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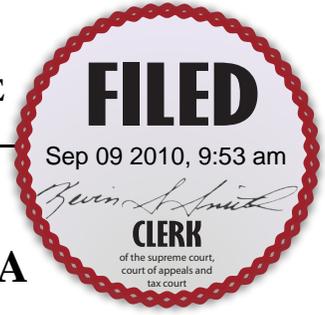
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: M.S.,)
A CHILD ALLEGED TO BE)
IN NEED OF SERVICES)
)
J.F.)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 42A01-1001-JC-32

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-0909-JC-99

September 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

J.F. (“Mother”) appeals the trial court’s adjudication of her son, M.S., as a Child in Need of Services (“CHINS”). Mother raises the following three restated issues:

- I. Whether the Knox County Department of Child Services (“DCS”) failed to present sufficient evidence that M.S. was a CHINS;
- II. Whether the trial court’s CHINS determination was based upon facts not alleged in the CHINS petition; and
- III. Whether the trial court’s findings and conclusions complied with Indiana Code section 31-34-19-10.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother and D.S. (“Father”), now divorced and remarried to other persons, are the parents of M.S., born December 22, 2004. Prior to this CHINS action, M.S. resided with his Mother, the custodial parent. However, on Monday, September 14, 2009, DCS received a report of physical abuse concerning M.S. after teachers at his daycare facility noticed a red handprint on the right side of his face and other red marks on the lower left side of his chin. DCS family case worker Kena Vieck interviewed M.S. at the daycare location. After speaking with M.S., Vieck contacted Mother, who admitted to Vieck that she had “smacked” M.S. the previous night. *Tr.* at 50. Upon the request of law enforcement, Mother met Vieck at the Knox County Sheriff’s Department, where Mother was interviewed by Detective Mike Fisher. Mother explained to Detective Fisher that M.S. was out of control, and as she was taking him inside to “time out,” he bit her. *Id.* at 10. Mother admitted that she smacked M.S. in the face once; she was unsure if she had smacked him more than once. Thereafter, Mother

was arrested on an allegation of battery causing serious bodily injury.¹ Mother agreed to let M.S. stay the night with Father as DCS further investigated the matter.

Vieck contacted Father and asked him to take M.S. to the doctor to be examined for his injuries, and Father did so the next day. The initial results of the x-ray were that M.S. had a possible fracture to his right cheek bone, but subsequent testing revealed that there was no fracture.

On September 16, 2009, DCS filed a verified CHINS petition, alleging that “pursuant to I.C. 31-34-1-1” (“Section 1”), M.S. was a CHINS because:

[T]he 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 parents, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and that he needs care, treatment, or rehabilitation that he is not receiving and that is unlikely to be provided or accepted without the coercive intervention of the Court[.]

Appellant’s App. at 3.

A Detention/Initial Hearing was held that date, and both parents appeared, along with Vieck and counsel for DCS. During the “Detention” portion of the hearing, Vieck testified for DCS regarding the injury observed on M.S.’s face and the interview with Mother. Vieck also reported that Mother “has a substantiated neglect on an older child back in 2004 for environment, life, health endangering which involved some extensive drug use and methamphetamine use.” *Tr.* at 11. At the conclusion of the “Detention” hearing, the trial

¹ According to the record before us, Mother was not formally charged with the offense. *Tr.* at 28

court ordered that M.S. remain a ward of DCS and that he should remain in his Father's custody during the proceedings.

Next, the trial court proceeded to the "Initial" hearing portion, where the trial court read to Mother and Father the CHINS petition, which alleged that M.S. was a CHINS under "Section 1." At that point, counsel for DCS advised that she omitted the "more relevant statute which would be 31-34-1-2 which is that the child's been injured due to actual physical abuse." *Id.* at 16. She then requested that the CHINS petition be amended by interlineation to read "that the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian." *Id.* The trial court granted the request and directed that the record reflect that the CHINS petition should be amended to reflect Indiana Code Section 31-34-1-2 ("Section 2").

Following this exchange, the trial court read to the parents the specific facts alleged in the CHINS petition including the report of physical abuse received by DCS on September 14, 2009, the noticeable bruising and marks on M.S.'s face, and Mother's admission that she caused the injuries. The trial court advised,

You have the right to know exactly what is the basis for the charge that your child is a Child in Need of Services. The basis is set forth in the petition which has been read to you. Do you understand those allegations?

Id. at 18. Both Mother and Father replied in the affirmative, that they understood the allegations. Father entered a general admission to M.S. being a CHINS, thus admitting that M.S. was a CHINS but not admitting to the specific allegations of the petition, and Mother entered a denial of the CHINS allegations.

At the November 10, 2009 fact-finding hearing, DCS's family case worker Vieck testified that her office received the report from M.S.'s daycare facility on September 14, that she went to the facility at approximately 11:00 a.m., and that she observed M.S. and the red marks to both the left and right sides of his face. M.S. stated to Vieck that his face hurt. *Id.* at 65. Vieck also spoke that day with Mother, who said that M.S. bit her on the arm the previous night at approximately 7:00 p.m., as she was carrying him to his room for a "time out." *Id.* at 50. Mother stated that as a reaction to his biting her, she smacked him in the face once. *Id.* Based on this information, DCS removed M.S. from Mother's custody and placed him with Father; Vieck explained that removal of M.S. was necessary to protect M.S.

Deputy Jarrett Ford of the Knox County Sherriff's Department, who responded to the daycare's initial call, testified that he observed M.S., who had bruising and redness to his face. Deputy Ford described that there were finger impressions on the right side of M.S.'s face and finger impressions on the left bottom part of his chin. *Id.* at 79. Deputy Ford explained that after Vieck arrived, he sat with M.S. and Vieck as Vieck spoke to M.S. After that, Deputy Ford contacted Mother and asked her to come to the Sheriff's Department, which she did.

Detective Fisher, who interviewed Mother at the police station on September 14, also testified. He stated that Mother explained to him that while she was in the process of disciplining M.S. for acting up, he bit her on the arm and, as a "knee jerk reaction" she "smacked him" in the face. *Id.* at 71, 76. When he inquired whether it was possible that she hit M.S. more than once, she told him that she remembered hitting him only once. Detective

Fisher testified that Mother was very remorseful about what had happened. Mother acknowledged to Detective Fisher that “it was excessive” and that she was upset that she “had overacted.” *Tr.* at 75, 77.

Stephanie Repphan, the ongoing case manager who took over the case from Vieck, testified to having seen the pictures of M.S. taken on September 14, and based on what she saw, she believed M.S. had been abused. She further stated that M.S.’s removal from Mother’s home based on his injury was necessary to protect his safety. *Id.* at 140-41. However, Repphan also had positive comments about Mother, testifying that, throughout the course of the CHINS proceedings, Mother was “very proactive,” and she “participates in everything we ask her to do.” *Id.* at 137. Even so, Repphan explained that, as of the date of the fact-finding hearing, DCS’s position was that M.S. was not ready to be reunified into his Mother’s home, which decision was primarily based upon the viewpoint of M.S.’s therapist, whom he was seeing to address behavioral issues. Repphan also acknowledged that, at that time, DCS was “not ready to [permit] unsupervised visitation,” because it “still has some concerns.” *Id.* at 143.

After taking the matter under advisement, the trial court issued its order determining M.S. to be a CHINS under Section 2, “in that the child’s physical or mental health is seriously endangered due to injury by the act of the parent, guardian, or custodian,” and it ordered DCS to prepare and file a predispositional report. *Appellant’s App.* at 7-8. Less than three weeks later, the trial court conducted a dispositional hearing, and subsequently issued a dispositional order, which ordered that M.S. would remain a ward of DCS, taking under

advisement the matter of whether M.S. would remain in his current placement with Father.
Tr. at 190.

The trial court's order identified certain needs of the child for care, treatment, or rehabilitation: "home based case management service, supervised visitation, parent aide, and therapy, and that participation by the parent, guardian, or custodian is necessary to facilitate reunification." *Appellant's App.* at 10. It also found that "[r]easonable efforts were made to reunite the child with the child's parent" and further identified family services that were offered or provided. *Id.* at 11. The trial court's order stated that its findings of fact and reasons for its disposition were based on DCS's predispositional report, which the trial court adopted. The order expressly recited DCS's thirteen recommendations, as amended by the trial court:

- (1) [Mother] will maintain weekly contact with Family Case Manager.
- (2) [Mother] and [Father] will notify FCM of any changes in address, household composition, employment or telephone number within five days of change.
- (3) [Mother] and [Father] will allow FCM to make announced and/or unannounced visits to the home.
- (4) [Mother] and [Father] will keep all appointments with service providers, DCS, and CASA.
- (5) [Mother] and [Father] will sign releases allowing DCS to communicate with services [sic] providers.
- (6) [Mother] and [Father] will maintain suitable housing.
- (7) [Mother] will maintain a legal source of income to adequately support [M.S.].
- (8) [Mother] will complete a psychological evaluation and follow all recommendations.
- (9) [Mother] and [Father] will ensure that [M.S.'s] medical and mental health needs are met in a timely and complete manner.
- (10) [Mother] will attend visitation with [M.S.] as scheduled.
- (11) [M.S.] will remain a ward of [DCS].
- (12) [Mother] and [Father] will NOT use physical discipline on [M.S.].
- (13) [Mother] will participate in Home Based Case Management services including parenting classes.

Id. at 11. Mother now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Mother argues that the evidence presented at the fact-finding hearing was insufficient to support the CHINS finding. When determining whether sufficient evidence exists in support of a CHINS determination, we consider only the evidence most favorable to the judgment and the reasonable inferences therefrom. *In the Matter of T.S.*, 881 N.E.2d 1110, 1112 (Ind. Ct. App. 2008). This court will not reweigh the evidence or reassess the credibility of the witnesses. *Id.*

DCS had the burden of proving by a preponderance of the evidence that M.S. was a CHINS. Ind. Code § 31-34-12-3. Indiana Code section 31-34-1-2, or Section 2, provides that a child is in need of services if the child is a child under eighteen years old and:

(1) the child's physical or mental condition is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; 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.

Here, Vieck, Detective Fisher, and Deputy Ford each observed on September 14 the handprint on M.S.'s cheek, as well as redness and bruising to both sides of M.S.'s face, photographs of which are included in the record before us. Mother admitted that she caused the injuries the previous evening, when she struck M.S. In arguing that the evidence was insufficient to sustain the CHINS determination, Mother urges that she struck M.S. as a

“reaction[.]” to him biting her. *Tr.* at 57. We acknowledge that the record before us indicates that M.S. has a history of biting people, including Mother, his stepfather, grandparent(s), and a CASA volunteer who supervised visitations. Prior to the current CHINS proceedings, Mother and her husband “took [M.S.] and tried to get him help” for his behavioral issues, but said that the counselor “refused to help him.” *Id.* at 114, 115. We also recognize that the home-based caseworkers for Raintree Consulting, who were involved in transporting M.S. to/from visitation and supervising them, testified at the fact-finding hearing that Mother was “loving” with M.S. and “very attentive” and that Mother and her husband were working together as a team to implement new discipline techniques to use with M.S. *Id.* at 127, 132. We commend Mother and her husband for their participation in the classes and techniques as recommended by DCS. However, Mother’s participation in services does not erase the fact that Mother undisputedly caused the injuries to both sides of M.S.’s face, which were observed by M.S.’s daycare teachers, Vieck, and law enforcement on September 14, 2009. On these facts, and considering only the evidence supporting the judgment, the evidence was sufficient to support the trial court’s CHINS determination. *See Roark v. Roark*, 551 N.E.2d 865, 871-72 (Ind. Ct. App. 1990) (excessive discipline resulting in welts and bruises sufficient to support CHINS determination).

II. Interlineation of “Section 2” Allegations

Mother asserts that the trial court erred by allowing DCS to proceed on a Section 2 CHINS case (injury by act or omission of parent) when the CHINS petition as filed alleged that M.S. was a CHINS under Section 1 (neglect of parent). Mother relies on Indiana Code

section 31-34-9-3, which requires that the DCS shall specify under which section they are filing the CHINS action.² The “CHINS petition is an integral part of ensuring that the parents have notice of the allegations and an opportunity to contradict the [Office of Family and Children’s] evidence.” *In re D.H.*, 859 N.E.2d 737, 743 (Ind. Ct. App. 2007) (quoting *Maybaum v. Putnam County Office of Family & Children*, 723 N.E.2d 951, 954 (Ind. Ct. App. 2000)). Here, Mother claims that because the interlineation amendment was never actually physically made to the petition,³ she did not have notice until after the evidence was closed that the State was pleading Section 2 and was thereby prejudiced. We disagree.

At the initial hearing, at which Mother and Father were present, DCS orally requested amendment of the CHINS petition by interlineation to reflect the more relevant statute, Section 2, involving injury to the child. The trial court granted the request without objection from Mother. The trial court then read to both parents the specific factual allegations from the CHINS petition, which described that DCS received the report from M.S.’s daycare, that Vieck investigated and observed the marks to both sides of M.S.’s face, that Mother admitted to Vieck and Detective Fisher that she caused the injuries to M.S.’s face, and that she was arrested. The trial court said, “The basis is set forth in the petition which has been read to

² Indiana Code section 31-34-9-3(4) states, in part, that the CHINS petition must contain a citation to the provision of the juvenile law that defines a CHINS and a concise statement of facts upon which the allegations are based, including date and location where the alleged facts occurred.

³ The trial judge explained on the record that, at the time of the initial hearing, he was attending a mandatory judicial conference and a judge pro tempore was conducting the hearing in his absence. “[T]he Judge Pro Tem listened to the request and agreed to amend the CHINS Petition by interlineation, but then it was never formally amended. What happened was, she said yes, you can do that, but didn’t take the time to write the amendment on the CHINS Petition or order DCS to give us a new amended CHINS Petition with Count 1 and Count 2 clearly indicated.” *Tr.* at 98-99.

you. Do you understand these allegations?” *Tr.* at 18. Mother responded that she did. Accordingly, Mother acknowledged her understanding that her act of striking M.S. causing injuries to him, not neglect, was the subject of the CHINS case.

At the subsequent fact-finding hearing, and after DCS had rested its case, there was discussion on the record about whether DCS was proceeding under Section 1 or Section 2. Mother asserted that the petition was never amended, and she had no notice that DCS was proceeding under Section 2. The trial court heard arguments from DCS, Mother, and Father.

The trial court gave Mother the opportunity to continue the hearing in order to prepare or modify her defense to the petition, and she declined. *Id.* at 101-02. Instead, Mother posed her continuing objection “to allow[ing] DCS to continue on a 2 and for any determination to be made on a 2,” and the trial court overruled her objection. *Id.* at 94

Mother is correct that the CHINS petition was never formally amended or actually written on to reflect Section 2. However, we find that, for several reasons, Mother had notice and was not prejudiced by the oversight of failing to physically amend the petition. First, the CHINS petition clearly alleges that M.S. was a CHINS because of the injuries sustained when Mother struck him, regardless of the fact that a box indicating Section 1 was checked, and the “neglect” language was recited, rather than another box for Section 2.⁴ Second, Mother expressly stated at the initial hearing that she understood the CHINS allegations at issue. Third, Mother was present at the initial hearing when the amendment by interlineation,

⁴ At the fact-finding hearing, DCS observed that in its Request for Filing of a CHINS Petition (filed prior to the Petition), and which initiated the CHINS process, “box 2” was checked, which showed that the CHINS allegation was a Section 2, namely “that the child’s physical or mental health was seriously endangered due to the injury by the act or omission of the child’s parent.” *Tr.* at 99-100.

to which she did not object, was granted on the record; she thereby has waived any objection to it now. *Parks v. State*, 752 N.E.2d 63, 65 (Ind. Ct. App. 2001) (defendant's failure to object to State's proposed amendment of charging information and his request to proceed with trial waived amendment issue for appeal).

While it certainly would have been better if the Section 2 amendment to the CHINS petition was written or otherwise reflected on the petition, it was amended on the record, and all parties were aware that DCS was seeking to have M.S. determined to be a CHINS stemming from Mother's act of striking M.S., resulting in injuries to his face. Mother has not persuaded us that she had no notice that DCS was proceeding on a Section 2 claim or was otherwise prejudiced.

III. Adequacy of the Findings and Conclusions

Indiana Code section 31-34-19-10 requires the trial court to give reasons for its disposition in a CHINS proceeding. Specifically, the statute imposes the following obligation on the trial court:

(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 disposition.

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

Ind. Code § 31-34-19-10. The court must do more than set forth vague findings that merely restate the statutory requirements. *In the Matter of J.Q.*, 836 N.E.2d 961, 966-67 (Ind. Ct. App. 2005).

Mother argues that the court's written order consists of simply generic findings that were inadequate to satisfy Indiana Code section 31-34-19-10. We disagree. The trial court expressly adopted DCS's predispositional report, which it is permitted to do under Indiana Code section 31-34-19-10(b). DCS's report consisted of ten pages reporting on family history, background, consultation with professionals, both for M.S and Mother, and options for treatment and placement of M.S. Furthermore, the trial court's order adopted the DCS report, not only by reference to it, but also by actual recitation of DCS's thirteen specific recommendations, one of which the trial court amended in part, and by so doing, the trial court demonstrated that it considered the appropriateness of each individual recommendation

rather than accepting the entire list wholesale.

The trial court's order does more than simply restate the statutory requirements, and while the trial court's findings and conclusions could have been more detailed, our review was not hindered in any way; the facts were straightforward and generally undisputed that Mother struck M.S. and injured him. In affirming the trial court's disposition, we borrow fitting language from *In re A.I.*, 825 N.E.2d 798, 814 (Ind. Ct. App. 2005), *trans. denied*, that the trial court's order, "while sparse, substantially complies with the statutory requirements. It is clear from the order that the trial court considered all the factors set forth in the statute." *See also, McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 196 (Ind. Ct. App. 2003) (trial court order incorporating predispositional report complied, as a whole, with statutory requirements). The trial court's order met the statutory requirements of Indiana Code section 31-34-19-10.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.