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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF A.E., A.E., & A.W.,)
CHILDREN IN NEED OF SERVICES,)
)
T.E. (Mother),)
)
Appellant-Respondent,)
)
vs.)
)
MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner,)
)
)
&)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee (GAL).)

No. 49A02-1002-JC-203

APPEAL FROM THE MARION SUPERIOR COURT
JUVENILE DIVISION

September 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

T.E. (“Mother”) appeals the juvenile court’s determination that her three children are children in need of services (“CHINS”). She contends that the juvenile court’s dispositional decree fails to sufficiently set forth the court’s reasoning as required by Indiana Code section 31-34-19-10. We agree with Mother and therefore remand this case for a new dispositional decree that includes written findings and conclusions concerning the elements listed in Section 31-34-19-10.

Facts and Procedural History

Mother has three biological children, An.E., born January 23, 1994, Ash.E., born September 28, 1996, and Asi.W., born May 7, 2001. Between 2005 and approximately October 2009, Mother was in a relationship with N.J. (“Boyfriend”), and during a portion of this time Boyfriend lived in the same house as Mother and her three children. By all accounts, Mother and Boyfriend had a volatile relationship, which included verbal altercations, name-calling, and occasional physical altercations. On one occasion, Mother alleged that Boyfriend stole her car.

On October 25, 2009, Marion County Department of Child Services (“DCS”) received a report of physical and sexual abuse in Mother’s home. The following day,

DCS investigator Stacy Plummer went to Mother's home and interviewed Mother and the children. Mother denied any sexual abuse in the home. Mother, who did indicate domestic violence from Boyfriend but was not specific, told Plummer that she had filed a protective order against Boyfriend in September but had it dismissed in October. Mother also told Plummer that Boyfriend mentally abused her and her children. Plummer interviewed Ash., who had a bruised eye and shin. Ash. told Plummer that Mother gave her the bruised eye. Ash. also said that Boyfriend sexually abused her. Plummer placed all three children in foster care based on allegations of sexual and physical abuse in the home.

Two days later, on October 27, 2009, the DCS filed a petition alleging that An., Ash., and Asi. were CHINS because Mother "failed to provide the children with a safe and appropriate living environment free from physical and sexual abuse and domestic violence." Appellant's App. p. 47. Specifically, the petition alleged that when Plummer interviewed the children,

[Ash.] presented with a bruised right eyelid and a bruised left shin. She reported that the bruise on her eye was from her mother punching her. In addition, [Ash.] reported that her mother's boyfriend . . . has been having sexual intercourse with her since she was nine years old. She stated that she had become pregnant by [Boyfriend] and that her mother was aware. She further reported domestic violence in her mother's relationship with [Boyfriend]. [An.] and [As.] both stated that they have witnessed violence between [Ash.] and [Boyfriend] and [Boyfriend] and their mother. [Mother] reported that [Boyfriend] was mentally abusive to her and the children and that there is a history of domestic violence between them.

Id.

A fact-finding hearing was held on December 21, 2009. Mother, a self-described "disciplinarian," testified that she had used leather belts to discipline her children when

talking to them did not work. Tr. p. 14, 17. Mother admitted that Boyfriend, whom she was no longer dating and was no longer living with her, was verbally abusive but that he had not sexually abused Ash., who had made false accusations against Boyfriend in the past. Mother said that although she had the protective order against Boyfriend dismissed, she had a court date in early January to have it reinstated. In addition, Mother described Ash. as “very defiant” and “disrespectful” and said that Ash. has, on occasion, harmed her little sister “in fits of anger.” *Id.* at 17.

Mother also testified about an incident that occurred a few days before Plummer came to the house to interview them. Mother explained that Ash. grabbed her, at which point Mother asked An. to help remove Ash. from her. Ash. then tackled Mother to the ground, at which point Mother smacked her across the face and called 911. Mother, who was willing to let Ash. live with her father, believed that the only services her family needed were services relating to the fact that her children were currently in foster care and thus separated from her.

Ash. testified at the hearing that Boyfriend had sexually abused her by “touch[ing] [her] in places he shouldn’t of,” such as her breasts, and by having sexual intercourse with her. *Id.* at 29, 32. Ash., however, admitted that she had previously made similar allegations against Boyfriend and then recanted those allegations. Ash. further testified that she saw Boyfriend hit Mother.

An. testified that he has a “good” relationship with Mother and that Mother is “a good mother” who takes care of his needs. *Id.* at 48, 49. An. also testified that he had

witnessed physical altercations between Mother and Boyfriend. An. said that he did not want to be in foster care and that he wanted to go home and be with Mother.

Following the fact-finding hearing, the juvenile court found the children to be CHINS.¹ Appellant's App. p. 101. A dispositional hearing was then held on January 22, 2010, at which time the DCS made its recommendation as to services and Mother produced evidence that she had since obtained a protective order against Boyfriend. Tr. p. 62. In addition, Mother's attorney said that she would participate in the services that the DCS recommended except for the psychological evaluation, because she "has never been diagnosed [with] any psychological issues, doesn't have any psychological issues." *Id.* Following the hearing, the court entered a dispositional decree in which Mother was ordered to comply with various services including home-based counseling, a parenting assessment, a psychological assessment, and a domestic violence program. Specifically, the court found that:

reasonable efforts have been offered and available to prevent or eliminate the need for removal from the home. After reviewing the reports and information from the [DCS], service providers and other sources, which the Court now incorporates in this order (see Court file), the Court also finds that the services offered and available have either not been effective or been completed that would allow the return home of the children without Court intervention.

The Court finds that it is contrary to the health and welfare of the children to be returned home and that reasonable efforts have been made to finalize a permanency plan for the children.

The Court orders the children to be wards of the Marion County [DCS]. The Court orders that the responsibility for placement and care of the child is ordered to the Marion County [DCS], with placement at: [An.]

¹ The juvenile court found the children to the CHINS "as to mother." Appellant's App. p. 101. We note that the Indiana Supreme Court disapproved of such a split parent CHINS analysis in *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010). This is because a CHINS determination establishes the status of the children alone. *Id.*

and [Asi.] are in therapeutic foster care. [Ash.] is on TTV [temporary trial visit] with [her father].

The Court proceeds to disposition and adopts the Pre-Dispositional Report of the [DCS] and incorporates same as the findings of the Court, including plan of permanency which is hereby ordered. The Court also orders the Parental Participation, which is made a part of the order.

* * * * *

The Court now orders the children removed from the care of [Mother] pursuant to this Dispositional Order.

* * * * *

The Court orders continued placement and wardship.

[Mother's attorney] requests that [An.] and [Asi.] be place[d] in home with [M]other or increased with up to and including TTV with [M]other.

The Court grants authorization for [M]other to have increased parenting time up to and including TTV upon agreement of HBC, DCS, and GAL.

The Plan for permanency: Reunification with parent(s)

Appellant's App. p. 41-42. Mother now appeals.

Discussion and Decision

Mother contends that the juvenile court's dispositional decree does not sufficiently set forth its reasoning as required by Indiana Code section 31-34-19-10. Because a CHINS proceeding is a civil action, the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. Ind. Code § 31-34-12-3; *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). Once a child's CHINS status has been determined, the juvenile court holds a hearing to consider alternatives for the child's care, treatment, placement, or rehabilitation; the participation of the parent, guardian or custodian; and the financial responsibility for the services provided. Ind. Code § 31-34-19-1. The juvenile court then fashions a dispositional decree setting forth the care, treatment, or rehabilitation necessary to address the child's needs. In this regard, Indiana Code section 31-34-19-10 provides:

(a) *The juvenile court shall accompany the court's dispositional decree with written findings and conclusions upon the record concerning the following:*

(1) The needs of the child for care, treatment, rehabilitation, or placement.

(2) The need for participation by the parent, guardian, or custodian in the plan of care for the child.

(3) Efforts made, if the child is a child in need of services, to:

(A) prevent the child's removal from; or

(B) reunite the child with;

the child's parent, guardian, or custodian in accordance with federal law.

(4) Family services that were offered and provided to:

(A) a child in need of services; or

(B) the child's parent, guardian, or custodian;

in accordance with federal law.

(5) *The court's reasons for the disposition.*

(b) The juvenile court may incorporate a finding or conclusion from a pre-dispositional report as a written finding or conclusion upon the record in the court's dispositional decree.

(Emphases added).

The DCS concedes “that the juvenile court’s order regarding the disposition hearing consisted largely of boilerplate language.” Appellee’s Br. p. 3. However, it argues that “the record” nevertheless gives sufficient reasoning to support the order. *Id.* The DCS specifically points to the dispositional hearing where Mother contested some of the recommended services. In the event we find the dispositional decree to be insufficient, the DCS argues that “the proper remedy would be to remand the CHINS determination with specific instructions to the juvenile court.” *Id.*

Mother is correct that the juvenile court’s dispositional decree quoted above amounts to a general recitation of the statutory language without specific application to Mother and her three children. This is especially crucial because the allegations are geared toward Ash., but the dispositional decree also covers An. and Asi. Although the

court incorporated the pre-dispositional report into the dispositional decree, which Indiana Code section 31-34-19-10(b) authorizes, the pre-dispositional report is not much help either. *See* Appellant’s App. p. 106-14. For example, the pre-dispositional report commences with the reasons for the DCS’s involvement, that is, reports of sexual and physical abuse by Mother and Boyfriend which were “substantiated,” but the report gives no specific or substantiated information. *Id.* at 107. The report later provides that “Out of home placement: IS NOT appropriate for the children.” *Id.* at 112. But this is contradicted by a later conclusion that the children cannot yet return home to Mother because “Mother has just re[c]ently started Homebased counseling and will be court ordered additional services at 1/22/[10] hearing, therefore, the reason for removal has not yet been alleviated.” *Id.* at 113. Simply put, the pre-dispositional report does not fill in the gaps left by the juvenile court in its dispositional decree.

Our Supreme Court highlighted the importance of clear findings in CHINS cases in *N.E.*:

First, when a juvenile court makes decisions during a CHINS hearing as to whether the child will become a ward of the State or orders services, this has the potential to interfere with the rights of parents in the upbringing of their children. Therefore . . . procedural irregularities, like an absence of clear findings of fact, in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to a potential subsequent termination of parental rights. Our legislature’s enactment of an interlocking statutory scheme governing CHINS and involuntary termination of parental rights compels this court to make sure that each procedure is conducted in accordance with the law. Both statutes aim to protect the rights of parents in the upbringing of their children, as well as give effect to the State’s legitimate interest in protecting children from harm. We conclude that in order to properly balance these two interests, the trial court needs to carefully follow the language and logic laid out by our legislature in these separate statutes.

919 N.E.2d at 108 (quotation omitted). Because the juvenile court did not sufficiently set forth the court's reasoning as required by Indiana Code section 31-34-19-10, we remand this case for a new dispositional decree that includes written findings and conclusions concerning the elements listed in Section 31-34-19-10.²

Reversed and remanded.

MAY, J., and ROBB, J., concur.

² We note that Mother does not argue that the evidence is insufficient to prove that the children are CHINS pursuant to Indiana Code chapter 31-34-1.