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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: J.F., Jo.F., N.V. and)
J.V., CHILDREN IN NEED OF SERVICES,)

MASHAWNDA FRANCE)
Appellant-Respondent,)

AND)

ROBERT VERCELLOTTI,)
Appellant-Respondent,)

vs.)

No. 49A02-0703-JV-252

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES)
Appellee-Petitioner,)

AND)

CHILD ADVOCATES, INC.)
Co-Appellee (Guardian ad Litem).)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Scott Stowers and Danielle Gregory, Magistrates
Cause Nos. 49D09-0605-JC-20251
49D09-0605-JC-20252
49D09-0605-JC-20253
49D09-0605-JC-20254

September 5, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

In this consolidated appeal, Appellant-Mother Mashawnda France and Appellant-Father Robert Vercellotti appeal from the juvenile court’s determination that their minor children, J.F., Jo.F., N.V., and J.V., were Children in Need of Services (“CHINS”).¹ Specifically, France and Vercellotti claim that the evidence was insufficient to support the CHINS determination. Concluding that the evidence was sufficient to support the CHINS determination, we affirm the judgment of the juvenile court.

FACTS AND PROCEDURAL HISTORY

On May 13, 2006, Vercellotti and France left three minor children, Jo.F., then age 6; N.V., then age 3; and J.V., then age 2, unsupervised in their vehicle parked on the north side of a pawn shop for at least eight to eleven minutes while they went inside to shop for movies. France is the mother of all three children and Vercellotti is the father of N.V. and J.V. While Vercellotti and France were inside the pawn shop, they did not have

¹ Ind. Code § 31-34-1-1.

the ability to supervise their children in the vehicle because the pawn shop did not have windows on the north end of the building, through which the parents could view their vehicle.

An off-duty police officer noticed that the children had been left in the vehicle and notified the Indianapolis Police Department. Officer Michael McFadden was dispatched to the scene and arrived four to five minutes after receiving the call. Neither Vercellotti nor France were within Officer McFadden's sight when he arrived at the pawn shop. Officer McFadden approached the vehicle and waited an additional four to six minutes with the children before entering the pawn shop to locate the children's parents. While waiting with the children, Officer McFadden determined that the car doors were unlocked and observed the older two children jumping back and forth between the front and back seats. He also observed that the outside temperature was forty-seven degrees and none of the children were wearing coats.

When Officer McFadden entered the pawn shop, both Vercellotti and France were waiting at the counter and neither appeared to be exiting the building when he entered. Officer McFadden arrested Vercellotti and France for child neglect on the basis that the children were left alone in the car for a long period of time, the parents had no visibility of the car from inside the pawn shop, the car doors were unlocked, the area was a high crime area, it was forty-seven degrees outside and the children were upset and not wearing coats.

During the arrest, France requested permission to make a phone call to arrange for someone to pick up the children, but Officer McFadden told her that per Indianapolis

Police Department Policy, he could not release the children to anybody. The Marion County Department of Child Services (“MCDCS”) was then called, and a representative came and removed the children.

After the children had been removed, they were transported to Youth Emergency Services, and Jo.F. was interviewed by a MCDCS representative. During this interview, Jo.F. informed the MCDCS representative that France had previously locked the children in a room and left them home alone for a period of time. The representative’s investigation also indicated that France had a substantial history with the Department of Child Services in Lake and Porter Counties.

After completing her investigation, the MCDCS representative placed the France-Vercellotti children in foster care. The MCDCS representative later learned that France had other children and the representative worked to locate them.² The MCDCS representative located J.F., who had been staying with a friend at the time of her mother’s arrest, and transported her to foster care.

On May 16, 2006, MCDCS filed a Request for Filing of Petition and for Temporary Custody and/or Supervision, which was granted by the juvenile court. MCDCS then filed a Petition Alleging Children in Need of Services.

After numerous hearings pertaining to this matter, the juvenile court issued Findings of Fact and Conclusions of Law on November 2, 2006, concluding that the France-Vercellotti children were CHINS, but that detention of the children was no longer

² The MCDCS representative discovered that Ms. France did not have custody of her oldest child, S.K., who lived with his father and subsequently determined that this child should not be removed from his current home.

warranted. On November 3, 2006, the court modified its Order to “continue the children in their current placement until further order of the Court” after discovering a no contact order, issued on behalf of Jo.F., N.V., and J.V. against France and Vercellotti. App. at 147 & 148.

The juvenile court issued a Disposition Order pertaining to Vercellotti on November 14, 2006, that ordered (1) that the children be named wards of the Marion County Office of Family and Children, (2) that the children’s placement in Therapeutic Foster Care continue, and (3) that the children be removed from the care of Vercellotti. Likewise, the juvenile court issued a Disposition Order pertaining to France on December 14, 2006, that ordered (1) that the children be named wards of the Marion County Office of Family and Children, (2) that the children’s placement in foster care continue, and (3) that the children be removed from the care of France.

On February 22, 2007, the MCDCS filed a Motion for Release of Wardship of all of the France-Vercellotti children. This Motion was granted by the juvenile court on March 27, 2007. The children were returned to the care of their parents pursuant to the agreed custody order and visitation schedule.³ Vercellotti and France now appeal the original CHINS determination.

DISCUSSION AND DECISION

When reviewing the sufficiency of the evidence supporting a CHINS determination,

³ The custody order and visitation schedule became necessary due to France and Vercellotti’s subsequent divorce.

[i]t is well established that . . . we will not set aside the judgment of the trial court unless it is clearly erroneous. A trial court's findings of fact, conclusions of law and judgment are considered to be "clearly erroneous" only if a review of the entire record leaves us with a definite and firm conviction that a mistake has been made. In reviewing the findings of fact made by the trial court we neither reweigh the evidence nor judge the credibility of witnesses. Rather, we consider only the evidence and reasonable inferences drawn therefrom which support the judgment.

Roark v. Roark, 551 N.E.2d 865, 869 (Ind. Ct. App. 1990) (internal citations omitted).

Moreover,

[d]etermining whether the evidence is sufficient requires both a quantitative and qualitative analysis. . . . Quantitatively, evidence may fail only if it is absent, that is only where there is none at all. Qualitatively, however, it fails when it cannot be said reasonably that the intended inference may logically be drawn therefrom.

In re M.W., 869 N.E.2d 1267, 1270 (Ind. Ct. App. 2007) (citing *Carbo, Inc. v. Lowe*, 521 N.E.2d 977, 980 (Ind. Ct. App. 1988)).

The juvenile court found that J.F., Jo.F., N.V., and J.V. were CHINS pursuant to Indiana Code section 31-34-1-1, which provides as follows:

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 the child:
 - (A) is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

The MCDCS was required to prove by a preponderance of the evidence that J.F., Jo.F., N.V., and J.V. were CHINS. *See* Ind. Code § 31-34-12-3.

Here, France and Vercellotti argue that there is insufficient evidence to support the juvenile court's CHINS determination. Both argue that the evidence presented by MCDCS is not sufficient to show that the children suffered any physical or mental harm as a result of their actions, that the CHINS determination was based solely upon their arrest, and that no other evidence was presented to support the court's determination.

The CHINS statute, however, does 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.* Further, as with parental rights terminations, the purpose of a CHINS adjudication is not to punish the parents, but to protect the children. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*.

While MCDCS concedes that the children suffered no physical injuries as a direct result of their parents' actions, MCDCS did provide evidence before the juvenile court to support its contention that the France-Vercellotti children's physical or mental condition was seriously endangered as a result of the parents' negligent supervision. Likewise, MCDCS presented evidence to disprove the parents' assertion that the primary reason for the CHINS petition was the parents' arrest.⁴

⁴ MCDCS does not challenge this Court's ruling in *Perrine v. Marion County Dep't of Child Servs.*, 866 N.E.2d 269 (Ind. Ct. App. 2007), that a parent's arrest may not be the actual incident that precipitated the filing of a CHINS petition. Rather, MCDCS distinguishes the *Perrine* case from the matter currently before the Court by providing evidence that the actual incident that precipitated the filing of the CHINS petition was the parents' actions in leaving

MCDCS presented evidence that France and Vercellotti had left their three minor children unattended in an unlocked vehicle for at least eight to eleven minutes while they went inside a pawn shop to shop for movies. MCDCS also presented evidence that while inside the pawn shop, France and Vercellotti had no visibility of their vehicle and thus had no way to supervise their children from within the shop. Officer McFadden testified that pawn shops generally create a high element of crime and that he felt it was “a very unsafe area for a child to be left alone in a vehicle.” Tr. at 127.

Fortunately, the France-Vercellotti children suffered no physical injuries as a result of their parents’ actions. That does not mean, however, that their physical and mental safety was not substantially endangered by these same actions. The evidence presented by MCDCS sufficiently supports the inferences drawn by the juvenile court in concluding that the France-Vercellotti children were CHINS and that intervention by the State was necessary to ensure both the physical and mental safety of the minor children.

Accordingly, we conclude there is sufficient evidence to support the juvenile court’s determination that J.F., Jo.F., N.V., and J.V. were CHINS.

The judgment of the juvenile court is affirmed.

NAJAM, J., and MATHIAS, J., concur

their children unattended in an unlocked vehicle in an unsafe area for a substantial amount of time. The parents’ subsequent arrest and being criminally charged as a result was merely a factor supporting the petition, not the precipitating incident itself.