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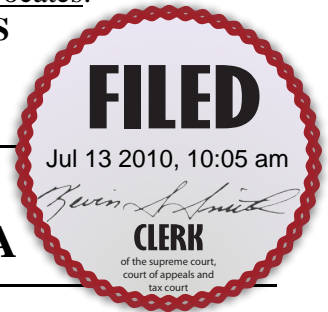
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF D.C.B., A Child in Need of)
Services,)
)
)
P.B., Mother, and)
Da.B., Father,)
)
Appellants-Respondents,)
)
vs.)
)
MARION COUNTY DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner)
)
and)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee (Guardian Ad Litem).)

No. 49A02-0912-JV-1204

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Julie Cartmel, Magistrate
Cause No. 49D09-0902-JC-7142

(Handdown Date)

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

P.B. (“Mother”) and Da.B. (“Father”) appeal the decision their child, D.C.B. (“Child”), is a Child in Need of Services (“CHINS”). Mother and Father raise two issues, which we reorder and restate as:

1. Whether Mother’s and Father’s due process rights were violated when a fact-finding hearing was not held within the statutorily-required sixty days; and
2. Whether there was sufficient evidence Child is a CHINS.

We affirm.

FACTS AND PROCEDURAL HISTORY

A petition alleging Child to be a CHINS was filed on February 5, 2009, because he allegedly “had been abandoned by both of his adoptive parents.” (App. at 31.) On February 17, a hearing was held, during which Mother indicated she was unable to care for Child because she lived in a one bedroom apartment and could not deal with his behavioral issues. Father testified he would be willing to house Child, but Father’s significant medical problems made him unable to deal with Child’s behavior and Father feared Child would run away

again.

A settlement conference was held on April 23, but the parties could not reach an agreement regarding Child's permanent placement. A fact-finding hearing was set for June 11, but was continued by agreement of the parties until August 13. During the August 13 hearing, Mother testified she had not secured housing with additional bedrooms, she had not seen Child in a few months, and when asked if Child was in need of services, she replied, "Yes." (Tr. at 12.) Perdina Boyd, Child's Dawn Project Care Coordinator, indicated neither Mother nor Father had attended monthly team meetings to discuss Child's progress. Father opined Child might be a CHINS because Child was a delinquent, but not because he or Mother was unable or unwilling to care for him. The trial court adjudicated Child a CHINS on September 16.

DISCUSSION AND DECISION

The U.S. Constitution protects the relationship between parent and child. *Troxel v. Granville*, 530 U.S. 57, 66 (2000); *see also Matter of Joseph*, 416 N.E.2d 857, 860 (Ind. Ct. App. 1981). The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to direct the care, custody, and control of their children. *Troxel*, 530 U.S. at 66. However, this right is not unlimited, and the State has the authority under its *parens patriae* power to intervene when necessary to protect children within its borders. *In re T.H.*, 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006). We have consistently held a parent's rights must be subordinated to the best interests of the child. *In re A.A.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997).

1. Due Process

Mother and Father argue they were denied their due process rights because a fact-finding hearing regarding Child's status was not held within sixty days, as required by statute. The pertinent statute provides:

(a) Except as provided in subsection (b), unless the allegations of a petition have been admitted, the juvenile court shall complete a factfinding hearing not more than sixty (60) days after a petition alleging that a child is a child in need of services is filed in accordance with IC 31-34-9.

(b) The juvenile court may extend the time to complete a factfinding hearing, as described in subsection (a), for an additional sixty (60) days if all parties in the action consent to the additional time.

Ind. Code § 31-34-11-1.

The CHINS petition was filed on February 5, 2009. During a pretrial hearing on April 23, Mother and Father waived the sixty-day requirement in order to “further look into the guardianship and subsidy.” (App. at 71.) The fact-finding hearing set for June 11 was continued by mutual agreement of the parties until August 13. Because Mother and Father agreed to delay their hearing, as permitted by Ind. Code § 31-34-11-1(b), their argument the delay violated their right to due process is without merit. *See Saucerman v. State*, 555 N.E.2d 1351, 1354 (Ind. Ct. App. 1990) (citing 5 C.J.S. Appeal and Error § 1508 (1958)) (“Where a party voluntarily . . . agrees to the manner in which his rights shall be submitted for determination in the trial court, he will not be permitted to complain, on appeal or error, that proceedings had in conformity thereto were erroneous.”).

2. Sufficiency of Evidence

The Parents argue there was insufficient evidence Child is a CHINS. A CHINS proceeding is a civil action and, thus, the State must prove the allegations in its petition by a preponderance of the evidence. Ind. Code § 31-34-12-3. A child is a CHINS when he or she is endangered by parental action or inaction. *Roark v. Roark*, 551 N.E.2d 865, 872 (Ind. Ct. App. 1990). The purpose of a CHINS adjudication is not to punish the parents, but to protect the children. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005).

The trial court found Child to be a CHINS pursuant to Indiana Code § 31-34-1-1:

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
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

When we review a judgment with findings of fact and conclusions of law, we will not set aside the judgment of the trial court unless it is clearly erroneous. *In re J.Q.*, 836 N.E.2d 961, 966 (Ind. Ct. App. 2005). Findings of fact, conclusions of law and judgments are clearly erroneous only if a review of the whole record leads us to a definite and firm conviction that a mistake has been made. *Id.* We will neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* Instead, we consider only the evidence and reasonable inferences drawn therefrom that support the judgment. *Id.*

According to the record, child was scheduled to be released from probation in early February 2009, at which time neither Mother nor Father could provide housing. The Intake Officer's Report of Preliminary Inquiry and Investigation indicated "[Mother] stated she was thinking maybe she would give living with [Child] another shot," (App. at 31), but she later "stated she loves [Child] but she is 'not going to do it.' [Mother] stated [Child] has told her he does not want to come be with her." (*Id.*) Furthermore, "[Mother] []does not think she has the physical and mental health to bring [Child] back into her home. [Mother] stated she does not think she should be forced to bring [Child] back into her home." (*Id.*)

Mother testified during the fact-finding hearing she would like Child to live with her, but she would need governmental services such as Dawn Project and the Midtown Mental Health Clinic. She indicated she might not be able to pay for those services if the CHINS case were dismissed or closed. When asked if she wished to terminate her rights with Child, she replied, "No." (Tr. at 12.) However, when asked whether she felt Child is in need of services, she answered "Yes." (*Id.*)

The record, including Father's testimony, indicates he is willing to care for Child but, "[Child] don't wanna follow the rules. Well at my home he runs away because he has to follow the rules." (*Id.* at 35.) Father has significant health problems requiring him "frequently to go in and out of the hospital." (*Id.* at 34.) Father testified Child is in need of services not because Father cannot provide for Child, but because "he's delinquent." (*Id.* at 36.)

Based on the record and Parents' testimony during the fact-finding hearing, the trial court found:

Although both Mother and Father love [Child], neither parent is either willing or able to care for him and deal with his behaviors.

By their own admissions, [Child] will not follow their rules and will run away from their homes. Mother expressed some willingness to take [Child] but acknowledged her inability to care for him. Father has many medical problems and acknowledged he cannot care for [Child].

(App. at 92.) These findings are supported by the evidence discussed above and support concluding Child is a CHINS as defined by Indiana Code § 31-34-1-1 because neither parent was able to care for him at the time of the trial court's determination.

CONCLUSION

Mother's and Father's due process rights were not violated. There was sufficient evidence to declare Child a CHINS. Accordingly, we affirm the decision of the trial court.

Affirmed.

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