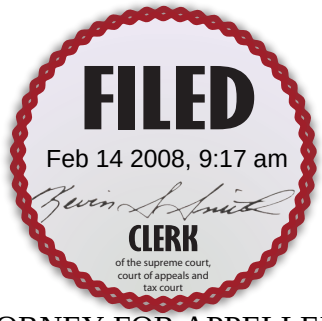

ATTORNEY FOR APPELLANTS:

NANCY A. MCCASLIN
McCaslin & McCaslin
Elkhart, Indiana

ATTORNEY FOR APPELLEE:

FAY SCHWARTZ
Elkhart, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF: V.D., C.J., A.J., C.J., C.J., III, and C.J.,	)	
ELIKA JACKSON, Mother, CARL JACKSON, JR., Custodian/Father,	)	
Appellants-Respondents,	)	
vs.	)	No. 20A03-0706-JV-295
ELKHART OFFICE OF FAMILY AND CHILDREN,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT – JUVENILE DIVSION
The Honorable David Denton, Magistrate
The Honorable Deborah A. Domine, Juvenile Magistrate
The Honorble Terry C. Shewmaker, Judge
Cause No. 20C01-0703-JC-00023
Cause No. 20C01-0703-JC-00024
Cause No. 20C01-0703-JC-00025
Cause No. 20C01-0703-JC-00026
Cause No. 20C01-0703-JC-00027
Cause No. 20C01-0703-JC-00028

February 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

In this consolidated appeal, Elika Jackson and Carl Jackson, Sr. (individually referred to as "Mother" and "Father" and collectively referred to as "Appellants") appeal from the juvenile court's determination that their minor children, Ca.J. III, C'l.J., Ca.J., A.J., Ch.J., and V.D. were Children in Need of Services ("CHINS"). Specifically, Mother and Father claim that the evidence is insufficient to support the CHINS determination. Concluding that the evidence is sufficient to support the CHINS determination, we affirm the judgment of the juvenile court.[1]

Facts and Procedural History

Mother and Father are the biological parents of the following children: (1) Ca.J. III, born July 11, 1999; (2) C'l.J., born December 1, 2000; (3) Ca.J., born October 12, 2001; (4) A.J., born October 22, 2002; and (5) Ch.J., born April 19, 2005.[2] Father is custodian to Mother's other child, V.D., born June 29, 1991. Mother and Father have maintained a relationship for approximately eight and one-half years and were married in November 2006.

On January 16, 2007, the Elkhart County Department of Child Services ("ECDCS") received a report indicating that A.J. was being abused. Specifically, the

[1] On December 8, 2007, the Elkhart County Department of Child Services filed a motion asking this Court to correct the official transcript and exhibits by attaching two missing pages, which we hereby grant.

[2] In May 2007, Mother and Father had another child, M.J., who is the subject of a separate appeal.

report alleged that A.J. had bruises on his upper back and arms as a result of Father hitting him across his back. A.J. told case manager, James William Pippen, that his Father had "whooped" him with both a belt and his hand. *See* Appellee's App. p. 2. A.J. could not remember when the hitting occurred. Ca.J. told Pippen that she witnessed the incident and confirmed that Father had hit A.J. across his back with a belt. Pippen took pictures of the bruises and lacerations on A.J. The following day, the Child and Family Advocacy Center ("CFAC") conducted an interview with A.J. regarding his injuries. In the interview, A.J. again stated that his father had "whooped" him with a belt and that he was afraid to go home. A.J.'s sisters, Ca.J. and C'l.J., were interviewed by the CFAC and confirmed that Father had beaten A.J. with a belt. A.J. also met with Jill Freshour, a therapist at Holy Cross Counseling Group, who diagnosed A.J. with Post-Traumatic Stress Disorder ("PTSD") and indicated that A.J. suffered from sensory integrated disorder, which occurs in many children who have a history of abuse. A.J. told Freshour that Father had "whooped" him.

In an effort to pinpoint when A.J. was abused, Pippen spoke with Danielle Carrington, A.J.'s teacher at the Head Start Program. Carrington indicated that A.J. was last in school on January 11, 2007, and at the time did not complain of any marks or bruises. However, when she saw him next on January 16, 2007, he complained about the bruises. Thereafter, A.J. was preliminarily placed in protective custody, and a protective custody hearing was scheduled. During the protective custody hearing, Father and Mother blamed A.J.'s injuries on a skin condition (eczema) and also claimed that Ca.J. III, his seven-year-old brother, caused the injuries. The juvenile court found probable

cause to keep A.J. in protective custody. While A.J. remained in protective custody, his siblings V.D., then age fifteen, Ca.J. III, then age seven, C'l.J., then age six, Ca.J., then age five, and Ch.J., then age one, remained in Father and Mother's home.

After A.J. was placed in protective custody, the ECDCS continued its investigation to assess the welfare of the children who remained in Mother and Father's home. As part of this continued investigation, the ECDCS acquired a report from the Lake County Department of Child Services ("LCDCS"), which indicated that both Mother and Father had been physically violent toward V.D. According to the report, Mother struck V.D. in the head and Father struck V.D. with a belt and choked her.

In addition to receiving the records from the LCDCS, the ECDCS received the results of a Rapid Family Assessment that was completed by Kim Varga, a clinical social worker. Varga's report maintains that "[A.J.] says he gets 'whooped all the time,' and that the younger children receive belt whoopings too." Appellants' App. p. 316. Varga writes in her report that "[g]iven the severity of the belt wounds on [A.J.], one would certainly question the safety of the other children in the home and the propensity for them to be injured as well." *Id*. at 325. Varga further states, "Given [A.J.'s] injuries, it seems to follow that the other children are at risk for injury as well even though their behaviors may not be to the extent of [A.J.'s] injuries." *Id*. at 326.

On March 14, 2007, the ECDCS filed five requests for emergency custody for Ca.J. III, C'l.J., Ca.J., Ch.J., and V.D. and affidavits in support thereof. Another protective custody hearing was held, and the court ordered the remaining five children into protective custody stating, in pertinent part:

> Well, based on the evidence presented, based on the fact that [A.J.] was seriously injured for some reason, based on the fact that there had been a prior investigation of abuse, there is risk. There is probable cause that these children are in need of service. Based on the evidence that I just cited, it is necessary to intervene to protect the kids and, certainly, the objective is reunification, but the objective is also that these kinds of injuries never occur again.

Tr. Jan. 18, 2007, & Mar. 15, 2007, Hr. p. 23.

On March 20, 2007, the ECDCS filed petitions alleging that all six children were CHINS. Mother and Father denied the allegations, and the court held an evidentiary hearing on the CHINS petitions. On May 25, 2007, the juvenile court found all six children to be CHINS and set all six matters for dispositional hearings. At the conclusion of the dispositional hearings, the court ordered all six children to "remain in foster care with a move to a less restrictive placement at the discretion of the [ECDCS] and CASA." Appellants' App. p. 49, 51, 53, 55, 57, 59. Mother and Father now appeal.[3]

Discussion and Decision

Appellants raise one issue on appeal: Whether the evidence is sufficient to support the trial court's determination that all six children are CHINS. The ECDCS has the burden of proving by a preponderance of the evidence that a child is a CHINS. *See* Ind. Code § 31-34-12-3; *In re M.W.*, 869 N.E.2d 1267, 1270 (Ind. Ct. App. 2007). When determining whether sufficient evidence exists in support of a CHINS determination, we consider only the evidence favorable to the judgment and the reasonable inferences raised by that evidence. *Id*. This Court will not reweigh evidence or judge witnesses' credibility. *Id*.

[3] On July 19, 2007, Appellants petitioned this Court to consolidate the appeals regarding the six children, which was granted on August 6, 2007.

The juvenile court found that the six children were CHINS pursuant to Indiana Code § 31-34-1-1, which provides as follows:

> 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 the child:
>
> (A) is not receiving; and
> (B) is unlikely to be provided or accepted without the coercive intervention of the court.

The CHINS statute, however, does not require that a court wait until a tragedy occurs to intervene. *Roark v. Roark*, 551 N.E.2d 865, 872 (Ind. Ct. App. 1990). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id*. 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), *trans. denied*.

Appellants maintain that that the ECDCS

> failed to prove the children's mental or physical conditions were seriously impaired or endangered as required by Ind. Code § 31-34-1-1. The [ECDCS] also failed to prove the children were not receiving the care from their parents that they needed.

Appellants' Br. p. 13. We disagree.

The evidence supports the allegation that Father and Mother abused their children. According to A.J., Father beat him with a belt and his hand, leaving bruises on his upper back and arms. A.J.'s sisters, Ca.J. and C'l.J., confirmed that Father had beaten A.J. with a belt. A.J.'s therapist diagnosed A.J. with various sensory disorders, including PTSD,

and stated, "a lot of children who have a history of abuse have sensory issues." Appellee's App. p. 18. Additionally, Varga's Rapid Family Assessment report indicates that all the children are abused and if the children remain in Mother and Father's home they have a significant chance of being injured. Although Mother and Father deny abusing their children, a report from the LCDCS indicated that on a previous occasion Mother struck V.D. in the head and Father struck V.D. with a belt and choked her. Thus, there is not much hope that they will be adequately cared for without the coercive intervention of the court. Sufficient evidence exists to support the findings that the children's mental or physical conditions are seriously impaired or endangered and that the children are not receiving the care from their parents that they need. Accordingly, sufficient evidence exists to support the juvenile court's determination that all six children are CHINS.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.