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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE MATTER OF J.A.S and )  
Z.S. Children Alleged to be in need of )  
Services. )

HARRY SPICER, )

Appellant – Respondent, )

vs. )

No. 15A01-0707-JV-307 )

DEARBORN COUNTY DIVISION )  
OF CHILDREN SERVICES, )

Appellee-Petitioner. )

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APPEAL FROM THE DEARBORN CIRCUIT COURT  
The Honorable James Humphrey, Judge  
Cause No. 15C01-0610-JC-67  
15C01-0610-JC-69

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**December 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issue

Harry Spicer appeals the trial court's adjudication of his two children, Z.S. and J.S., as children in need of services ("CHINS"). Spicer raises the sole issue of whether the trial court's adjudication is supported by sufficient evidence. Concluding sufficient evidence exists, we affirm.

## Facts and Procedural History

Z.S. and J.S. are Spicer's biological children.<sup>1</sup> In 2000, the children began living with their paternal grandparents, Sam and Joyce Spicer, who insured the children, enrolled them in school, and generally cared for them. In January 2002, Spicer instructed an attorney to draw up paperwork giving the grandparents legal guardianship over the children, and the family proceeded as if the grandparents did indeed have such guardianship.

On October 23, 2006, Spicer was arrested for operating a methamphetamine lab. At the time of the arrest, Z.S. was at Spicer's home. Police notified the Dearborn County Division of Child Services (the "DCS"). The DCS filed a request for temporary custody of the children. On October 30, 2006, the trial court held a detention hearing. At this hearing, it was determined that Sam and Joyce were not in fact the children's legal guardians. The trial court granted wardship of the children to the DCS with placement of the children at the DCS's discretion. The DCS indicated its intention to perform background checks on Sam and Joyce and place the children with them as soon as possible. The DCS then filed a petition alleging the children to be CHINS on November 2, 2006. Spicer denied the

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<sup>1</sup> The children's mother apparently abandoned the family in 2000 and is not a party to this proceeding.

allegations in the petition, and the grandparents intervened. The trial court held an initial hearing that same day. At the close of the hearing, the trial court granted the DCS's request for temporary wardship, and left placement at the DCS's discretion. It declined to order placement with Sam and Joyce, as the DCS had not completed background checks, and the trial court expressed reluctance "to make that order blindly," noting its "responsibility . . . to make sure [the children] are in a safe place." Tr. at 36. The trial court instructed the DCS to get the background checks done as soon as possible.

The DCS's investigation took much longer than expected, as the police returned fingerprints taken by the DCS on more than one occasion because of smudging. During this period, J.S. remained in foster care. Z.S. initially was placed in foster care, but at some point, his behavior deteriorated and he was placed in residential treatment. At some point between the initial hearing and the fact-finding hearings, which were held on January 3 and February 22, 2007, Sam passed away.

The trial court adjudicated the children to be CHINS on March 5, 2007. In its order the trial court stated it found the children to be CHINS "because the children's legal custodian, Harry Spicer, was arrested and because Harry Spicer's home contained a methamphetamine lab." Appellant's Appendix at 52. On April 11, 2007, the trial court held a dispositional hearing. On May 29, 2007, the trial court issued a dispositional decree in which it ordered that J.S. be returned home pursuant to the terms of a safety plan,<sup>2</sup> and that Spicer participate in a variety of therapy and parenting services. The trial court also ordered that Z.S. remain in residential treatment. Spicer now appeals the CHINS adjudication.

## Discussion and Decision<sup>3</sup>

A child under the age of eighteen is a CHINS if:

- (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.

Indiana Code section 31-34-1-1.<sup>4</sup> The DCS has the burden of proving by a preponderance of the evidence that a child is a CHINS. Ind. Code § 31-34-12-3; In re M.W., 869 N.E.2d 1267, 1270 (Ind. Ct. App. 2007). When reviewing the sufficiency of the evidence to support a CHINS adjudication, we consider only the evidence favorable to the judgment and the reasonable inferences raised by that evidence. Id. This court will not reweigh evidence or judge witnesses' credibility. Id.

Spicer focuses the majority of his argument on whether or not Joyce and Sam are "guardians" for purposes of the CHINS statute. We find this point largely irrelevant. The first subsection of the CHINS statute indicates that a child is a CHINS if "the child's physical or mental condition is seriously . . . endangered as a result of the . . . neglect of the child's parent, guardian, or custodian to supply the child with necessary . . . supervision." Ind. Code § 31-34-1-1(1). Spicer is the children's biological father, and the children spent time in his

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<sup>2</sup> Spicer's brief indicates that J.S. returned to Joyce's care. Appellant's Brief at 4. The trial court's order merely indicates that J.S. shall return "home." Appellant's App. at 65.

<sup>3</sup> Joyce is not a party to this appeal.

<sup>4</sup> A child is also a CHINS for a variety of other reasons not applicable to this case. See Ind. Code

home, which contained a methamphetamine lab. Whether or not Spicer was the children's primary caretaker is irrelevant for purposes of this subsection of the CHINS statute, which contemplates endangerment by a parent, guardian, or custodian. The subsection is satisfied as Spicer, the children's parent, endangered his children as a result of his failure to provide adequate supervision.

We do not take seriously Spicer's insinuations that because the children tested negative for methamphetamine that they were not endangered by the presence of a methamphetamine lab in a home in which they spent time. See Appellant's Reply Br. at 2 ("Additionally, the evidence showed that neither children were medically affected by the presence of meth in their Father's home."); id. at 3 (referring to a home containing a methamphetamine lab as a "supposedly dangerous environment"); id. (stating that "neither children [sic] was physically impacted"); id. at 3-4 (arguing that because the children did not have methamphetamine in their systems, their possible exposure did not support a CHINS determination). As Officer Nicholas Beetz testified, methamphetamine labs themselves are inherently dangerous due to their tendency to explode. The lack of evidence that the children were at Spicer's house during the actual production of methamphetamine is not material, as is the fact that J.S. was not at the home at the time of the arrest, as Joyce testified that J.S. went to Spicer's home "every other weekend or so." Tr. at 132. According to a report by the United States Department of Justice, "[n]ormal cleaning will not remove methamphetamine and some of the chemicals used to produce it." Children at Clandestine Methamphetamine Labs: Helping Meth's Youngest Victims (U.S. D.O.J. Office for Victims of Crime, OVC

Bulletin), June 2003, at 4, available at [www.ojp.usdoj.gov/ovc/publications/buletins/children/197590.pdf](http://www.ojp.usdoj.gov/ovc/publications/buletins/children/197590.pdf) (last visited November 21, 2007). Additionally, explosions do not necessarily occur during the production of methamphetamine, as the materials used in the manufacturing process “can be easily ignited by a single spark or cigarette ember,” and any safety equipment used is typically “inadequate to protect a child.” *Id.* These labs therefore “constitute bombs waiting to be ignited by a careless act.” *Id.* The children’s mere presence in this home endangered them. Moreover, Officer Beetz testified that Spicer admitted using methamphetamine while children were in the home. *See White v. State*, 547 N.E.2d 831, 836 (Ind. 1989) (recognizing that “exposure of a dependent to an environment of illegal drug use poses an actual and appreciable danger to that dependent and thereby constitutes neglect regarding the endangerment requirement of the offense [of neglect of a dependent]”). The fact that they apparently escaped physical harm is indicative of luck, not lack of endangerment.

Spicer’s brief presents a concern that finding the first subsection of the CHINS statute satisfied will jeopardize children living with their non-biological parents and make a child who “happens to be visiting a friend’s house where unbeknownst to the parents, drugs are present” a CHINS. Appellant’s Reply Br. at 3. We disagree, as the CHINS statute requires not only that a child be endangered because of some failure of supervision, but also that the child is not receiving care that is unlikely to be provided without coercive intervention. Ind. Code § 31-34-1-1(2). In the typical situation presented by Spicer, this second subsection will not be satisfied, as the DCS will have no reason to believe that the children’s parents, guardians, or custodians will not adequately supervise their children in the future to ensure

that they are not exposed to the dangers present in the other house. Therefore, we wish to clarify that in no way should this decision be read as to limit the ability of parents to leave their children in the care of responsible relatives or other caretakers. The problem comes when parents or guardians learn that the people with whom they are leaving the children are not responsible caretakers and refuse to take steps to ensure that the children will no longer be in such a situation without court intervention.

In this case, sufficient evidence exists from which the trial court could have concluded that the second subsection was satisfied at the time of the CHINS determination. At the fact-finding hearing, Nina Meister, a supervisor with the DCS, testified: “[B]ased on the allegations and the substantiation of the report, there was no guarantee that the children wouldn’t return back to [Spicer’s] home if he were to bond out of jail.” Tr. at 60. She also testified to “concern on . . . Sam’s part that Harry would insist on having the children back in his care if Sam didn’t bail him out of jail.” *Id.* Further, Meister testified that Sam “refused to sign a safety plan saying that the children wouldn’t return to that home,” *id.* at 86, and that he wanted a court order before he would give the DCS information, *id.* at 92. Meister testified that after receiving a court order, Sam became cooperative. Spicer points to Joyce’s testimony that had she known of the drug activity in Spicer’s home, she would not have allowed the children to go there. However, this testimony goes to the weight of the evidence and not the sufficiency. Evidence exists from which the trial court could have found that the children would again have been exposed to a dangerous environment without some sort of judicial intervention. Therefore, sufficient evidence supports the trial court’s CHINS adjudication.

Although we affirm the trial court's decision, we agree with Spicer's contention that "[i]n this instance, the State's interference had the possibility of doing more harm than good to these children." Appellant's Br. at 12. However, it was not the trial court's determination that the CHINS statute was satisfied that caused this harm. Indeed, the CHINS adjudication itself did not compel that the children be removed from their grandparents' home and placed in foster care. At the detention hearing, the trial court ordered the children to be placed at the discretion of the DCS. At this hearing, Meister had stated, "we do not believe it's against [the children's] best interests to remain in the home of their grandparents at this time as long as they cooperate with the [DCS]." Tr. at 19. Indeed, it seems that every party to this case, the DCS included, thought that the best result was for the children to be placed with their grandparents. Had the children been timely placed with the grandparents, it appears the resulting harm to Z.S. may not have occurred, and the only effect of this entire proceeding would have been that Spicer would have been required to participate in parenting and substance abuse classes.

The only reason this placement did not happen soon after the detention hearing was because the DCS failed to complete background checks on Sam and Joyce, apparently due to recurring problems with smudging of their fingerprints. Thus, the background checks remained uncompleted for a period of roughly six months. During this time period, Z.S. developed behavioral problems, was tentatively diagnosed with post-traumatic stress syndrome, and is now in residential treatment. As the trial court found in its dispositional order: "The Department of Child Services did not make reasonable efforts to prevent the removal due[] to the emergency nature of the situation in that the children were exposed to



their father's drug addiction." Appellant's App. at 65. The trial court's displeasure with the DCS's inability to complete the background checks in this case was evidenced at the dispositional hearing:

. . . the implementation of the policy is terrible. This is absolutely ridiculous that we have this policy in place, we've tried to get this done three times, and I've got kids . . . at least one of them, probably who should be with a grandmother, and we can't get it done because somebody can't get the fingerprints done, and you can pass on my frustration to whomever you need to pass it on to, this is wrong.

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This is absolutely, positively ridiculous, how can we protect and do what's best for the children, if we can't get anybody to do what they're supposed to do? This has been going on for how many months now? Three months?

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It's . . . I cannot tell you how frustrated and disappointed I am to try to go along with these policies which I think have a good reason behind them, but then to have this thrown in our face . . . and I don't know if somebody is playing games or what they're doing, this is wrong, it is hurtful to children, and it has to stop.

Tr. at 176, 182-83. The trial court's comments need little elaboration, and we indicate our agreement.

### Conclusion

Although we recognize the unsatisfactory circumstances of this case, these circumstances do not affect the sufficiency of the evidence to support a CHINS adjudication.

Affirmed.

KIRSCH, J., and BARNES, J., concur.