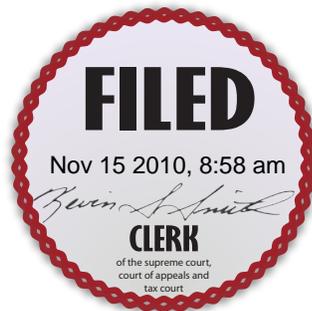


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEES:

STEVEN J. HALBERT
Carmel, Indiana

ELIZABETH G. FILIPOW
DCS Marion County Office
Indianapolis, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF I.D., Minor Child,)
)
T.D., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner,)
)
and)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee-Guardian Ad Litem.)

No. 49A05-1003-JC-198

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Julie Cartmel, Magistrate
The Honorable Marilyn Moores, Judge
Cause No. 49D09-0910-JC-47113

November 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

T.D. (“Mother”) appeals the juvenile court’s order determining that I.D. is a child in need of services (“CHINS”) and the dispositional order following that determination. Mother raises one issue, which we revise and restate as whether sufficient evidence supports the juvenile court’s determination that I.D. was a CHINS. We affirm.

The facts most favorable to the juvenile court’s order follow. On October 4, 2009, Mother gave birth to I.D., and I.D. was “very premature” as she was almost sixteen weeks early, and weighed less than two pounds. Transcript at 66. J.E. (“Father”) claimed that he was I.D.’s father but paternity had not been determined at the time of the fact-finding hearing. I.D. was placed in the neonatal intensive care unit of Methodist Hospital and was placed on a ventilator and given a feeding tube. I.D.’s meconium¹ tested positive for opiates.

The Department of Child Services of Indiana (“DCS”) received a report regarding Mother and I.D. On October 6, 2009, Nathan Johnson, a DCS employee, met with Mother, and Mother reported that she did not have any prenatal care with I.D. Mother also informed Johnson that she did have other children that were not in her care due to CHINS cases and that reunification with those children was “not going to happen.” *Id.* at

¹ Meconium is generally defined as “[a] dark green fecal material that accumulates in the fetal intestines and is discharged at or near the time of birth.” THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1090 (4th ed. 2006).

11. At this time, Mother was unemployed and lived in her mother's apartment with Father. Johnson searched the DCS index which revealed that Mother perpetrated substantiated neglect in 2006, 2008, and 2009.

DCS "substantiated the assessment for neglect" and as a result of that substantiation filed a Petition Alleging Child In Need of Services. Id. at 15. The petition alleged that I.D. was a CHINS because Mother failed to provide I.D. with a safe, stable, and appropriate living environment, Mother had a history with DCS, I.D.'s siblings were removed due to an unexplained skull fracture and neglect, Mother had failed to take advantage of any services, Mother had untreated issues with substance abuse, and Mother had not demonstrated an ability to care for a child with I.D.'s special needs.

Michael Parks, an employee at Adult & Child and the case manager that supervised Mother's visitation with I.D. in the hospital, initially scheduled visitation for four days a week, and Mother and Father indicated that they wanted visitation for only three days a week which Parks then instituted. Mother and Father then indicated that the visitation "was costing them too much in gas money and money to get up there" so visitation was reduced to two days per week. Id. at 87.

On December 22, 2009, the court held a fact-finding hearing. At that time, I.D. remained in the neonatal intensive care unit. Judith Hanlon, a nurse in the Methodist Hospital Newborn Intensive Care Unit, testified that babies in I.D.'s condition are usually released "[j]ust with oxygen and then quite often they go home with a feeding tube" and "[t]hey go home on monitors . . . because of the feeding tube usually, it's a safety thing to

make sure they're not gonna have any problems.” Id. at 70. Hanlon also testified that I.D. will need to see a pulmonologist as a part of ongoing care, to have constant supervision, to be fed every three hours, and to be safely administered any medications.

After the hearing, the court entered an order on February 18, 2010, which concluded that I.D. was a CHINS. Specifically, the order stated:

FINDINGS OF FACT:

1. The child, [I.D.], was born on October 4, 2009 in Indianapolis, Indiana at Methodist Hospital.
2. The Mother of [I.D.] is [T.D.] and the alleged father is [J.E.]. While [Father] and [Mother] hold[] [Father] out to be the father of [I.D.], legal paternity had not been established, either through a paternity action filed in a Court of competent jurisdiction, nor through execution of a paternity affidavit pursuant to Indiana code.
3. [I.D.] remained in Methodist Hospital from her time of birth through the date of the fact-finding on December 22, 2009.
4. Neither parent has gainful employment or other valid source of income such that the child's financial needs can be met by either parent, separately or together.
5. [I.D.] did not receive prenatal care, and was born prematurely.
6. Both parents have a substantial prior history of substantiated neglect; moreover, parents have had four previously born children removed from their care pursuant to Court [sic] under respective cases adjudicating those children to be in need of services, and the parental rights of [Mother] and [Father] are pending final hearing on a petition to terminate rights as to those children.
7. That parents failed to complete services under prior CHINS matters involving [I.D.'s] previously born siblings, including but not limited to, home based services (both parents), drug and alcohol assessments

(both parents), parenting instruction (both parents) and a psychological assessment (mother)

8. Mother has a history of homelessness, unemployment and substance abuse.
9. Parents admit that reunification with the previously born sibling[s] is not going to occur.
10. Parents have participated in supervised parenting time with [I.D.] as arranged for by DCS.
11. [I.D.] is currently on a ventilator, without which she would not survive, and further received nourishment through a naso-gastric feeding tube. Additionally, she is receiving intravenous medication to treat wounds on her feet.
12. Parents have held [I.D.], changed her diaper and taken her temperature, but have not otherwise engaged with [I.D.] in other permitted tasks.
13. [I.D.] will need ongoing pulmonary treatment, special feeding and nutritional regimens and must remain hooked up to a monitor at such time as she may be discharged from Methodist Hospital.
14. Parents failed to avail themselves of home-based services offered to them by DCS subsequent to the filing of the Petition alleging that [I.D.] is a Child In Need of Services, filed with this Court on or about October 14, 2009.
15. [Mother] and [Father] have two prior-born children with special medical needs, also born prematurely, who are in pre-adoptive care and for whom parents have signed consents for adoption.
16. [I.D.] need [sic] intensive and specialized medical care upon her release from the hospital, and parents are unable to provide same for her.
17. Parents do not have stable housing of their own and currently are staying in the home of a relative.

18. Parents have refused to engage in treatment for their identified substance abuse issues.
19. [I.D.'s] physical condition, moreover her life, would be in serious jeopardy if placed in the care of her parents, due to her parents lack of understanding and engagement in learning of therapies necessary to care for [I.D.]; because parents lack stable housing and income necessary for [I.D.]'s care; because of parents [sic] history of neglect and failure to offer prenatal care for [I.D.]; and because of the complex nature of the care needed by [I.D.] that parents are unlikely to provide and [are] unwilling to learn.

* * * * *

CONCLUSIONS OF LAW:

1. [I.D.] is a child under the age of eighteen (18); namely, under one (1) year of age.
2. On December 22, 2009, [I.D.] resided in Methodist Hospital.
3. The events pertaining to [I.D.] as set for [sic] the [sic] the Petition Alleging that [I.D.] is a Child In Need of Services occurred in Marion County, Indiana.
4. [Mother] and [Father] are unable to care for [I.D.] and are unable or unwilling to learn the skills necessary for the care of [I.D.]'s complex medical issues, such that her life and health would be placed in serious jeopardy if [I.D.] were placed in their care; further, parents are unlikely to comply with services necessary to effectuate their ability to provide [I.D.] with necessary food, shelter, clothing, medical care, and supervision without the coercive intervention of the Court.
5. That the Department of Child Services has proven by a preponderance of the evidence that [I.D.] is a Child In Need Of Services.

IF ANY OF THE FOREGOING CONCLUSIONS OF LAW ARE MORE PROPERLY DENOMINATED AS FINDINGS OF FACT, THEY ARE SO DENOMINATED.

Appellant's Appendix at 84-88. After a dispositional hearing on March 2, 2010, the court entered a dispositional order which ordered I.D. to be removed from Mother's care with the plan for permanency being reunification with Mother and Father. The court also entered a participation decree which required Mother to complete a psychological evaluation and participate in and successfully complete a drug and alcohol assessment and successfully complete all recommendations made by the evaluations including intensive out-patient or in-patient treatment. Additional facts will be provided as necessary.

The issue is whether sufficient evidence supports the juvenile court's determination that I.D. 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 DCS was required to prove by a preponderance of the evidence that I.D. was a CHINS. Id.

When a court's order contains 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 juvenile 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 child. In re A.I., 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), trans. denied.

Mother does not challenge any specific finding. Rather, Mother argues that “[t]here was no evidence that the parents had failed to care for I.D.’s needs because she had been in the hospital since birth.” Appellant’s Brief at 4. Mother argues that the factual findings “relate almost entirely to the conduct of the parents with other children prior to the birth of I.D.” and “do not support the conclusion of law that I.D. is a CHINS.” Id. Mother argues that “[t]here is nothing about [her] actions during her pregnancy or after the birth of her daughter which shows that she is unwilling to care for her daughter and take care of her medical needs.” Id. Mother also argues that the participation decree demanding that she undergo a psychological evaluation and drug and alcohol assessment are “unrelated to the child’s needs” and “merely drains the resources of already financially distressed parents.” Id. at 5.

Initially, we observe that the record reveals a pattern regarding Mother’s other children. Specifically, DCS records indicate that Mother perpetrated substantiated neglect in 2006, 2008, and 2009. Mother had been referred to services in 2007, 2008, and 2009, and “[m]ost of those ultimately ended up being closed out due to noncompliance with those services.” Transcript at 12. Services were referred in April 2009, but none of those were completed. I.D.’s siblings have been found to be CHINS. One of I.D.’s siblings has been adopted by another family, and Mother signed consents to adoption for two of her other children.

In the month before I.D. was born, Kareema Boykin, a therapist who had received a referral from the Marion County Department of Child Services (“MCDCS”) for

homebased counseling services for Mother, attempted to schedule three appointments, but Mother failed to appear for any of the appointments even though Boykin was willing to provide Mother with transportation.

As to Mother's substance abuse issues, the record reveals that Mother would not submit to a drug and alcohol assessment. Jennifer Hoover, the family case manager, received information that Mother sought "pain killers from the Emergency Rooms from hospitals all over for non-specific pain and selling pain killers, taking them, abusing them." Id. at 39. At one point, Hoover went to Mother's home to perform a "mobile screen," gave Mother water to drink, and sat with Mother for two-and-a-half hours, but Mother "absolutely insisted" that she could not "pee one single drop" even though she knew that if the screen did not take place that she was going to lose visitation with her children. Id.

Specifically as to I.D., the record reveals that on May 26, 2009, someone reported to Hoover that Mother was pregnant. Hoover asked Mother directly if she was pregnant on at least three occasions and also "kept saying, 'If you are pregnant,'" and Mother "vehemently denied it, [saying], 'I'm not pregnant[,] I am not pregnant[,] 'I am not pregnant,' right up [until] probably a month before [I.D.] was born." Id. at 34. Mother admitted that she did not have any prenatal care with I.D. I.D.'s meconium tested positive for opiates.

Mother is unemployed and lives in her mother's apartment, which, according to the family case manager, is a place that I.D. could not be placed because "there are adults

in the home that have CPS and domestic violence history.” Id. at 45. Hoover testified that Mother does not have “basic programs and a home, finances and the basic, even transportation,” and that Mother and Father did not have “[t]he very basics of living” Id. at 62.

Johnson, a DCS employee and the investigator of the initial report regarding I.D., testified that he was concerned that there was a risk of harm to I.D. if I.D. was returned to Mother’s care because Mother had “active open CHINS cases” regarding her other children and Mother had not utilized services to allow for reunification. Id. at 15. Johnson also testified that “[w]ith [I.D.] being born premature [he] did have concerns regarding [Mother’s] ability to appropriately care for [I.D.]” Id. Hoover testified that she had concerns regarding Mother. Specifically, Hoover testified that Mother and Father requested that she help them pursue the transfer of guardianship of I.D. to a friend, and that “gave [Hoover] great concern about their own confidence and their ability to parent this child”² Id. at 41. Hoover also testified that Mother gave her conflicting stories about I.D.’s well-being. Specifically, the following exchange occurred during the direct examination of Hoover:

Q Have you had any other conversation with [Mother] or [Father] that have caused you concern about their ability or interest in caring for [I.D.]?

A Well [Mother] is . . . Gives me conflicting stories. She called me on approximately, I wanna say around October the 11th or 12th and said that, “Oh, this baby’s fine.” “She’s just . . .” “She’s not as bad as

² The friend ultimately withdrew her offer to be guardian of I.D.

[A.] and [I.]” “She’s just extra small.” “I think she’s gonna do . . .” You know, “She’s gonna be great, she just needs to gain weight and get bigger.” “There’s nothing wrong with her.” Two days later she called me up and said, “I need my visits unsupervised cause [I.D.]’s near death.” “She’s at the point of dying any time.” “She’s got pressure on her lungs.” “She isn’t gonna make it and this weekend she’s going to die and I’m not gonna be there with her when she dies.” And . . . But two days before that she had told me absolutely the opposite. And this has been a pattern with [Mother] and with this child as well. And I knew for a fact that when [Mother] was telling me all of that, that [I.D.] was stable. She wasn’t at imminent death.

Id. at 42. Hoover testified that she, her supervisor, and her division manager “felt real strongly that [I.D.] needs to be placed in the placement that [two of Mother’s other children] are in, in the foster home and is trained for medically fragile children.” Id. at 43. Hoover also testified that there is a risk of harm if I.D. were to be returned to Mother and Father’s care, that I.D. needs to be placed in a foster home instead of with Mother and Father because Mother and Father are not financially stable, do not have jobs, and are “not prepared in any aspect to take a totally healthy baby, much less a medically fragile child.” Id.

Parks, the case manager that supervised Mother’s visitation with I.D., indicated that there was a problem with Mother and Father “not being around enough” during the visitation which caused him to set only ten-minute breaks. Id. at 90. Specifically, Parks testified that Mother and Father “were not there with [I.D.]. They would go down to the cafeteria and then they wouldn’t be there with their daughter. Or if they were, you know, out and about for a good amount of time, they wouldn’t be with [I.D.] and our primary

focus was to get them in visiting [I.D].” Id. at 89. Parks expressed a concern that Mother was not spending enough time interacting with I.D. and that Mother and Father gave I.D. focused attention for only twenty minutes out of the hours that Parks spent with them. Hoover, the family case manager, testified that Mother and Father have “shown a flagrant past history with all of their children of not being attentative [sic] in visitation at the hospitals. Of being involved with numerous other things including sex in the parent[s’] lounge and various other things, rather than attending to the child and actually performing parenting time.” Id. at 49.

Based upon our review of the record, we cannot say that the evidence does not support the juvenile 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 juvenile court’s findings of fact, conclusions of law, and judgment were clearly erroneous. The evidence and findings of fact were sufficient to demonstrate that I.D.’s “physical or mental condition” is “seriously endangered,” and that I.D. needed “care, treatment, or rehabilitation” that I.D. 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 appears to argue that there was insufficient evidence to support the court's participation decree ordering Mother to undergo a psychological evaluation and drug and alcohol assessment, Mother cites In re A.C., 905 N.E.2d 456 (Ind. Ct. App. 2009). In In re A.C., a mother argued that there was insufficient evidence to support the juvenile court's participation decree ordering her to participate in and successfully complete a drug and alcohol assessment, including intensive outpatient treatment or inpatient treatment as recommended by evaluations. 905 N.E.2d at 464. The court cited Ind. Code § 31-34-20-3 which provides:

If the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, the court may order the parent, guardian, or custodian to do the following:

- (1) Obtain assistance in fulfilling the obligations as a parent, guardian, or custodian.
- (2) Provide specified care, treatment, or supervision for the child.
- (3) Work with a person providing care, treatment, or rehabilitation for the child.
- (4) Participate in a program operated by or through the department of correction.

The court held that “[a]lthough 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. The court observed that the juvenile court found that “[mother] agreed that she needed the services being proposed by the [DCS] but disagreed that she needed any substance

evaluation services,” and that there was no other reference to any alleged substance abuse in the findings of fact or conclusions of law. Id. The court stated: “In addition, after reviewing the record, we are unable to find any allegation or even an indication that Mother has a substance abuse problem.” Id. The court concluded that the evidence did not support the juvenile court’s participation decree requiring Mother to submit to drug and alcohol assessment, random drug testing, and substance abuse treatment. Id.

Here, unlike in A.C., the court’s February 2010 order found that Mother had a substantial prior history of substantiated neglect, failed to complete a previously ordered psychological assessment, had a history of substance abuse, and had refused to engage in treatment for her identified substance abuse issues. The record reveals that Mother would not submit to a previously ordered drug and alcohol assessment, that I.D.’s meconium tested positive for opiates, that Mother had sought pain killers from emergency rooms from hospitals “all over for non-specific pain and selling pain killers, taking them, abusing them,” and that the family case manager recommended that visitation be supervised because Mother had not submitted to drug and alcohol assessments. Transcript at 39. We conclude that the evidence supports the court’s participation decree.

For the foregoing reasons, we affirm the juvenile court’s determination that I.D. was a CHINS.

Affirmed.

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