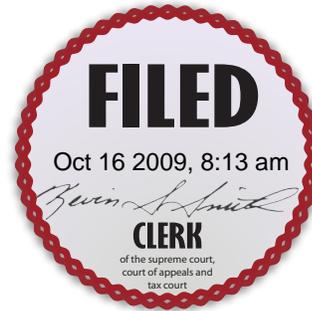


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
 COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF: K.R. )  
 )  
 CHILD IN NEED OF SERVICES )  
 )  
 J.C. (MOTHER) )  
 K.R. (FATHER), )  
 )  
 Appellants-Respondents, )  
 )  
 vs. )  
 )  
 MARION COUNTY DEPARTMENT )  
 OF CHILD SERVICES, )  
 )  
 Appellee-Petitioner, )  
 )  
 and )  
 )  
 CHILD ADVOCATES, INC., )  
 )  
 Co-Appellee (Guardian Ad Litem). )

No. 49A05-0903-JV-149

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn A. Moores, Judge  
The Honorable Beth Jansen, Magistrate  
Cause No. 49D09-0809-JC-43163

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**October 16, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

In this consolidated appeal, J.C. (“Mother”) and K.R. (“Father”) appeal the trial court’s adjudication of their son, K.R., as a Child in Need of Services (“CHINS”). Although Father and Mother both assert that the Marion County Department of Child Services (“DCS”) failed to present sufficient evidence to prove that K.R. was a CHINS, we find that Father’s additional issue is dispositive: whether the trial court entered specific findings as required by Indiana Code section 31-34-19-10.

We remand with instructions.

**FACTS AND PROCEDURAL HISTORY**

Mother and Father are married and are the parents of K.R., born May 31, 2008. K.R. is Mother’s fifth child. She does not have custody of her prior four children; she consented to the adoption of the oldest two, the natural father has custody of her third child, and her parental rights to the fourth child were involuntarily terminated.

In June 2008, a CHINS petition was filed as to K.R. and a fact-finding hearing was held; however, an Informal Adjustment Agreement (“IA Agreement”) was offered to and accepted by Mother and Father in August 2008, and the CHINS petition was dismissed. The court approved the IA Agreement on September 11, 2008. *Exhibits Vol.* at 14. Pursuant to

the IA Agreement, Mother and Father agreed to, among other thing, not use illegal drugs, not commit any acts of domestic violence, participate in individual counseling and home-based counseling, and submit to random urine screens. On or about September 17, 2008, Mother's urine screen tested positive for cocaine.<sup>1</sup>

Shortly thereafter, on September 23, 2008, DCS filed a second CHINS petition as to K.R., the one at issue in this case. The petition alleged that K.R. was a CHINS because Mother failed to provide the child with a safe, stable, and appropriate home environment free from substance abuse. It further alleged, in relevant part:

[Mother] has an extensive history with DCS . . . She has failed to successfully complete services in her prior cases . . . and has failed to remedy the reasons for DCS'[s] involvement. Mother agreed to participate in services through [the IA Agreement] but she has continued to use illegal drugs. On or about September 17, 2008, [Mother] tested positive for cocaine. Due to [Mother's] extensive history of substance abuse and her continued substance abuse despite services being offered by DCS, the coercive intervention of the Court is necessary to ensure the child's safety and well being, and the child is in need of services.

*Father's App.* at 26.<sup>2</sup> With regard to Father, the petition alleged that he was "unable to ensure the child's safety and well being while in the care and custody of [Mother]." *Id.*

A fact-finding hearing was held on November 13 and December 18, 2008. The State presented the testimony of Harry Rybolt, a DCS worker, who had interviewed Mother in June 2008. Mother reported to Rybolt that she last used drugs in December 2007, which would have been during her pregnancy with K.R. She also told Rybolt that she had never completed

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<sup>1</sup> Mother disputes the accuracy of the positive urine screen.

<sup>2</sup> As Mother and Father each filed an Appendix, we will identify them as *Mother's App.* or *Father's App.*

a drug treatment program because she does not like them and did not believe that they worked. The IA Agreement was admitted into evidence at the hearing without objection.

At the conclusion of the State's evidence, Mother and Father moved for judgment on the evidence, arguing that the State had failed to establish that K.R. was a CHINS. The trial court denied the motion. Mother and Father thereafter presented their evidence, which consisted of the testimony of the guardian ad litem, two counselors with whom the parents had attended counseling sessions, a field office investigator from the Marion County Public Defender Agency, and a DCS caseworker who testified about whether DCS had been notified about a spilled drug screen urine sample.<sup>3</sup>

At the January 12, 2009 dispositional hearing, the trial court adjudged K.R. to be a CHINS and issued a written dispositional order. In addition to the order, the trial court issued a Participation Decree which required Mother and Father to follow DCS's recommendations regarding: home-based counseling; random urine screens; drug and alcohol evaluation and treatment; individual counseling; and compliance with prescribed medications.

Mother and Father now appeal.<sup>4</sup>

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<sup>3</sup> No one testified that the spilled urine sample belonged to Mother; however, by presenting evidence of the spilled screen, Mother presumably desired that the trial court would make that inference.

<sup>4</sup> Mother and Father each filed a Notice of Appeal in February 2009. Our review of the record before us reveals that on March 2, 2009, the trial court held a placement review hearing, where it appears to have heard argument from counsel and received evidence from at least DCS, the guardian ad litem, and the home-based counseling service. At the conclusion of the hearing, the court issued an order reflecting that Mother and Father were participating and following DCS recommendations and had satisfied the goals and objectives. The trial court released the wardship of K.R. and closed the case. *Mother's App.* at 138; *Father's App.* at 6.

## DISCUSSION AND DECISION

Pursuant to Indiana Code section 31-34-1-1, a child under eighteen years of age 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 the child:

(A) is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

DCS must prove these elements by a preponderance of the evidence. Ind. Code § 31-34-12-3; *In re T.S.*, 881 N.E.2d 1110, 1112 (Ind. Ct. App. 2008).

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:

(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. It must do more than set forth vague findings that merely restate the statutory requirements. *See In the Matter of J.Q.*, 836 N.E.2d 961, 966-67 (Ind. Ct. App. 2005) (remanding CHINS adjudication where appellate review was made difficult due to vague language in trial court's findings).

Here, the trial court's written dispositional order regarding K.R. stated,

The Court finds that reasonable efforts have been offered and available to prevent or eliminate the need for removal from the home. After reviewing the reports and information from [DCS], service providers and other sources, which the Court now incorporates into this order (see Court file), this Court also finds that the services offered and available have either not been effective or been completed that would allow the return of the child without Court intervention.

The Court finds that it is contrary to the health and welfare of the child to be returned home and that reasonable efforts have been made to finalize a permanency plan for the child[.]

The Court orders the child to be a ward of the Marion County Office of Family and Children. The Court orders that the responsibility for placement

and care of the child is ordered to the Marion County Office of Family and Children, with placement at: Temporary In-Home Trial Visit[.]

The Court proceeds to disposition and adopts the Pre-Dispositional [sic] Report of the Division of Family and Children and incorporates same as the findings of the Court, including plan of permanency which is hereby ordered. The Court also orders the Parental Participation, which is made part of the order.

*Mother's App.* at 21-22.<sup>5</sup>

Father 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 agree. The trial court's findings are not specific to K.R. or his parents. They do not reflect or identify the efforts that were made or services that were offered to Mother or Father, or what treatments they failed to complete. In *J.Q.*, the trial court's factual findings were very similar, and at places identical, to those now before us. There we determined that "the limited findings ... make it difficult for this court to determine whether or not a mistake has been made in adjudicating [the child] a CHINS," and we remanded with instructions to the trial court that it more specifically follow the requirements of Indiana Code section 31-34-19-10. *J.Q.*, 836 N.E.2d at 967; *see also In re T.S.*, 881 N.E.2d at 1113-14 (reviewing CHINS determination with substantially similar findings and noting that those findings are generally not sufficient to permit appellate review).

We recognize that in the present case the trial court's findings adopt the predispositional report, which is permitted by Indiana Code section 31-34-19-10(b). The

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<sup>5</sup> We note that prior to the start of the fact-finding hearing, Mother made an oral request for written findings of fact and conclusions of law; however, the trial court denied her motion.

report states the reason for DCS's involvement was, "Mother has never successfully completed a drug and alcohol program and tested positive for cocaine during the most recent IA [Agreement]." *Father's App.* at 60. The dispositional options for the plan of care or placement of the child were: "Continue with services previously ordered under IA and now to include ... drug and alcohol program." *Id.* at 64; *see also id.* at 65 (additionally recommending to parents counseling, random drug screens, and staying compliant with medications). As for a placement recommendation, one section states, "The child is currently placed at home with both parents, where he can visit with relatives as well." *Id.* (Section III(B)(1)(i-vi)). However, immediately thereafter it states, "Out of home placement IS appropriate for the child" and "[DCS] continues to recommend out of home placement due to [Mother's] drug usage." *Id.* (Section III(B)(2)), (3)). The report at times is internally inconsistent, contains very little concerning Father, and does not suffice to provide the specific findings required by Indiana Code section 31-34-19-10 needed to support the CHINS adjudication.

As Father notes, a CHINS finding has serious and permanent consequences for a parent and could adversely affect a parent in a subsequent proceeding. As this court has previously observed:

[P]rocedural irregularities, like an absence of clear findings of fact, in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to a potential subsequent termination of parental rights. Our legislature's enactment of an interlocking statutory scheme governing CHINS and involuntary termination of parental rights compels this court to make sure that each procedure is conducted in accordance with the law. Both statutes aim to protect the rights of parents in the upbringing of their children, as well as give effect to the State's legitimate

interest in protecting children from harm. We conclude that in order to properly balance these two interests, the trial court needs to carefully follow the language and logic laid out by our legislature in these separate statutes.

*In re J.Q.*, 836 N.E.2d at 967 (citations omitted); *see also A.P. v. Porter County Offices of Family and Children*, 734 N.E.2d 1107, 1112-13 (Ind. Ct. App. 2000) (discussing that CHINS and termination proceedings are distinct but are not independent of each other).

The limited findings of the trial court are such that we cannot make a determination as to the validity of the determination adjudicating K.R. as a CHINS. We remand this case to the trial court with instructions to issue specific findings and conclusions pursuant to Indiana Code section 31-34-19-10.

Remanded with instructions.

NAJAM, J., and BARNES, J., concur.