorrect. In determining whether L.A. is a victim of a sex offense under Indiana Code section 31-34-1-3(a)(1), the trial court need not adjudge a particular person guilty of a criminal act; it need only be convinced by a preponderance of the evidence of L.A.'s condition as the victim of a sex offense. Here, the evidence shows that L.A. told Detective Cockrell, FCM Mehring, and FCM Hale on separate occasions that someone had touched her vaginal area. This is enough to show that L.A. is a victim of child molesting by a preponderance of the evidence. *See* Ind. Code §§ 35-42-4-3, 35-41-1-9.[5]

II. Indiana Code Section 31-34-1-1

Father also contends that the evidence is insufficient to support the trial court's determination that L.A. is a CHINS under Indiana Code section 31-34-1-1, which provides:

[5] The trial court addressed the determination that L.A. needs care, treatment, or rehabilitation that she is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court in its findings under Indiana Code section 31-34-1-1. Therefore, we address it in the following section.

> 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.

There is sufficient evidence that L.A. is a CHINS pursuant to Indiana Code section 31-34-1-1. That is, testimony from witnesses supports the findings that L.A. was molested while in the care and custody of Father, L.A. was afraid to return home, Father failed to take appropriate action after learning of the molest, and Father engaged in illegal drug use while in the presence of L.A., and these findings support the trial court's determination that L.A. is a CHINS under Indiana Code section 31-34-1-1. Detective Cockrell, FCM Mehring, and FCM Hale each testified that L.A. had told them in separate instances that someone had touched her vaginal area. FCM Mehring and Combs each testified that they saw that L.A.'s vaginal area was very red, and Word testified that she saw bruising in L.A.'s vaginal area. Detective Cockrell and FCM Hale each testified that L.A. told them in separate instances that the molestation had occurred at her house.

Moreover, once Father learned of the molestation, he failed to take appropriate action. He testified that he did not take L.A. to be seen by a doctor because he "didn't have time." Tr. p. 184. The morning before L.A.'s interview with Detective Cockrell, however, he did find the time to execute guardianship papers giving guardianship of L.A. to his son and his wife. Detective Cockrell testified that in response to her question as to

why Father failed to notify the police after he learned of the molestation, his response was that "he felt that this was [retaliation] by Sam because he'd kicked her out." *Id.* at 29. In short, despite discovering that his daughter had been molested, Father failed to take any action to ensure that L.A. was safe and healthy.

Furthermore, Word testified that she saw Father use methamphetamine "too many [times] to count," *id.* at 9, and that Father would allow L.A. to remain in the room while he smoked or injected methamphetamine. This evidence supports the conclusion that Father used drugs on numerous occasions in L.A.'s presence.

This evidence supports the trial court's findings, and the findings support the trial court's determination that L.A. is a CHINS. Father's arguments ask us to reweigh the evidence and reassess the credibility of witnesses, which we may not do. Based on the evidence, we conclude that the DCS has proved by a preponderance of the evidence that L.A. is a CHINS pursuant to Indiana Code sections 31-34-1-3(a) and 31-34-1-1.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.