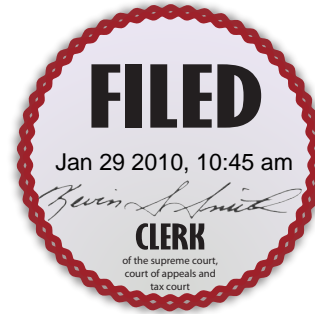


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MATTER OF C.M.S., A.S.,)
and D.S., Children in Need of Services,)
)
M.S., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
DEPARTMENT OF CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 02A03-0908-JV-388

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable William Briggs, Senior Judge
Cause No. 02D07-0810-JC-700

January 29, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent, M.S. (Mother), appeals the juvenile court's order declaring her minor children, C.M.S, A.S., and D.S., (collectively, "the Children") to be Children in Need of Services (CHINS). Mother argues that there was insufficient evidence supporting the CHINS determination. Finding sufficient evidence, we affirm.

FACTS

Mother is the biological mother of C.M.S., born on December 13, 2001; A.S., born on October 19, 2003; and D.S., born on March 17, 2005. On September 19, 2008, the Department of Child Services (DCS) received a report that A.S. had untreated head lice and that C.M.S. had been touched inappropriately by T.S., Mother's boyfriend, who was residing with Mother and the Children. DCS began an investigation concerning these allegations.

On October 14, 2008, Tonya Schepper, a DCS family case manager, had Mother sign a safety plan providing that "[Mother] will ensure her childrens [sic] safety by not allowing [T.S.] in the presence of [the Children] until further notice by the Department of Child Services." States Ex. 7. That same day, Schepper discussed living arrangements with Mother and T.S. It was agreed that T.S. would move to a friend's house. Schepper also cautioned T.S. that either DCS or the Fort Wayne Police Department would be checking to see if he was still in the home.

On October 15, 2008, the DCS filed a petition alleging the Children to be CHINS after T.S. was found at the home. On October 16, 2008, the juvenile court held a

preliminary inquiry hearing and determined that there was probable cause to believe that the Children were CHINS. After concluding that “due to the emergency nature of the matter, the safety of the children precluded pre-placement preventative and/or reunification services,” the juvenile court ordered that the Children be placed in licensed foster care. Appellant’s App. p. 10.

On November 21, 2008, DCS filed an amended CHINS petition, alleging, in part:

2. At the writing of the Preliminary Inquiry report, [Mother] and [T.S.] were living together with [Mother’s] children.
3. At the writing of the Preliminary Inquiry report, [Mother] was unemployed and had to go to food banks daily for food supplies.
4. At the writing of the Preliminary Inquiry report, [T.S.] was unemployed and unable to financially contribute to [Mother’s] household.
5. Prior to the writing of the Preliminary Inquiry report, [Mother] was diagnosed as bipolar and manic but does not take her medications because she cannot afford them.
6. Prior to the writing of the Preliminary Inquiry report, [T.S.] inappropriately touched [C.M.S.] while [Mother] was in the home.
7. Prior to the writing of the Preliminary Inquiry report, [T.S.] touched [C.M.S.’s] privates, butt and boobs underneath her clothes and [had] sex with her.
8. Prior to the writing of the Preliminary Inquiry report, [T.S.] inappropriately touched [A.S.].
9. On or about October 14, 2008, [Mother] signed a safety plan stating that she would not allow her boyfriend [T.S.] to be in the presence of her children until the DCS investigation was complete.

10. After signing the safety plan on or about October 14, 2008, [Mother] allowed [T.S.] to be in the presence of her children.

11. [Mother] was unable to protect her children from being inappropriately touched by [T.S.].

12. The children are unavailable to testify as doing so would cause them emotional, mental, and/or physical harm.

13. Due to being inappropriately sexually touched, [C.M.S., A.S., and D.S.] require care and treatment.

Id. at 38-40.

On December 17, 2008, an initial hearing was held in which Mother admitted that she was the Children's mother and admitted the allegations contained in paragraphs 2, 3, 5, and 9, but denied the remaining allegations. Similarly, T.S. denied all the allegations except for those in paragraphs 2, 3, and 9. The juvenile court ordered that the Children continue in foster care pending relative placement.

A factfinding hearing was held February 25, 2009, and March 16, 2009. Dr. Anthony Flores certified that C.M.S. and A.S. could not testify in the proceedings because, among other reasons, it would cause "psychological impairment." State's Ex. 1-2. Dr. Flores also concluded that both children required ongoing therapy.

During the factfinding hearing, it was established that Mother and T.S. were married on December 1, 2008, approximately one and one-half months after Mother signed the safety plan requiring that T.S. not be in the presence of the Children. T.S. testified that he was currently living with Mother and intended to stay there even if the

Children were returned. T.S. also stated that Mother was not currently working and that his income sustained the household.

DCS presented evidence of C.M.S.'s disclosure of being inappropriately touched by T.S. Specifically, Daniel Whitley, a DCS family case manager, testified that he had conducted a forensic interview with C.M.S. During the interview, C.M.S. disclosed that T.S. had touched her inappropriately. Additionally, the Children's foster parent testified that when the Children got into her vehicle after being picked up from DCS's office, C.M.S. stated, "[T.S.] was at the house and we can't be at the house with [T.S.] there . . . because he touched me on my privates." Tr. p. 68.

Moreover, during the course of DCS's investigation, C.M.S. stated to family case manager, Michael Bitler, that she did not like T.S. because "he had touched her privates." Id. at 128. Similarly, C.M.S. told her maternal grandmother that she was afraid of T.S. because he had touched her "private area." Id. at 73.

On March 16, 2008, the juvenile court determined from the bench that the Children were CHINS. In its written order, the juvenile court found that all the allegations contained in DCS's amended petition, with the exception of paragraph 4, had been proved by a preponderance of the evidence. The juvenile court concluded that the Children were CHINS "as defined by I.C. 31-34-1-1 and 31-34-1-3."¹ Appellant's App. p. 49. Mother now appeals.

¹ We note that a copy of the dispositional decree containing findings of fact and conclusions of law are absent from the record provided to this court. Nevertheless, from the Chronological Case Summary, we observe that a dispositional hearing was held on March 25, 2009, and the juvenile court entered a written

DISCUSSION AND DECISION

Mother argues that the evidence was insufficient to support the CHINS determination. DCS has the burden of proving by a preponderance of the evidence that a child is in need of services. In re T.S., 881 N.E.2d 1110, 1112 (Ind. Ct. App. 2008). When reviewing a CHINS determination, we will consider only the evidence most favorable to the judgment and the reasonable inferences that may be drawn therefrom. Id. We will neither reweigh the evidence nor assess witness credibility. Id.

Here, the juvenile court determined that the Children were CHINS pursuant to Indiana Code sections 31-34-1-1 and 31-34-1-3. Mother does not argue that the evidence was insufficient under section 31-34-1-3, which authorizes a CHINS determination when a child is the victim of a sex offense or resides with the victim of a sex offense and certain additional elements are satisfied. Rather, Mother focuses her entire argument on section 31-34-1-1. Thus, there is no need for further inquiry because a determination that a child is a CHINS under section 31-34-1-3 is sufficient. Nevertheless, we will address her argument under section 31-34-1-1, which states:

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

dispositional decree on May 14, 2009, ordering that the Children continue in foster care with Mother granted unsupervised visitation.

(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.

Mother contends that because she signed a safety plan, the juvenile court erred when it determined that she failed to protect her children. In addition, Mother claims that there “exists no evidence that T.S. was ever in the presence of the children once the safety plan was in place.” Appellant’s Br. p. 7.

Notwithstanding the fact that Mother signed a safety plan, in which she agreed that she would not allow T.S. in the presence of her children, Schepper testified at the factfinding hearing that T.S. was found at the home after the safety plan had been signed. Accordingly, Mother’s contention that there “exists no evidence that T.S. was ever in the presence of the children once the safety plan was in place,” *id.*, is without merit. Perhaps even more compelling, Mother married T.S. on December 1, 2008, a mere one and one-half months after signing the safety plan. And T.S. testified that he intends on remaining in the home even if the Children are returned. Although the marriage occurred after the Children had been removed from Mother’s home, it is certainly relevant to Mother’s future willingness to protect the Children and to follow the safety plan.

Under these circumstances, we cannot conclude that the juvenile court abused its discretion when it determined that Mother failed to protect the Children and concluded that they are CHINS. Although Mother points to evidence suggesting the contrary, this is

simply a request that we reweigh the evidence, a task in which we will not engage.

Therefore, we affirm the judgment of the juvenile court.

The judgment of the juvenile court is affirmed.

DARDEN, J., and MAY, J., concur.