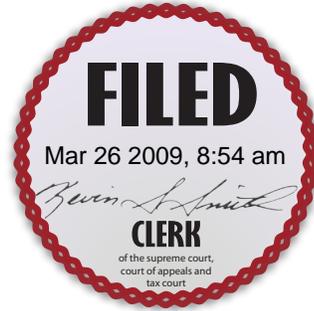


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: T.L. and J.L.,)
CHILDREN IN NEED OF SERVICES,)
)
T.P., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 49A04-0808-JV-472

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0708-JC-35669

March 26, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent T.P. (“Mother”) appeals the trial court’s order declaring her minor children, T.L. and J.L., to be Children in Need of Services (CHINS). Mother argues that there is insufficient evidence supporting the trial court’s CHINS determination. Finding no error, we affirm.

FACTS

During the relevant period of time, Mother was the primary caregiver for three-year-old J.L. and four-year-old T.L. Mother and the children’s father (Father) have had a volatile relationship and, although they did not live together at the time of the incident, they continued to engage in a romantic relationship. Father had moved out of Mother’s home in 2007 and during the following year, there were several incidents of domestic violence in which Father physically abused Mother. Father has admitted that he blacks out when he gets angry and violent, that some of the violence has occurred in front of the children, and that he has choked Mother when the children were present in the home. Mother has stated that Father has head butted her, thrown her to the ground, thrown her on the bed hard enough to break it, and punched and kicked doors and walls. Father is also verbally abusive to Mother, frequently calling her derogatory and obscene names in front of the children.

On March 13, 2008, Father pulled down Mother's pants and "whooped her like a kid." Tr. p. 36. She called the police to report the abuse and has cooperated with the police in pursuing the domestic violence complaint against Father. Notwithstanding the violence, Mother allowed Father into her house two weeks later and they smoked marijuana together. Mother and Father have frequently smoked marijuana while the children are present, and T.L. is aware of the drug use and can explain the difference between "weed" and cigarettes. Appellant's App. p. 95.

On March 28, 2008, Marion County Department of Child Services (DCS) removed the children from the home and filed a petition alleging them to be CHINS. Among other things, the petition alleged that the children are CHINS because their parents

have failed to provide the children with a safe, stable, and appropriate home environment free from domestic violence, substance abuse, and neglect. . . . [Mother] indicated that [Father] began pushing her around, threw her on the ground, and called her a whore. She stated that in the past [Father] has head butted her and thrown her on the ground. She also reported that [Father] has anger issues, will punch things, and has caused several holes in the walls. [Mother] stated that she continues to stay with [Father] because she feels sorry for him. [T.L.] reported that he has seen his dad hurt his mom. He stated that he tries to get his dad to stop but he will not. [Mother] admitted to smoking marijuana approximately a month ago, and [Father] admitted to smoking marijuana daily. He indicated that he uses marijuana to cope with his depression. In addition, [Father] reported that the children know about marijuana because [Mother] talks about it in front of them. Due to the ongoing domestic violence in the home and [Mother's] failure to remove the children from this dangerous environment, in addition to the parents' illegal drug use, the coercive intervention of the Court is necessary

to ensure the safety and well-being of the children, and the children are in need of services.

Appellant's App. p. 30. Following a fact-finding hearing that took place on June 17 and 18, 2008, the trial court declared the children to be CHINS on July 16, 2008, finding in pertinent part as follows:

48. [Mother] has been unable to keep [Father] away from herself, her home or the children in the past when she has wanted to.
49. [Mother] demonstrates no understanding of the danger to herself from [Father's] continued presence in her life.
50. [Mother] demonstrates no understanding of the potential danger or harm to the children from witnessing the contentious relationship between their parents.
51. [Mother] took no action to stop smoking marijuana until DCS removed the children from the home.
52. Even after the March 13, 2008, incident, [Mother] welcomed [Father] at the home and continued to imbibe in illegal drugs with him until DCS removed the children from the home.
53. The supervision provided by the parents failed to protect the children from repeatedly witnessing and being involved in domestic violence.
54. The supervision provided by the parents failed to protect the children from witnessing drug usage by the parents, and put the children in danger from being supervised by parents under the influence of illegal substances.
55. It was only the coercive intervention of the court and DCS which prompted any behavior change on [Mother's] part.
56. [Mother] has welcomed [Father] back into her life previously after incidents of physical and mental abuse occurring in front of the children.

57. [T.L.] displays unusually aggressive and violent behavior towards other children, behavior consistent with exposure to domestic violence.

Id. at 95-96. The trial court held a dispositional hearing on July 30, 2008, finding that the children should continue to be wards of DCS and reside away from Mother's home and ordering Mother to participate in services. The plan for permanency is reunification with the parents. Mother now appeals.¹

DISCUSSION AND DECISION

Mother argues that there is insufficient evidence supporting the trial court's order determining the children to be CHINS. In considering the evidence supporting a CHINS determination when the trial court made findings of fact and conclusions of law, we apply a two-tiered standard of review and may not set aside the findings of judgment unless they are clearly erroneous. Parmeter v. Cass County Dept. of Child Servs., 878 N.E.2d 444, 450 (Ind. Ct. App. 2007). We first consider whether the evidence supports the factual findings and then whether the findings support the judgment. Id. Findings are clearly erroneous when the record contains no facts to support them either directly or by inference, and a judgment is clearly erroneous if it relies on an incorrect legal standard. Id. We give due regard to the trial court's ability to assess witness credibility and do not reweigh the evidence, instead considering the evidence most favorable to the judgment

¹ On June 17, 2008, Father submitted an agreed entry admitting to the allegations of the CHINS petition and agreeing to participate in services, including a mental health assessment, home-based counseling, drug and alcohol assessment, and domestic violence treatment.

with all reasonable inferences drawn in favor of the judgment. Id. While we defer substantially to findings of fact, we do not do so to conclusions of law. Id.

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

- (1) 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; 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.

Ind. Code § 31-34-1-2. DCS has the burden of proving by a preponderance of evidence that a child is a CHINS. I.C. § 31-34-12-3.

Here, the record reveals a physically and verbally abusive relationship between Mother and Father. Mother had called the police and reported the abuse several times in the past but in each case, Mother refused to cooperate with the police and continued to have contact with Father. Even after the latest incident, which caused the children to be removed from the home, Mother allowed Father to come into her house.

Some of the violence occurred in front of the children. T.L. told the investigating case manager that he had seen Father pull Mother's pants down and hit her, head butt Mother, throw Mother on the ground, throw Mother on the bed with such force that the bed broke, and push and hit Mother. T.L. says that he believes his Father is bad and that he tries to stop Father from hurting Mother but that Father will not stop.

Father and Mother have also frequently smoked marijuana while the children are home. In fact, they smoked marijuana together the night before DCS removed the children from the home. T.L. knows what marijuana is and can describe the difference between marijuana and regular cigarettes.

The DCS case manager was very concerned about the amount of violence that the children had witnessed. Of even greater concern was T.L.'s behavior towards other children. Specifically, T.L. behaved in a violent and mean manner towards other children, especially younger children. Additionally, T.L. has experienced a great deal of emotional upheaval. When the case manager spoke to him about his parents, he frequently cried and covered his head.

Mother argues that she is essentially being punished for calling the police and pressing charges, insisting that she is being penalized for being a victim of domestic abuse. Mother believes that this result sends a message that abused women "should suffer in silence or risk losing their children." Appellant's Br. p. 6. We cannot agree. No one is blaming Mother for the abuse that she suffered at the hands of Father, and she should be commended for cooperating with police and pressing charges.

This case is about the children's well being, not about Mother. The role of DCS is to protect the children, and the evidence in the record herein supports the trial court's conclusion that they needed protection. Mother's past decisions, including repeatedly allowing Father back into her home and their lives and smoking marijuana while the children were present, endangered the children's mental health. It was only after the

children were removed that Mother stopped using marijuana and sought a protective order. Under these circumstances, we do not find that it was clearly erroneous for the trial court to conclude that the court's coercive intervention was necessary. We hope that Mother takes part in the required services and is able to reunite with the children, but in the meantime, we find sufficient evidence supporting the trial court's determination that the children are CHINS.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.