

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:

ANTHONY S. CHURCHWARD
Leonard, Hammond, Thoma & Terrill
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE:

GREGGORY W. HOCKEMEYER
Myers Tison Hockemeyer & McNagny, LLP
Columbia City, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

FELICIA DUBS,)
)
Appellant-Respondent,)
)
vs.) No. 92A03-0706-JV-267
)
WHITLEY COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner.)

APPEAL FROM THE WHITLEY CIRCUIT COURT
The Honorable James R. Heuer, Judge
Cause No. 92C01-0604-JC-1

October 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent Felicia Dubs (“Dubs”) appeals the trial court’s determination that her daughter L.S. is a Child in Need of Services (“CHINS”). We affirm.

Issue

Dubs presents a single issue for review: whether the evidence was sufficient to support the juvenile court’s adjudication of L.S. as a CHINS.

Facts and Procedural History

L.S. was born on September 20, 2003 to Dubs and Daniel Swindell. Because L.S. was born out of wedlock, Dubs had the sole physical and legal custody of L.S.

On March 26, 2006, L.S. was admitted to Dupont Hospital in Fort Wayne, Indiana with massive bruising, swelling, and hair loss. L.S. was found to have elevated liver profiles, which is a potential indicator of chronic infection, and was tested for exposure to heavy metals. The results of the toxin screen were negative, and the attending physicians were unable to verify the existence of a suspected bleeding disorder. L.S. was discharged on March 29, 2006, with a diagnosis of malnutrition.

Four days later, Dubs and her parents took L.S. to Riley Children’s Hospital in Indianapolis. Prior to taking L.S. to Riley, Dubs called L.S.’s paternal grandmother to report that “L.S. got worse” and she was taking her to Riley because “[L.S.’s] head was so swelled she couldn’t hardly see and that she had purple bruises down her sides and blood coming from her toenails.” (Tr. 120.)

During L.S.’s stay at Riley Hospital, medical examinations and testing revealed that L.S. had sustained the following injuries: rib fractures on both sides, a femoral fracture, a

subdural hematoma, a penetrating vaginal injury, a lesion on the liver, multiple bruises, and a bruise on one foot consistent with a human bite mark. Dr. Philip Merk opined that the rib fractures were up to seven days old, and the hymenal laceration was approximately three to seven days old.

On April 6, 2006, the Whitley County Juvenile Court issued an emergency custody order providing that L.S. would be placed in foster care upon her release from Riley Hospital.

On April 18, 2006, the Whitley County Department of Child Services (“the DCS”) requested court authorization to file a CHINS petition. On the same day, the juvenile court granted the DCS leave to file the CHINS petition. The petition alleged that L.S., while in the custody of Dubs, sustained numerous physical injuries and was the victim of a criminal sex offense.

On April 24, 2006, the juvenile court conducted an initial hearing, at which Dubs appeared and denied the allegations of the CHINS petition. The parties appeared for a fact-finding hearing on August 28, 2006. Evidence was heard on that date, and on December 11, 2006. On December 28, 2006, the juvenile court found L.S. to be a CHINS and continued her placement in foster care.

On January 29, 2007, a dispositional hearing was held. L.S. was made a ward of DCS. On February 27, 2007, Dubs filed a motion to correct error. The motion was denied and this appeal ensued.

Discussion and Decision

Dubs contends that the evidence was insufficient to support the juvenile court’s determination that L.S. is in need of services. More specifically, Dubs argues that the DCS was required to establish that L.S.’s injuries were inflicted by Dubs or at a time in which

Dubs had the care, custody, or control of L.S., and failed to do so.

The DCS had the burden of proving by a preponderance of the evidence that L.S. was a CHINS. In re C.B., 865 N.E.2d 1068, 1072 (Ind. Ct. App. 2007), trans. denied. When reviewing the sufficiency of evidence, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. Slater v. Marion Co. DCS, 865 N.E.2d 1043, 1046 (Ind. Ct. App. 2007). We do not reweigh the evidence or judge the credibility of witnesses. Id.

Indiana Code Section 31-34-1-1 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.

Additionally, Indiana Code Section 31-34-12-4 provides:

A rebuttable presumption is raised that the child is a child in need of services because of an act or omission of the child's parent, guardian, or custodian if the state introduces competent evidence of probative value that:

- (1) the child has been injured;
- (2) at the time the child was injured, the parent, guardian, or custodian:
 - (A) had the care, custody, or control of the child; or
 - (B) had legal responsibility for the care, custody, or control of the child; and
- (3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian.

The evidence that Dubs had “legal responsibility for the care, custody, or control of L.S.” is uncontroverted. See Ind. Code § 31-34-12-4. In order to show that L.S. was injured while in Dubs’ care, the DCS presented L.S.’s medical records, the testimony of her examining physician, and the testimony of her social worker. L.S.’s assessment at Dupont Hospital indicated that she displayed the following conditions:

1. Abuse Suspect.
Worsening Ecchymosis [bruising]
Several Abrasions
Laceration of the Lip
Maternal Drug Screen is Positive
2. Alopecia [hair loss] consistent with Alopecia Areata on the Crown
3. Edema of the Facial Area and Distal Extremities
4. Otitis Media and Sinusitis
5. Recent Diarrhea
6. Joint Crepitus
7. Parasthesias (Constant Pain to Palpation)
8. Elevated Lactic Dehydrogenase and Creatinine Phosphokinase
9. Normal Acute Phase Reactants
10. History of Fatigue Time Greater than One Month

(DCS Ex. A.) L.S.’s medical records from Riley Hospital reveal that she had “several injuries consistent with trauma” and that the “multiple different injuries in multiple locations cannot be explained by any underlying medical condition and indicate abuse/non-accidental trauma.” (DCS Ex. O.) The injuries were in various stages of healing, but appeared to have been inflicted within the preceding one to two weeks.

Dr. Merk testified that he examined L.S. at Riley Hospital on April 5, 2006. The results of her examination and testing showed that L.S. had sparse hair, decreased hemoglobin, cracked lips, bruises under her right ear, neck, and chest, an abrasion on her back, a vaginal tear consistent with a penetrating injury, a bite mark on her right foot, a right

femur fracture, and multiple rib fractures. Social worker Mary Dygert testified that L.S. had been diagnosed with post traumatic stress disorder.

Pursuant to Indiana Code Section 31-34-12-4, upon the presentation of this evidence, a rebuttable presumption arose that L.S. is a CHINS. Dubs then offered the testimony of Kelly Funk, R.N., who was not involved in L.S.'s direct care, but had reviewed her medical records. Funk's testimony alleged or implied that L.S.'s fractures and vaginal injuries had been inflicted during medical treatment at Riley Hospital. Dr. Donald Smith, Jr., who also was not involved in L.S.'s direct care, but had reviewed her medical records, testified to his disagreement with Funk's assessment. The juvenile court found Funk's testimony unpersuasive to rebut the presumption that L.S. is a CHINS.

As previously observed, we do not reweigh the evidence or judge the credibility of witnesses. Slater, 865 N.E.2d at 1046. The evidence favorable to the judgment amply supports the juvenile court's determination that L.S. is a CHINS.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.