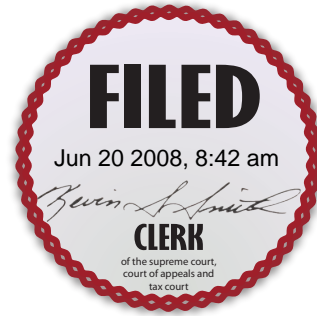


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF K.G., )  
)  
NATHAN GOODE, )  
)  
Appellant-Respondent, )  
)  
vs. )  
)  
MARION COUNTY DEPARTMENT OF )  
CHILD SERVICES, )  
)  
Appellee-Petitioner )  
)  
and )  
)  
CHILD ADVOCATES, INC., )  
)  
. Co-Appellee-(Guardian Ad Litem) )

No. 49A05-0712-JV-674

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Danielle Gregory, Magistrate  
Cause No. 49D09-0707-JC-028351

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**JUNE 20, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**HOFFMAN, Senior Judge**

Nathan G. (Father) appeals the juvenile court's order determining that his daughter, K.G., is a child in need of services (CHINS).

We reverse and remand.

The sole issue for our review is whether there is sufficient evidence to support the CHINS determination.

When K.G. was born in June 2007, Christina S. (Mother) was involved in a CHINS proceeding with her three-year-old son. Based upon information contained in a psychological evaluation performed during the pendency of that CHINS proceeding, the Marion County Department of Child Services ("DCS") filed a CHINS petition to take custody of K.G. as well. Specifically, the evaluation stated that Mother was mildly mentally retarded as well as illiterate, and that her cognitive impairment placed her children at risk.

Although K.G. was initially placed in foster care, one month later, at the initial hearing on the CHINS petition, the trial court ordered that K.G. be returned to her parents after the parents agreed to follow a family safety plan. Pursuant to the terms of the plan, a friend was to be in the home with Mother and K.G. while Father was at work.

Two months later, at the CHINS fact-finding hearing, Psychologist Dr. Mary Papandria testified that Mother's limitations did not prevent her from parenting her children. Rather, Dr. Papandria explained that Mother only needed assistance in so doing. Dr. Papandria testified that she had never met Father.

The testimony further revealed that Father completed three years of service in the United States Army where he earned transferable college credits. At the time of the hearing, Father had a full-time job as a pharmacy inventory manager at Walgreen's pharmacy, where he earned over \$1,000.00 per month and had health insurance coverage. Mother and Father had stable housing, and hoped to move to Ohio where Father's mother, who was a registered nurse, would help Mother take care of K.G. while Father was at work.

Also at the hearing, DCS caseworker Mandy Rollison testified that she was concerned that the family asked when the safety plan would be lifted. Following the hearing, the trial court determined that K.G. was a CHINS. Father appeals this determination.

The Fourteenth Amendment to the United States Constitution gives parents a right to establish a home and raise their children. *In re D.G.*, 702 N.E.2d 777, 781 (Ind. Ct. App. 1998). However, a parent's right to his children is balanced against the State's limited authority to interfere for the protection of the children. *Id.*

Indiana Code Section 31-34-1-1 provides that a child under eighteen years old is a CHINS if:

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

DCS has the burden of proving its allegations by a preponderance of the evidence. *See* Indiana Code Section 31-34-12-3. Reviewing the sufficiency of the evidence, we consider only the evidence most favorably to the judgment and the reasonable inferences flowing therefrom. *Perrine v. Marion County Office of Child Services*, 866 N.E.2d 269, 273 (Ind. Ct. App. 2007). We will not reweigh the evidence or judge the credibility of the witnesses. *Id.*

Here, Father argues that there is insufficient evidence to support the CHINS determination. Specifically, he contends that there is insufficient evidence that K.G. was endangered as to him and that he had failed or would fail to provide necessary care or treatment for her.

Our review of the evidence reveals that the CHINS petition was based on concerns regarding Mother's ability to parent K.G. The psychologist who expressed these concerns in a prior CHINS proceeding had never met Father. The evidence further reveals that Father completed three years of service in the Army where he earned transferable college credits. At the time of the hearing, Father had a full-time job as a pharmacy inventory manager. He earned over \$1,000.00 per month and had health insurance coverage. He also had stable housing.

In addition, the record of the proceedings is devoid of any evidence that Father has ever endangered K.G. or that he has failed or would in the future fail to provide the necessary care or treatment for her. The caseworker's testimony that she was concerned that Father asked her when K.G.'s safety plan would be lifted is not evidence of either of these elements. The trial court erred in determining that K.G. was a CHINS. *See In re*

*M.W.*, 869 N.E.2d 1267 (Ind. Ct. App. 2007) (finding insufficient evidence to support the CHINS determination).

Reversed and remanded with instructions to vacate K.G.'s CHINS determination.

NAJAM, J., and BROWN, J., concur.