

FILED

Mar 17 2010, 9:34 am

Beverly Smith

CLERK

of the supreme court,
court of appeals and
tax court

ATTORNEY FOR APPELLEE:

ELIZABETH G. FILIPOW

Indianapolis, Indiana

BAILEY, Judge

Case Summary

K.T. (“Mother”) appeals the juvenile court’s determination that her son, T.R., is a child in need of services (“CHINS”). We affirm.

Issue

Mother presents a single issue for our review, which we restate as: whether the evidence was sufficient to support the juvenile court’s adjudication of T.R. as a CHINS.

Facts and Procedural History

Four-month-old T.R. lived with Mother and A.R. (“Father”). On January 13, 2009, Mother went to work at approximately 12:45 p.m., leaving T.R. in Father’s care. At 6:30 p.m., after Mother had returned home, she discovered that T.R.’s leg was swollen to twice its normal size. She immediately took T.R. to receive treatment at St. Vincent Hospital.

T.R. arrived at the hospital with a splint on his right leg, from the middle of his thigh to his ankle. Dr. Cortney Demetris, a member of the child protection team at the Peyton Manning Children’s Hospital, determined that T.R. had suffered trauma at two different times. Approximately two weeks earlier, T.R.’s right leg had been broken in three places – immediately above the knee, immediately below the knee, and immediately above the ankle. In Dr. Demetris’ opinion, the swelling was not caused by the two-week-old fractures, but by a more recent, non-accidental, traumatic event. She also diagnosed T.R. as “failure to thrive” based upon his weight relative to his age and length. Transcript at 13.

The Marion County Department of Child Services (“DCS”) filed a petition alleging T.R. to be a CHINS. After an evidentiary hearing, the juvenile court determined that T.R.

was in need of services.

Mother now appeals.¹

Discussion and Decision

Mother argues that the evidence was insufficient to support the juvenile court's determination that T.R. is in need of services because he was injured while in Father's care, not hers. Her legal argument is deficient in two manners. First, Mother acknowledges the well-established precedent that, in reviewing a true finding that a child is a CHINS, the appellate court "neither reweighs the evidence nor judges the credibility of the witnesses" and "considers only the evidence and reasonable inferences drawn therefrom which support the judgment." Appellant's Brief at 5 (citing Nowels v. Nowels, 836 N.E.2d 481, 484 (Ind. Ct. App. 2005)). She nonetheless proceeds to repeatedly cite evidence unfavorable to the finding, including at least five references to her own testimony.

Second, on January 6, 2010, the Indiana Supreme Court observed that, "a CHINS adjudication is simply that – a determination that a child is in need of services." In re N.E., 919 N.E.2d 102, 105 (Ind. 2010). It therefore held that, "a CHINS determination establishes the status of a child alone" and that "a separate analysis as to each parent is not required in the CHINS determination stage." Id. at 106. Two days after In re N.E. was handed down, Mother filed a notice with our Court that she would not file a reply brief. While Mother's appellate arguments do not account for the recent decision in In re N.E., we follow this binding precedent and therefore decline to consider Mother's argument that T.R. is not a

¹ Father admitted that T.R. is a CHINS. He was charged with Battery resulting in Serious Bodily Injury and Neglect of a Dependent. That matter was still pending at the time of the CHINS hearing.

CHINS “as to Mother.” Appellant’s Br. at 5 and 7-10.

DCS had the burden of proving by a preponderance of the evidence that:

- (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.

Ind. Code §§ 31-34-1-1, -12-3; and In re N.E., 919 N.E.2d at 105. Furthermore, where the child was in the care, custody, or control of a parent when the child received an injury that would not ordinarily be sustained except for the act or omission of the parent, there is a rebuttable presumption that the child is in need of services. Ind. Code § 31-34-12-4.

Here, the record contained evidence that T.R., while in Father’s care, suffered non-accidental trauma to his right thigh. Two weeks earlier, the same leg had been fractured in three separate places.

Furthermore, T.R. was diagnosed as failure to thrive. In the two weeks between being examined by his primary care physician and his arrival at the hospital, T.R. had lost weight. While in the hospital, however, T.R. gained approximately twenty grams per day. Based upon this evidence, Dr. Demetris concluded that there was no medical reason preventing T.R. from gaining weight when given adequate calories.

Finally, DCS assessor Amanda Thompson testified that, when interviewed the day

T.R. was released from the hospital, Mother stated that Father had a short temper and that he had hit her with a bottle. Thompson added that, “[t]here was a discussion about the baby being failure to thrive and [Mother] admitted that she did see that perhaps the diapers weren’t going down as much as they should’ve been, nor the formula.” Tr. at 29. “[Mother], at the beginning was unsure, but then she started convincing me that she understood that the only person that could have caused this would’ve been [Father].” Id. According to Thompson, however, Mother’s perspective on T.R.’s injuries quickly changed. “Within a couple of days . . . it was while we were here at Court for the CHINS proceeding, that she was now convinced that it could’ve been an accident, which concerns me now leaving the child in the home.” Id. at 30.

Based upon this record, there was sufficient evidence for the juvenile court to find by a preponderance of the evidence that T.R. is a CHINS.

Affirmed.

BAKER, C.J., and ROBB, J., concur.