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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF J.M.R., CHILD IN NEED OF SERVICES	)	
M.R.,	)	
Appellant-Respondent,	)	
vs.	)	No. 02A03-1105-JC-273
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
The Honorable Lori K. Morgan, Magistrate
Cause No. 02D08-1001-JC-41

November 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

M.R. ("Father") appeals the juvenile court's dispositional order in the adjudication of J.M.R. as a child in need of services ("CHINS"). Father raises the following restated issue for our review: whether there is sufficient evidence to support the juvenile court's finding that J.M.R. was CHINS as to Father.

We affirm.

FACTS AND PROCEDURAL HISTORY

J.M.R. was born on March 19, 2005, to J.R. ("Mother") and Father. At the time of J.M.R.'s birth, Father was in Afghanistan serving in the military. Since the time of his return from Afghanistan in 2005, Father had seen J.M.R. approximately four times, with the last visit occurring in May 2008, when Father was in Indiana for a post-dissolution child support hearing.

Mother has moved six or seven times since May 2008 without contacting Father or providing him with her current addresses. Father contacted Mother at least once to arrange a visit with J.M.R., but Mother denied Father the opportunity to visit. On another occasion, Mother warned Father that he was not allowed on the property where Mother and J.M.R. were living. Occasionally, Father would attempt to locate Mother and J.M.R. by contacting J.M.R.'s maternal grandmother. Father also attempted to contact Mother by telephone, but the numbers were often disconnected.

Mother, who was living with her three other children fathered by J.B., who also lived with them, moved the family to Arkansas without notifying the Allen County office of the Indiana Department of Child Services ("ACDCS") of the move, and in violation of a CHINS order then in effect. An ACDCS case manager filed a missing persons report for Mother and

the children, and later successfully located Father, who was living in Florida at the time. The Arkansas Department of Child Services became involved when they were called to Mother's home in Arkansas in January 2010 for a domestic incident between Mother and J.B. J.M.R. and Mother's other children were removed from Mother's care and placed in licensed foster care in Arkansas until the ACDCS could travel there to retrieve the children and place them in licensed foster care in Indiana.

ACDCS advised Father when J.M.R. was located, and Father indicated that he wanted J.M.R. to live with him in Florida. The ACDCS case manager explained to Father that such an arrangement would involve an interstate compact on the placement of children, which was a lengthy process. Father maintained that he wished to begin the process, and such process was begun in Florida. Father later moved to Missouri in December 2010, and the Florida agreement was cancelled, with the process beginning in Missouri. Officials in Missouri notified the ACDCS that, because Father was moving to Arkansas, the Missouri Department of Child Services would be denying any agreement for the placement of J.M.R. with him in Missouri.

Father confirmed that he was living in Arkansas and still wanted J.M.R. to be placed with him in Arkansas instead of in licensed foster care in Indiana. Father also stated that he had not visited with J.M.R. after her placement in foster care because counselors were trying to help her to understand that J.B. was not her biological father and expressed to him that their relationship should proceed slowly beginning with therapeutic telephonic visitation. The first therapeutic telephonic visitation had not yet occurred by the time of the CHINS factfinding hearing.

ACDCS filed a CHINS petition on January 22, 2010, alleging that J.R.M. was CHINS as to Mother. On September 2, 2010, Mother admitted the allegations in the CHINS petition as they related to her. Also on that date, ACDCS filed a second amended verified CHINS petition. A factfinding hearing was held on February 28, 2011, at which Mother appeared in person and Father appeared telephonically. At the conclusion of the hearing, the magistrate stated as follows:

> THE COURT: Okay. The testimony is that the child was born during the period of the marriage. The parties were married in 2004 and divorced in 2009, so allegations one and two are not proven. Allegation three, that [Father] has not provided material or financial support. He's substantially current in the payment of support, he's only $454.00 behind in the payment of support. Allegation four, he's not maintained regular contact or visited with, that allegation is true, however, there is reason for that and that is because he's not known where [Mother] has been residing and with the remaining allegations, I don't find that those have been proven by a preponderance of the evidence either. [Father] is [sic] testified today that he is willing to provide care for her and in fact, has initiated an Interstate Compact process for placement. Hum, he's not, one of the reasons for the lack of visitation once the case started is that there was a directive that visitation occur on a therapeutic basis because of the child's belief that another gentleman was the child's father so I don't find, in sum, I don't find that the allegations in paragraph 4(B) have been proven by a preponderance of the evidence. Hum, CHINS as to the, a CHINS finding goes as to the condition of the child, so the child is still a CHINS regardless because of the finding based upon the allegations in paragraph 4(A). Hum, is [Father] willing to be placed under a Parent Participation Plan[?] I looked at the elements of the plan, for him it's the standard eight, Mr. Clifton?
>
> ATTY. J. CLIFTON: [Father] are you fine. I would have to go off the record and possibly ask him if that's okay Your Honor.
>
> THE COURT: Oh, okay. You want me to go over those with him?
>
> ATTY. J. CLIFTON: That would be fine if you want to on the record.
>
> THE COURT: Okay. Alright, [Father], hum, the Parent Participation Plan that pertains to you is a standard one that's used in CHINS cases. I'm going to

go over these elements with you and I need you to tell me whether or not you'd be willing and able to comply with these elements.

[FATHER]: Okay.

THE COURT: One is that you would refrain from all criminal activity, two is that you would maintain clean, safe, and appropriate housing at all times, three is that, you would notify the [ACDCS] within 48 hours of all changes in household composition, housing, and employment, that means if you move, someone moves in or out of your home, you get a job or lose a job, or your military status changes, you become incarcerated, any major change that you would notify the Department's case manager within 48 hours, the fourth is that you would cooperate with all caseworkers, the Guardian ad litem and/or CASA by attending all case conferences as directed, maintain contact, and accept announced and unannounced home visits. The fifth is that you would immediately provide the caseworkers with accurate information regarding paternity, finances, insurance, and family history. The sixth is that you would immediately provide the caseworker with signed and current consents or release and exchange of information. The seventh is that you would provide your child with clean and appropriate clothing at all times, and the eighth is that you would fully cooperate with all the rules of your child's placement. Are you able to comply, are you willing to be placed under a Dispositional Order and if so, are you willing to comply with those elements [Father]?

[FATHER]: Yes, I'm willing to comply with all of them.

Tr. at 48-51.

The written order signed by the magistrate and approved by the trial court, however, reflected the following conclusions as to Father:

6. CONCLUSIONS OF THE COURT

A. Conclusions regarding [Father]:

1. Based on the preponderance of the evidence the COURT NOW FINDS AND CONCLUDES that allegations in the paragraph(s) number 4(B) 4 of the petition filed March 8, 2011 regarding [Father] are found to be true.

2. The allegations in paragraph(s) number 4(B) 1-3 & 5-8, of the petition filed March 8, 2011 are not sustained by a preponderance of the evidence.

Appellant's App. at 22. The order is dated February 28, 2011, and was entered on the chronological case summary ("CCS") on March 8, 2011. *Id*. at 23. The order, approved by the trial court and dated March 8, 2011, does not contain a paragraph 4(B) with subsections. The second amended verified CHINS petition filed on September 2, 2010 contains a paragraph 4(B) with subsections and the subsection 4, which pertains to Father, states as follows:

> 4.B.4. [Father] has not maintained regular contact with, or visited regularly with, [J.M.R.].

Id. at 29.

Father filed a motion to correct error and argued that the written order did not correctly reflect the magistrate's findings regarding Father. In particular, Father argued that the magistrate had found that none of the subsections of paragraph 4(B) had been proven by a preponderance of the evidence. The trial court denied Father's motion to correct error, and Father now appeals.

DISCUSSION AND DECISION

Father argues that the juvenile court's findings of fact are not supported by the evidence and that the court's conclusions of law are not supported by the findings of fact. When we review a case in which a trial court has entered findings of fact and conclusions thereon, we will not set aside the trial court's findings or judgment unless they are clearly erroneous. *In re C.S.*, 863 N.E.2d 413, 417 (Ind. Ct. App. 2007); Ind. Trial Rule 52(A). We engage in a two-tiered standard of review, considering first whether the evidence supports the findings and then whether the findings support the judgment. *In re C.S.*, 863 N.E.2d at 417.

Findings are clearly erroneous only when a review of the record leaves us firmly convinced that a mistake has been made. *Id*. A judgment is clearly erroneous when the findings of fact and conclusions thereon do not support it. *Id.* In applying this standard, we neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. *Id*. Indiana Code section 31-34-23-4 provides that any finding by a juvenile court must be based on a preponderance of the evidence.

Father specifically challenges the trial court's conclusion contained in paragraph 6(A). In particular, Father challenges the trial court's written order and claims that it does not reflect the findings and conclusions of the trial court at the conclusion of the factfinding hearing. We disagree.

Although the trial court's written order could have been more artfully drafted, the record as a whole does accurately reflect that Father did not maintain contact or regularly visit with J.M.R. Father admitted to roughly four visits with J.M.R. since her birth, and J.M.R. was five years old at the time of the hearing on the CHINS petition. The trial court did note on the record that there were many factors at play, including Mother's possibly intentional efforts to thwart Father's visitation and contact with J.M.R. Father, nonetheless did not maintain contact or regularly visit with J.M.R.

"A CHINS adjudication focuses on the condition of the child." *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). "[T]he acts or omissions of one parent can cause a condition that creates the need for court intervention." *Id.* Furthermore, "[w]hile we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that---a determination that a child is in need of services." *Id.*

"[A] CHINS adjudication does not establish culpability on the part of a particular parent." *Id*. "Only when the State moves to terminate a particular parent's rights does an allegation of fault attach." *Id*.

Therefore, while Father's minimal contacts and visitation with J.M.R. are not appropriately described as a "failure" on his part due to the array of factors present in that situation, it remains true that he did not maintain contact with or regularly visit with J.M.R. The trial court and ACDCS were receptive to Father's efforts to begin establishing a relationship with J.M.R., but sought to regulate the recommencement of that relationship in a manner that best suited J.M.R.'s interests. Father indicated at the hearing that he was amenable to voluntarily submitting to a parenting participation plan and such was included in the trial court's dispositional order.

We find that while the trial court's written order could have been more carefully worded to reflect the complexity of the situation vis-à-vis Father's visitation efforts and contact with J.M.R., the trial court did acknowledge as much in the record of the proceedings. We find no reversible error here.

Affirmed.

BAKER, J., and BROWN, J., concur.