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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF T.O., S.O., B.O., R.O., Z.O., E.O., and G.O., Minor Children,	)	
J.O., Mother,	)	
Appellant-Respondent,	)	
vs.	)	No. 85A04-1006-JC-407
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Robert R. McCallen, III, Judge
Cause Nos. 85C01-1003-JC-20, 85C01-1003-JC-21, 85C01-1003-JC-22, 85C01-1003-JC-23, 85C01-1003-JC-24, 85C01-1003-JC-25, 85C01-1003-JC-26

December 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

J.O. ("Mother")[1] appeals the juvenile court's order determining that T.O., S.O., B.O., R.O., Z.O., E.O., and G.O. (the "Children") were children in need of services ("CHINS"). Mother raises one issue, which we revise and restate as whether sufficient evidence supports the juvenile court's determination that her seven children were CHINS. We affirm.[2]

The facts most favorable to the juvenile court's order follow. Mother is the mother of T.O., born on October 18, 1999, S.O., born on February 5, 2001, B.O., born on March 1, 2002, R.O., born on October 28, 2003, Z.O., born on October 9, 2004, E.O., born on October 25, 2005, and G.O., born on February 2, 2007. At some point, Mother married M.C. ("Stepfather").

Mother was involved in domestic disturbances with people other than Stepfather. In one incident, B.C., Mother's sister, whom Mother indicated had been diagnosed as "bipolar, schizophrenic, [and] all kinds of things," chased Mother with a knife in front of some of the Children. Transcript at 14.

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[1] Mother's brief lists her initials as J.C.; however Mother's testimony reveals that her initials were J.O. at the time of the hearing.

[2] We remind Mother that Ind. Appellate Rule 46(A)(5) governs the Statement of Case and provides that "[t]his statement shall briefly describe the nature of the case, the course of the proceedings relevant to the issues presented for review, and the disposition of these issues by the trial court or Administrative Agency. *Page references to the Record on Appeal or Appendix are required in accordance with Rule 22(C).*" (Emphasis added).

We observe that while Mother included the trial court's judgment, the Notice of Completion of Clerk's Record, and the chronological case summary in her brief, neither Mother nor DCS filed an Appendix.

About six weeks prior to March 22, 2010, Mother and Stepfather began residing at the Knights Inn in Wabash because their house had caught fire after Mother's two youngest children went in a bedroom with a lighter and caused a mattress to become engulfed in flames. Mother and Stepfather shared two rooms with a total of four beds with Mother's parents, Mother's two nephews, and the seven Children.

On March 22, 2010, while the three youngest children were at the Knights Inn with Mother and Stepfather, a domestic disturbance occurred and G.O. was injured. Mother, who does not have a driver's license, called a friend to pick up the three youngest children. The friend eventually brought G.O. to the police station, and R.O. was later found at a bait shop with Mother's sister, B.C.

The Indiana Department of Child Services ("DCS") received a report alleging that Mother and Stepfather had been in a domestic dispute and that one of the children may have been injured in the altercation. Ryan Jacobs, a family case manager with DCS, went to the police station, examined G.O., and sent G.O. and another family case manager to the hospital so that G.O. could receive treatment. G.O. suffered an open wound on the back of his head as well as welts on his shoulder, back, and under his armpit.

The DCS filed a verified petition alleging the Children to be CHINS.[3] On May 5, 2010, the court held a fact finding hearing. According to Mother's testimony, the three youngest children were throwing chips into the air, and G.O. "was jumping on the chair and was trying to put his head in between the light piece, you know, just jumping up and

[3] The record does not contain a copy of this petition.

down." Id. at 10. Mother began cleaning up the "chip mess." Id. G.O. then jumped, fell, and hit his head. Mother noticed that G.O. was bleeding and "freaked out." Id. Stepfather "walked over and spanked them for throwing chips in the air." Id. at 8. Mother and Stepfather "got[] in a little argument," and then Stepfather "walked back over and smacked [G.O.] with a broom" on the "back shoulder area." Id. Mother and Stepfather then "started arguing, screaming, [and] fighting." Id. at 9. Mother "got [the broom] away from" Stepfather and began hitting Stepfather with the broom. Id. Mother later observed a "small red mark" on G.O. from Stepfather striking G.O. with the broom. Id. Mother later testified that G.O. had blood on his head from when he "bounced off of a chair onto the bed frame," which occurred before Stepfather spanked G.O. and struck G.O. with a broom. Id. at 24. According to Jacobs, a family case manager, he asked G.O. how he received the cut on his head, and G.O. stated that "Daddy hit him," and he fell and cut his head. Id. at 34.

After the hearing, the court entered an order on May 6, 2010, which concluded that the Children were CHINS. Specifically, the order stated:

> A. The children (all minors) are children in need of services because: Their physical and/ or [sic] mental conditions are seriously impaired and/or seriously endangered as a result of the inability, refusal, and/or neglect of their parents to supply the children with necessary supervision and they need care, treatment, or rehabilitation that they are not receiving, and that is unlikely to be provided or accepted without the coercive intervention of the Court[.]
>
> Further, their physical and/or mental conditions are seriously endangered by act and/or omission of their parent, guardian and/or custodian.

On or about March 22, 2010, the children were residing with their mother and her husband (not their natural father) at the Knight's Inn in Wabash. They were living at the Knight's Inn because of damage to their home from a fire started by one or two of the children. On that date four of the children were not present at the Inn but [Z.O.], [E.O.] and [G.O.] were. During the afternoon, Mother and her husband got into a domestic altercation because of what she perceived as excessive punishment inflicted by her husband on, at least, [G.O.]. While accounts vary, the Court finds that [G.O.] was injured, about his head, arms and back, when he was struck by Mother's husband. This incident, as well as the ensuing altercation between Mother and her husband, occurred in front of all three children. Thereafter, Mother physically struck her husband with a broom and he then prevented them from leaving their room. Neither Mother nor her husband are licensed drivers and the injuries to [G.O.] required medical attention. Mother allegedly telephoned a friend to pick up the children and to take [G.O.] to the hospital. For whatever reason, [G.O.] was not transported to the hospital until after the friend was summoned to the Police Department and, then, he was take [sic] by a family case manager, not Mother or her friend. Mother admits to having anger issues on occasion and particularly on that date. Her husband was ultimately arrested for his disorderly conduct after the police were called to the Inn. He remains incarcerated.

Mother has had other incidents of what could be considered domestic disturbances, with other family members, in the presence of one or more of her children, on prior occasions.

To Mother's credit, she appeared to be coming to the defense of [G.O.] after he was struck by her husband. However, the situations she has placed her children in are unsafe. This has happened on more than one occasion.

B. The continued removal of the children from their home is necessary for the reasons as set forth in the detention order heretofore entered in this cause and the allegations (which the Court finds to be true), contained in the petitions. The County Office made all reasonable efforts to prevent the children's removal from the home and/or to reunite them with their parents. Under the circumstances presently before the Court, reunification is not in their best interests.

However, based upon the steps taken by the Mother both before and after detention, it is the Court's belief that this likely should become an In Home CHINS in the not too distant future, assuming Mother fully participates in

> all services offered and likely with the benefit of one or two protective orders to control who can be around the children.

Appellant's Brief at 12-13.[4]

The issue is whether sufficient evidence supports the juvenile court's determination that the Children were 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 the Children were 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. 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:

[4] On May 28, 2010, the court held a dispositional hearing. The record does not contain a copy of the transcript of the dispositional hearing. DCS states in its statement of the case that a dispositional order was filed after the hearing.

> 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 argues that the requirement in Ind. Code § 31-34-1-1(2)(B), which requires that the children need care, treatment, or rehabilitation that "is unlikely to be provided or accepted without the coercive intervention of the court," has not been met. Mother argues that "she recognized that there were certain issues with her family, and assistance that she needed, long before the DCS ever intervened," and that she "was willing to rectify those issues on her own." Appellant's Brief at 9. Mother also argues

that she "sought out counseling on her own for five or six months prior to the date of the Fact Finding Hearing." Id.

With respect to Mother's argument that she sought out counseling on her own, Mother cites to a portion of the transcript that reveals that the Children were receiving services through the Bowen Center. However, the facts most favorable to the court's judgment reveal that Mother also needs services in order to protect the Children.

The following exchange occurred during the cross-examination of Jacobs, one of the family case managers:

> Q In your opinion, why don't you think [Mother] uh seek out of [sic] the treatment on her own?
>
> A Um, just I know that she had gotten the counseling at the school, but, um, there had been other things that [Mother] and I had been involved with and um I had unsubstantiated some other reports on her. Um, but I – with the domestic violence between her and [Stepfather], I don't think she would seek out the uh – the appropriate counseling for the domestic.

Transcript at 37-38. The following exchange occurred during the redirect examination of Jacobs:

> Q [T]he domestic . . . violence issues between [Mother and Stepfather], does that affect just them or does it also affect the children?
>
> A Yes, it affects everybody within the household.
>
> Q So her – if she were not to do those services, um, it would also affect the children, is that correct?
>
> A Absolutely.

Id. at 38. When asked by the court if his opinion changed because Stepfather was actually out of the home, Jacobs stated: "No, because I believe that he will be back. I don't believe that they will actually separate." Id. Jacobs testified that it looked like Mother and Stepfather kissed before the detention hearing on March 24, 2010.

Jacobs testified that Mother was involved in domestic disturbances with people other than Stepfather and indicated that the situation was harmful to the Children "whether or not [Stepfather was] in the picture." Id. at 39. Mother admitted that there had been domestic disturbances between herself and other family members at the home. Mother testified that she could not tell how many domestic disturbances she had been involved in but did not believe it was more than five.

Jacobs described the relationship between Mother and her sister B.C., who chased Mother with a knife in front of the Children, as a "love-hate relationship." Id. After the incident on March 22, 2010, R.O. was later found at a bait shop with B.C., whom Mother described as being diagnosed as "bipolar, schizophrenic, [and] all kinds of things." Id. at 14.

Jacobs indicated that Mother "gets angry easily" and that he would like to see Mother obtain help for anger management. Id. at 40. Jacobs also testified that he would like to see Mother complete other services to help with raising the Children before they were placed back with Mother. Lastly, Jacobs indicated that he believed that the Children were in need of care, treatment, or rehabilitation that they were not receiving or not provided or accepted without the coercive intervention of the court.

Based upon the evidence and reasonable inferences therefrom that are most favorable to the judgment, we conclude that the evidence and findings of fact were sufficient to demonstrate that the Children need care, treatment, or rehabilitation that was "unlikely to be provided or accepted without the coercive intervention of the court."[5] See 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).

For the foregoing reasons, we affirm the juvenile court's determination that the Children were CHINS.

Affirmed.

RILEY, J., and ROBB, J., concur.

[5] Mother appears to focus on the requirement in Ind. Code § 31-34-1-1(2)(B). At one point, Mother argues that "there is no allegation that she physically harmed the children in her care," but "concedes that domestic altercation between her and [Stepfather], and her inability to prevent her husband's excessive physical punishment of the child may be enough to satisfy the first prong of I.C. § 31-34-1-1, or more specifically I.C. § 31-34-1-1(1)." Appellant's Brief at 8-9. To the extent that Mother challenges the requirement in Ind. Code § 31-34-1-1(1), the evidence previously discussed, including evidence of G.O.'s injuries and Mother's pattern of domestic disturbances involving Mother and her family, satisfies the statutory requirement.