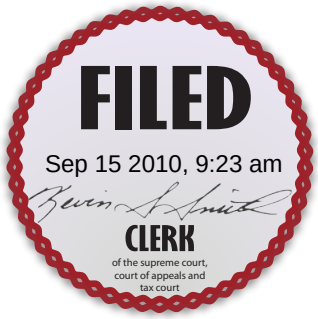

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF N.L., alleged to be a Child in Need of Services,	)	
B.L. (Mother), Appellant-Respondent,	)	
vs.	)	No. 49A02-1002-JC-140
MARION COUNTY DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC., Co-Appellee-Guardian Ad Litem.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Danielle P. Gaughan, Magistrate
Cause No. 49D09-0909-JC-43660

September 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

B.L. appeals from the trial court's determination that her daughter, N.L., is a child in need of services ("CHINS"). She presents a single issue of whether the evidence is sufficient to support the trial court's decision. We affirm.

Facts and Procedural History

On September 19, 2009, Officer David Miller ("Officer Miller") of the Indianapolis Metropolitan Police Department responded to a domestic disturbance call. When Officer Miller arrived, B.L. told Officer Miller that she had been fighting verbally and physically with both her mother, D.S., and with her sister, S.S. Officer Miller spoke with B.L., D.S., S.S., and several children, and learned that while B.L. had been fighting outside the house, N.L., then less than two months old, was lying on a couch inside the house. It was only when Officer Miller pointed out that no one was holding or otherwise attending to N.L. that D.S., N.L.'s grandmother, picked up N.L.

During subsequent investigation by Officer Miller and Teresa Howard ("Howard") of the Marion County Department of Child Services ("DCS"), B.L. asked "at least 20 to 30 times" if she could leave, while others expressed concern about what Officer Miller would do. N.L. was found to be dirty and was wearing dirty clothes. Officer Miller noted that the house was too small for all the kids present and that there were neither diapers nor a baby bed for N.L. B.L. indicated that N.L. slept with her on the bottom bunk in a bunk bed. One of the children Officer Miller interviewed told Officer Miller that B.L. had physically abused N.L. in the past.

When Howard interviewed her, B.L. denied any prior involvement with DCS. Howard discovered, however, an open case in the DCS system relating to two other children of B.L. DCS had also been involved in prior cases related to several of B.L.'s children, including two children who were adopted by their paternal grandmother and three children for whom B.L.'s parental rights had been terminated and who were subsequently adopted. Because of the domestic disturbance involving B.L. and the absence of diapers and a baby bed, Howard removed N.L. from the home.

DCS caseworkers arranged for B.L. and D.S. to have visitation with N.L. Visitation time was scheduled three times per week, and D.S. attended every session. B.L., however, missed numerous visits because she was unable to get a ride or had a conflict in her work schedule. B.L. sometimes asked to reschedule the visitation times after missing an appointment, but always declined offers of bus passes or other transportation to the visitation site. During visitation, D.S.—not B.L.—engaged in direct interaction with N.L., and B.L. generally responded poorly when N.L. did not cling to her. B.L. eventually ceased appearing at visitation appointments in November 2009.

On numerous occasions, B.L. has told DCS workers that "y'all can just keep" N.L. (Tr. 75.) B.L. has also refused on multiple occasions to participate in meetings with DCS staff regarding N.L., saying "I'm not doing all that" or "You can keep her then." (Tr. 76.) B.L. was unable to bond with her other children, and DCS workers remained concerned about the absence of necessities in B.L.'s residence, her inconsistent appearance at visitation, and B.L.'s failure to obtain services for mental health issues.

Based on conditions in the home, including physical altercations involving B.L. while N.L. was present, and the absence of necessities for N.L., DCS filed its petition to have N.L. declared a CHINS on September 22, 2009. The trial court held a fact-finding hearing on the CHINS petition on November 11, 2009, November 30, 2009, and December 17, 2009. The court adjudicated N.L. to be a CHINS on January 15, 2010, and on January 27, 2010, suspended B.L.'s parenting time and excepted DCS from making reasonable efforts toward family reunification in this case. This appeal follows.

Discussion and Decision

B.L. challenges the trial court's decision on the ground that it is not supported by sufficient evidence. In such cases, we do not reweigh the evidence on review, but instead examine the evidence most favorable to the trial court's decision and draw all reasonable inferences in that same light to determine whether sufficient evidence exists to support the trial court's decision. In re A.S., 912 N.E.2d 840, 851 (Ind. Ct. App. 2009), trans. denied (citing In re H.N.P.G., 878 N.E.2d 900, 903 (Ind. Ct. App. 2008), trans. denied, cert. denied, 129 S. Ct. 619 (2008)).

Indiana Code Section 31-34-19-10(a)(1) requires that juvenile courts enter written findings and conclusions when adjudicating a child to be in need of services. When reviewing written findings and conclusions, we engage in a two-tiered review: we first determine whether the evidence supports the findings, and then determine whether the findings support the judgment. Id. at 851. We may not reverse the findings and conclusions of a trial court unless they are clearly erroneous. Ind. Trial Rule 52(A). Findings of fact are

clearly erroneous when the record is devoid of any evidence or reasonable inferences in support of those findings; the judgment is clearly erroneous when unsupported by findings of fact and the conclusions relying upon those facts. In re A.S., 912 N.E.2d at 851.

DCS pursued a CHINS adjudication for N.L. under Indiana Code Sections 31-34-1-1, which determines that

> 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; and
>
> (B) is unlikely to be provided or accepted without the coercive intervention of the court.

DCS was required to prove N.L.'s CHINS status by a preponderance of the evidence. In re A.H., 913 N.E.2d 303, 305 (Ind. Ct. App. 2009) (citation omitted). The court need not wait until a tragedy occurs before intervening; parental action or inaction is sufficient to adjudicate a child as a CHINS. Id. at 306 (citation omitted). The purpose of a CHINS adjudication is to protect the subject child, not to punish the child's parents. Id.

Here, there was sufficient evidence to support N.L.'s CHINS adjudication. As to N.L.'s endangerment, B.L. was fighting with both her mother and her sister, and this fighting had escalated to a physical confrontation. N.L. was left alone on a couch in the home during

the fight. N.L. was dirty and wearing dirty clothes, with no diapers in the house. N.L. also did not have a baby bed, instead sleeping with B.L. on the bottom bunk of a bunk bed, and exposing N.L. to the possibilities of falling from bed or asphyxiation.

As to N.L's need for and likelihood of receiving care, B.L. provided little of N.L.'s care, depending instead upon N.L.'s grandmother, D.S., for childcare. B.L. was routinely frustrated when attempting to care for N.L., consistently handing off N.L. when N.L. did not cling to her, and exhibited particular sensitivity in this regard. B.L. had not successfully bonded with any of her other children, had a history of refusing services in the past, and had lost parental rights for five other children. During the conduct of N.L.'s case, B.L. was at best erratic in her attendance of visitation appointments and at worst uncooperative with DCS caseworkers and law enforcement personnel, offering to leave N.L. with DCS and reacting with hostility when DCS employees attempted to provide services, rides, or bus passes for visitation times.

Given these facts, we disagree with B.L.'s contention that there was insufficient evidence to support a CHINS adjudication of N.L.

Affirmed.

RILEY, J., and KIRSCH, J., concur.