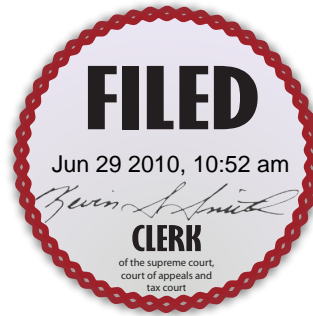


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ANNA ONAITIS HOLDEN
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CYNTHIA SERICATI,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 49A04-0911-CR-673

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G22-0809-FD-215398

June 29, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Cynthia Sericati (“Sericati”) was convicted of Class D felony neglect of a dependent. The trial court sentenced her to two years suspended to probation. Sericati now appeals and argues that the evidence presented was not sufficient to support her conviction for Class D felony neglect of a dependent.

We affirm.

Facts and Procedural History

In September 2007, Charles Huff (“Huff”) moved in with Sericati, her husband Kenneth, and their children. In May 2008, Kenneth’s job required that he be away from home during the week. At this time, Huff began to regularly babysit Sericati’s three children. Sericati and Kenneth had one child together and Sericati had two children from a previous marriage, eleven-year-old son, J.N. and seven-year-old daughter, S.N.

On September 7, 2008, S.N. did not want to return to Sericati’s house after spending the weekend with her father and stepmother. S.N. told her stepmother that she did not want to return to Sericati’s house because of Huff’s presence. She said that Huff had been touching her vagina with two fingers both inside and outside of her underwear. The stepmother asked S.N. if she had told anyone else about the molesting. S.N. told her stepmother that she had told Sericati and that Sericati had said that she would tell Huff to stop. The stepmother informed S.N.’s father and they called the police and Sericati about the allegations.

On September 9, 2008, S.N. was interviewed at the Child Advocacy Center. While waiting with her stepmother and Sericati, S.N. worked on homework. As Sericati and the stepmother spoke about the allegations, Sericati said that this was the first time

she heard about the molesting. S.N. said that she had told Sericati. S.N. and Sericati then argued back and forth, but S.N. insisted that she had told Sericati about the abuse. S.N. also told the interviewer that she had told Sericati more than once about the abuse and that Sericati told Huff to stop but he did not.

During the ensuing investigation, Sericati repeatedly told police that she did not believe the allegations. She told police that the allegations were false and had been planted in S.N.'s head by her ex-husband. After questioning by the police, Huff confessed to molesting S.N. and was arrested. Sericati was told of Huff's arrest by police and she still did not believe S.N.'s allegations. After being informed that Huff had confessed, Sericati finally believed that Huff had molested S.N. Huff is currently serving a sentence for Class A felony child molesting.

On September 16, 2008, Sericati was charged with Class D felony neglect of a dependent. Following a bench trial on January 22, 2009, Sericati was found guilty as charged. On March 27, 2009, the trial court sentenced Sericati to two years suspended to probation. Sericati now appeals.

Discussion and Decision

Sericati argues that the evidence presented at trial is not sufficient to support her conviction for Class D felony neglect of a dependent. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty

beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt, then circumstantial evidence will be sufficient. Id.

Indiana Code section 35-46-1-4 (2004) states: “A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally . . . places the dependent in a situation that endangers the dependent’s life or health . . . commits neglect of a dependent, a Class D felony.” Under Indiana Code section 35-41-2-2 (2004), “[a] person engages in conduct “knowingly” if, when he engages in the conduct, he is aware of a high probability that he is doing so.”

When S.N. told her stepmother about the abuse, S.N. specifically stated that she had told Sericati about the abuse. Tr. p. 65. S.N. testified that she told Sericati a number of times that Huff was touching her. Tr. p. 66. While waiting to be interviewed at the Child Advocacy Center, S.N. told Sericati that she had told Sericati about the abuse on a number of occasions.

S.N.’s statement to the interviewer at the Child Advocacy Center indicated that she had told Sericati twice about the abuse and that the abuse began when Huff first moved in with Sericati. Ex. Vol., State’s Ex. 2 at 11. S.N. also said that Sericati told Huff to stop but Huff did not. Ex. Vol., State’s Ex. 2 at 8. Sericati continued to allow Huff to care for S.N. Although Sericati denies being told about the abuse, S.N.’s insistence that she had told Sericati about Huff’s abuse remained remarkably consistent throughout the investigation and trial.

Under these facts and circumstances, the trial court could reasonably infer from the evidence that Sericati knowingly placed S.N. in a situation that endangered S.N.'s health by allowing Huff to continue caring for S.N. despite S.N.'s allegations of abuse. Sericati's claim that S.N. did not tell her about the abuse is merely a request that we reweigh the evidence and judge the credibility of witnesses, which we will not do. The evidence presented at trial was sufficient to support Sericati's conviction for Class D felony neglect of a dependent.

Affirmed.

RILEY, J., and BRADFORD, J., concur.