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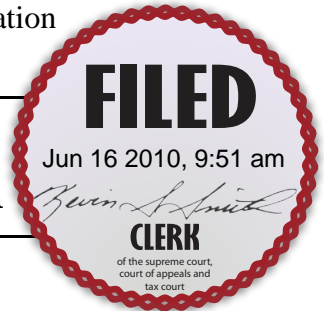
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF J.M., Minor Child,)
)
HEATHER M., Mother, and)
DELBERT M., Father,)
)
Appellants-Respondents,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioners.)

No. 20A03-0910-JV-480

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Juvenile Magistrate
Cause No. 20C01-0906-JC-95

June 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Heather and Delbert M. (“Parents”) appeal the declaration their infant, J.M., is a child in need of services (“CHINS”). As the evidence is sufficient to support the finding, we affirm.

FACTS AND PROCEDURAL HISTORY

J.M. was born on June 17, 2009. At that time, two of J.M.’s siblings, Je.M. and D.M. (hereinafter “Siblings”), had been in the custody of Elkhart County Division of Child Services (hereinafter “DCS”) for ten months because Siblings were injured during a domestic dispute between Parents. Parents’ rights had been terminated as to an older child, A.M., and Father’s rights had been terminated as to another child, S.M.¹ On June 17, 2009, the court issued an emergency order removing J.M. from Parents due to the history of domestic violence and parental rights terminations.

One week later, DCS alleged J.M. was a CHINS. Following a hearing on August 21, 2009, the trial court entered an order that stated, in pertinent part:

Based upon the evidence presented, viewed in the light of the assigned burden of proof, the court finds for the state for the reasons that follow:

1. [J.M.] was born on June 17, 2009; he is two months old.
2. [J.M.]’s two older siblings, [Je.M.] and [D.M], were removed from [Parents’] home on September 14, 2009, [sic] because of domestic violence between parents, and the fact that the children were injured when parents pushed them away during and [sic] altercation.
3. [Siblings] were not the first of [Parents’] children to be removed from the family because of domestic violence. According to an Involuntary Termination of Parental Rights Order issued on June 14, 1999, in relation to an older child, [A.M.] was removed from her parents’ care as an infant and parental rights terminated in part because

¹ S.M. was born to another woman before Father married Mother.

of [Father's] history of "violence and rage." The same Court Order found [Parents] had been offered extensive services but failed to gain the insight necessary to improve their ability to parent.

4. The parental rights of [Father] have been involuntarily terminated in the case of another child on March 3, 1997. In that case too, the court referred to domestic violence and described [Father] as a dangerous, violent person.
5. During today's hearing service providers testified that violence in [Parents'] home has continued. [Mother's] therapist, Carrie Sommer, testified that she believes the relationship between [Parents] remains violent. While acknowledging that no [police] report has been filed since July of 2008, case manager Angela Welles also expressed the opinion that domestic violence in [Parents'] home is an ongoing problem.
6. [Mother] was convicted of Domestic Battery on February 2, 2009 based upon a guilty plea entered; she remains on probation today.
7. The parents' history of domestic violence and concerns expressed that the violence is continuing, makes it essential for the safety of newborn [J.M.], and [Siblings], that parents learn from services, and apply what they have learned in their own relationship and as they parent their children. Service providers say they have not learned. Visit supervisor, Jenifer Pickering, from the Family and Children Center, opined based upon observations of weekly two[-]hour visits held between February and July of this year that parents were unable to apply what they had learned in parenting their children. The CASA, Anne Hostetler, observed that parents have participated in services, but they have made little progress in becoming better parents. Rene Schmucker, of Oaklawn, who is presently supervising visits between [J.M.], [Je.M.], and [D.M.] and the parents relayed that she observed little family interaction between the parents and their children during visits. She also testified that [Mother] had problems feeding [J.M.] during the scheduled visits. The children's therapist, Michelle Thomas, has also observed visitations between parents and their children and expressed the opinion that the parents do not have the skills to provide for the needs of

- a child.
8. Parents disagreed. Parents testified that they have learned. They testified that they are ready to care for an infant.
 9. Janelle Munet, a Reta Volunteer agreed with the parents. She stated that she has worked with [Mother] for nearly eight years, and with [Father] recently on parenting skills. She testified that she has seen both parents with their children prior to their removal from the home. And [sic] stated that she has no concerns about them being with an infant.
 10. While the court is impressed at the effort of [Parents] to participate in services, and seek out additional services through Reta on their own, those services do not preclude a finding of CHINS. The evidence presented supports a finding that there is history of violence in [Parents'] home, and that children have been harmed by that violence in the past. The evidence presented supports a finding that service providers say that violence between [Parents] continues and that [Parents] are not learning to apply the skills needed to keep a child in their care safe from harm. Domestic violence is like a fire in the room; it can kill. To avoid risk of harm, the fire must be extinguished or those in the room must be removed. In this case removal is necessary to keep [J.M.] safe.

Based upon the cited findings, the court finds that [J.M.] is a child in need of services as defined by IC 31-34-1-1.

Reasonable efforts were precluded at the time of removal from parents' care under this cause because of concern that physical violence between the parents, and a lack of parenting ability would be harmful to the child. Reasonable efforts have been made under the prior CHINS cases involving [Siblings]. Those efforts have included supervised visitation, individual therapy, psychological evaluation, anger management, marital counseling, parenting classes, and supervised visitation.

It is in the best interest of the safety and welfare of the child that he remain out of the home of the parents at this time. The CASA Anne Hostetler testified that the child needs a safe, stable home, free from domestic violence; this is something that the parents are unable to provide at this time.

(Appellant's App. at 49-51.)

DISCUSSION AND DECISION

A child under the age of eighteen may be declared in need of services if the trial court finds the State proved by the preponderance of the evidence:

- (1) the child's physical or mental condition is seriously impaired or seriously endangered as 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; Ind. Code § 31-34-12-3 (assigning to DCS the burden to prove by preponderance of evidence).

When a trial court enters findings and concludes a child is a CHINS, we determine first whether the evidence supports the findings and then whether the findings support the judgment. *In re C.B.*, 865 N.E.2d 1068, 1073 (Ind. Ct. App. 2007), *trans. denied*. We may reverse only if the judgment is unsupported by the findings or conclusions. *Id.* As we conduct our review, we may not reweigh the evidence or reassess the credibility of the witnesses. *In re J.V., C.V., D.V., & A.V.*, 875 N.E.2d 395, 402 (Ind. Ct. App. 2007), *reh'g denied, trans. denied*. Rather we consider only the evidence favorable to the trial court's judgment. *Id.*

Parents first assert the CHINS determination is improper because "father and mother have not abandoned, neglected or abused and J.M. was not endangered by the actions of his parents." (Appellant's Br. at 19.) While there is no evidence Parents committed a specific

act after June 17, 2009, of abandonment, neglect, or abuse of J.M., the evidence *does* support an inference that J.M. would be endangered in Parents' care.

Angela Welles, who worked for Elkhart County DCS and had been the family's case manager since February 2009, testified she considered in June 2009 whether it would be possible to move Parents' visitation with Siblings into Parents' home. She determined that was not possible because service providers were fearful for the children's safety. They were afraid of Father, with whom Welles had "had very little interaction" in the four months prior to J.M.'s CHINS hearing. (Tr. at 75.) One of the Parents told Welles domestic violence had occurred between Parents on July 2, 2009, and service providers continued to see bruises on Mother "on and off." (*Id.* at 83.) DCS was concerned about placing J.M. with his parents because of "[p]oor parenting skills, umm, continued domestic violence in the home which is often escalated by [Father]'s drinking." (*Id.* at 76.)

Mother's individual therapist, Carrie Sommer of the Family and Children Center, believed the family needed to begin family therapy sessions so that Mother and Father could work on their relationship issues, because she believed there was still violence in the house.

Melody Holmes, the parent aide who has worked with Parents since December of 2008, testified Parents were receptive to learning new skills, but their ability to implement those skills was "[l]imited." (*Id.* at 130.) Similarly, the Court Appointed Special Advocate testified: "Although [Mother] and [Father] have been participating in services, I don't believe that they're making any progress in services and I've explained to [Mother] several times that it's progress that we're looking for not just participation. I don't feel like [J.M]

would be safe if he was there.” (*Id.* at 142.)

Sheila Rena Schmucker, a visit supervisor employed by Oaklawn, began supervising visits on July 14, 2009. Mother and J.M. had visitation once a week and, on a separate day, the whole family participated in a weekly visitation session. Initially Mother’s visits with J.M. were at home, but because Mother’s “attitude was becoming kind of aggressive, I felt it was in my best interest to move those back to [the facility].” (*Id.* at 123.) In addition, Mother had begun inaccurately reporting to other providers things that Schmucker had said to her. As for Parents’ ability to care for J.M., Schmucker testified:

They are good about checking [J.M.]’s diaper. We have had a lot of redirection and I had to provide a lot of parenting skills where [J.M.]’s concerned with him. Mom always wanted to feed him even if it was not time for him to eat. I had to finally ask foster mom not to send a bottle, because, then he was going back with a tummy ache. Mom’s not sure how much to give him before she tried to burp him. I – two weeks ago I had to, three times, say you need to give him enough so that he can burp because he was crying. She would give him two or three sips. He was very frustrated and finally I said on the third time, if you cannot give him, at least, an ounce, I’m going to have to do this for you.

(*Id.* at 124-25.) As for whether she is concerned about Parents’ ability to care for J.M., she testified her concern was whether parents “know how to take care of him as far as – especially the feeding, and following – I kind of find myself repeating the same things over and over and I’m not seeing them even apply some of those things at this point.” (*Id.* at 125.) She believed visits needed to remain supervised.

Parents assert “past conduct is not an indicator of how parents will care for a newborn.” (Appellant’s Br. at 19.) However, the court’s determination that J.M. was a

CHINS was not based only on Parents' historical inability to parent Siblings, who both were more than five years older than J.M. Rather, the CHINS fact-finding hearing included testimony Parents could not care appropriately for J.M. during supervised visitation in the three months between his birth and his CHINS hearing.

Finally, Parents cite testimony from themselves, the foster mother, and Mother's parenting coach as demonstrative of Parents' ability to care properly for J.M. Parents also note the hospital did not have any concerns about Mother caring for a newborn. However, we may not accept Parents' invitation to reweigh the evidence. *See In re J.V., C.V., D.V., & A.V.*, 875 N.E.2d at 402 (we may not reweigh the evidence or reassess credibility). There is ample evidence to support the trial court's findings, which support the declaration that J.M. is a CHINS. Accordingly, we affirm.

Affirmed.

BAILEY, J., and BARNES, J., concur.