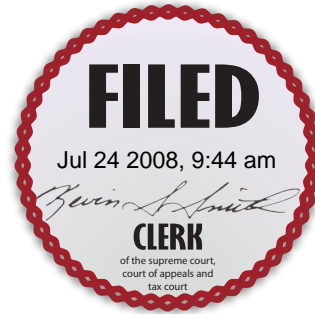


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

ANNA E. ONAITIS
Indianapolis, Indiana

KIMBERLY SPINDLER
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF K.L., T.R. and B.M.,)
)
CHILDREN IN NEED OF SERVICES,)
)
T.W.,)
)
Appellant-Respondent,)
)
vs.)
)
MARION COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner,)
)
and)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee (Guardian ad Litem).)

No. 49A02-0712-JV-1032

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Beth Jansen, Judge
Cause No. 49D09-0704-JC-03512, 49D09-0704-JC-013513 & 49D09-0704-JC-013514

July 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Tremina Wrice (“Mother”) appeals the trial court’s determination that K.L., T.R., and B.M. (the “Children”) were children in need of services (“CHINS”). Mother raises two issues, which we revise and restate as:

- I. Whether the trial court erred by failing to enter specific findings of fact and conclusions thereon; and
- II. Whether the evidence is sufficient to support the trial court’s finding that K.L., T.R., and B.M. were CHINS.

We reverse and remand.

The relevant facts follow. Mother has three children: T.R., who was born on April 18, 1990, K.L., who was born on June 18, 1993, and B.M., who was born on July 28, 2000. Michael Robinson is T.R.’s biological father, Derrick Manns is B.M.’s biological father, and Kennedy Lenoir is K.L.’s biological father.

On April 3, 2007, the Marion County Department of Child Services (“MCDCS”) filed a petition alleging that T.R., K.L., and B.M. were CHINS. Specifically, the petition alleged:

* * * * *

5. The children are Children In Need of Services as defined in IC 31-34-1 in that: one or more of the children’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of a parent, guardian or custodian to supply one or more of the children with necessary food, clothing,

shelter, medical care, education or supervision and the children need care, treatment or rehabilitation that the children are not receiving and are unlikely to be provided or accepted without the coercive intervention of the Court, as shown by the following, to wit:

- A) On or about March 31, 2007, the Marion County Department of Child Services (MCDCS) determined, by its Family Casemanager (FCM) Jennifer Sweazy, these children to be children in need of services because mother is unable to care for her children, due to her current mental state. Mother is inpatient in the psychiatric ward at Wishard Hospital. Mother has been hearing voices telling her to sacrifice her children. [T.R.] has not been in school because she has been worried about her siblings and staying home to care for them. Mother has failed to ensure her daughter[']s attendance at school. In addition, the children went for at least one day without food. Due to mother's mental state, mother is a threat to her children's well being and the children are endangered in her care.

* * * * *

- D) Further information is provided in the attached Preliminary Inquiry and Affidavit by the Family Casemanager identified therein.

Appellant's Appendix at 24. Sweazy's preliminary inquiry and affidavit referenced in the petition stated:

On 03-30-07 at approximately 2:30am, FCM Sweazy and YES CC Newton responded to an IMPD call at the Augusta Christian Church, located at 3445 W. 71st Street. At the scene, FCM Sweazy spoke with IMPD Officer Jones (ID #J2395) who reported that the police had been called to the scene in regards to a woman who needed to be evaluated for psychiatric reasons. Per Officer Jones, when he arrived at the church, he spoke to church staff who reported to him that [Mother] had been hearing voices in her left ear telling her to sacrifice her children. Prior to FCM Sweazy's arrival, [Mother] had been immediately Detained [sic] (ID) and taken to Wishard Hospital for evaluation and she was no longer present at the church.

FCM Sweazy spoke with one of the pastors at the church, Pastor Powell. FCM Sweazy commented to Pastor Powell the familiarity noted in her appearance and Pastor Powell stated that she is also one of the school counselors at Northwest High School where [T.R.] attends. Per Pastor Powell, [Mother] and her children first arrived at the church the previous Sunday and had been coming by the church every day since then. Pastor Powell stated that [Mother] had been hearing voices in her left ear telling her to sacrifice her children and the only time she didn't hear the voices was when she was at the church. Pastor Powell stated that [Mother] and two of her children had been at the church since approximately 5:00pm the previous day. She stated the one time [Mother] left the church to go home; she got a frantic cell phone call from the children stating that their mother was almost unconscious at a stop light. Pastor Powell stated that she spoke to [Mother] and [Mother] immediately returned to the church. After the church service Pastor Powell continued to work with the family and pray with them. Pastor Powell offered to take the children home; however, [Mother] refused to allow that. As [Mother] appeared to not be improving, mentally, the decision was made to call the police.

FCM Sweazy spoke with both [T.R.] and [K.L.] at the YES center; [B.M.] was remained [sic] asleep throughout the investigation. [T.R.] did most of the talking and stated that the family used to live in Michigan City approximately two to three years ago and her mother went to a church there. [T.R.] stated that the church used "witchcraft" on her mother and was "trying to curse her" and ever since then her mother has been trying to get the demons out of her body. [T.R.] confirmed that her mother had been going to Augusta Christian Church every day this week for them to pray to get the demons out of her mother. [T.R.] stated that she had not been in school all week to care for her mother and little brother. [T.R.] stated that she was worried that the voices in her mother's head may have her mother hurt her younger brother and she wanted to stay with him and protect him. Tears began to well up in [T.R.]'s eyes and she stated that she didn't want to talk about it anymore because she didn't want the demons to come inside of her. [K.L.] stated that he had been going to school all week. [T.R.] also reported that neither she nor her brother had anything to eat the previous day until people at the church found out late the previous night and got them some food.

* * * * *

Id. at 30-31.

On May 30, 2007, the trial court held a fact finding hearing, which was continued to July 11, 2007, and August 29, 2007. At the August 29, 2007, hearing, Mother's attorney asked the trial court to "issue findings of fact and conclusions of law." Transcript at 40. The trial court stated, "I think that has to be filed in a written motion." Id. Mother's attorney asked for a brief recess to draft a motion, and the trial court responded, "No. I'll take it under advisement." Id. The trial court then denied Mother's oral motion.

At the August 29, 2007 hearing, Jamie Walker, the family case manager, testified that Mother had told her that the allegations in the CHINS petition were not true. Walker also testified that "[i]f what's in the petition is true. . . If the voices are true. If, if it's true, children need to be in a safe, stable home." Id. at 127. T.R. testified that Mother never threatened her, K.L., or B.M., that Mother never said that demons were telling her to kill T.R., K.L, or B.M., and that Mother did not think that the Children had "uncleaned spirits." Id. at 62. T.R. testified that she never stayed home from school because she was terrified that Mother was going to kill T.R.'s brothers, as was alleged in the CHINS petition. T.R. also testified that she was not sure why Sweazy wrote down that the Children did not eat because they had eaten.

The trial court continued the fact finding hearing to October 31, 2007. At this hearing, Sweazy testified that at the time she wrote the affidavit she thought that Mother was inpatient in the psychiatric ward at Wishard Hospital, but she was no longer sure if

that was true. On November 11, 2007, the trial court held a ruling hearing. At this hearing, the trial court asked whether the parties wanted “this set for a disposition so we can have a formal report, or did you want to get started on the services today?” Id. at 211. The attorney for MCDCS stated, “I believe [Mother’s attorney], our previous conversations have been we’d like to get it taken care of today.” Id. The trial court then stated that it would set disposition regarding T.R.’s biological father in thirty days, and found that Mother waived filing of the formal pre-dispositional report. That same day, the trial court entered the following order:

CHILDREN IN NEED OF SERVICES

Ruling

* * * * *

After reviewing testimony the Court finds children in need of services as to [Mother], Mr. Robinson and Mr. Lenoir. Mr. Commons represents Mr. Robinson, who fails to appear, and request [sic] matter be set for disposition. Court grants. All other parties waive PDR and Court proceeds with disposition as to mother and Mr. Lenoir. DCS states Mr. Lenoir allowed [K.L.] to have phone contact with [Mother] and that [K.L.] has been suspended from school. Court authorizes all parents to have increased visitation up to and including temporary in-home trial visitation pending positive recommendations from homebased and service providers. . . .

The Court having heard the statements and considered the file and facts in this matter, now finds the children to be in need of services. The Court finds by preponderance of the evidence by trial that the children are in need of services.

The Court finds that reasonable efforts have been offered and available to prevent or eliminate the need for removal from the home. After reviewing the reports and information from the Office of Family and Children, service providers and other sources, which the Court now

incorporates into this order (see Court file), the Court also finds that the services offered and available have either not been effective or been completed that would allow the return home of the children without Court intervention.

The Court finds that it is contrary to the health and welfare of the children to be returned home and that reasonable efforts have been made to finalize a permanency plan for the children[.]

The Court orders the children to be wards of the Marion County Office Of Family and Children. The Court orders that the responsibility for placement and care of the child [sic] is ordered to the Marion County Office of Family and Children, with placement at: [K.L.] with father; [B.M.] and [T.R.] in foster care[.]

The Court, having considered the question of access to these juvenile proceedings, now finds that it is in the best interests of the child or the safety and welfare of the community to deny access, and, therefore, orders that the general public and the media shall not be allowed access to any of the proceedings under this cause, pending further Order of the Court.

The Plan for permanency: Reunification with parent(s)

The Court orders this cause continued for Disposition Hearing on 12/5/2007 at 9:45 AM in Court #1 and Placement Review Hearing on 12/5/2007 at 9:45 AM in Court #1 and parties are ordered to return without further notice.

The Court has ordered the child placed out of the home and finds that the child's legal settlement for school purposes is: IPS.

Appellant's Appendix at 17-19.

I.

The first issue is whether the trial court erred by failing to enter specific findings of fact and conclusions thereon. Ind. Trial Rule 52 provides, in pertinent part, that the trial court "shall make special findings of fact without request . . . in any other case

provided by these rules or by statute.” Mother argues that Ind. Code § 31-34-19-10 required the trial court to make findings and conclusions thereon. Ind. Code § 31-34-19-10 governs “[f]indings and conclusions” in a dispositional hearing and provides:

- (a) The juvenile court shall accompany the court’s dispositional decree with written findings and conclusions upon the record concerning the following:
 - (1) The needs of the child for care, treatment, rehabilitation, or placement.
 - (2) The need for participation by the parent, guardian, or custodian in the plan of care for the child.
 - (3) Efforts made, if the child is a child in need of services, to:
 - (A) prevent the child’s removal from;
 - (B) reunite the child with;the child’s parent, guardian, or custodian in accordance with federal law.
 - (4) Family services that were offered and provided to:
 - (A) a child in need of services; or
 - (B) the child’s parent, guardian, or custodian; in accordance with federal law.
 - (5) The court’s reasons for the disposition.
- (b) The juvenile court may incorporate a finding or conclusion from a predispositional report as a written finding or conclusion upon the record in the court’s dispositional decree.

The MCDCS argues that the trial court’s order addressed a fact finding hearing and that Ind. Code § 31-34-19-10 “does not address findings of fact regarding a CHINS fact finding hearing, but those that must accompany the disposition.” Appellee’s Brief at

7. Mother argues that the trial court entered “one order” that served as both the CHINS adjudication and the dispositional decree. Appellant’s Brief at 8. We agree with Mother.

The record reveals the following exchange:

THE COURT: Do you folks want this set for a disposition so we can have a formal report, or did you want to get started on the services today?

DCS: Your Honor, since this thing’s been going on since April, I’d like to just do it today if that’s okay with everybody. I know . . . I believe [Mother’s attorney], our previous conversations have been we’d like to get it taken care of today. I have not specifically asked the father’s attorneys about it.

* * * * *

THE COURT: Okay. So what I’ll be doing then is setting Mr. Robinson for a disposition in approximately 30 days. Anything further regarding mother and Mr. Lenoir, and proceeding to disposition?

DCS: No Your Honor.

[Lenoir’s Attorney]: No.

THE COURT: I will, I will show that those parties are waiving filing of the formal pre-dispositional report and by agreement of the parties

Transcript at 211-217. Further, the trial court’s order states Mother waived “PDR” and the trial court proceeded “with disposition as to [Mother].” Appellant’s Appendix at 17. Based on the record, we conclude that the trial court’s order was a disposition and the requirements of Ind. Code § 31-34-19-10 are applicable.

Mother argues that the trial court’s order does not comply with the mandates of Indiana Code § 31-34-19-10. We find In re J.Q., 836 N.E.2d 961 (Ind. Ct. App. 2005), reh’g denied, instructive. In In re J.Q., the court held that review of the trial court’s

findings of fact was made difficult by the trial court's vague language. The trial court merely stated:

The Court finds that reasonable efforts have been offered and available to prevent or eliminate the need for removal from the home . . . the Court also finds that the services offered and available have either not been effective or been completed that would allow the return home of the child without Court intervention.

The Court finds that it is contrary to the health and welfare of the child to be returned home and that reasonable efforts have been made to finalize a permanency plan for the child.

Id. at 966. This court held that the trial court's limited findings "ma[d]e it difficult for this court to determine whether or not a mistake has been made in adjudicating J.Q. as a CHINS." Id. The court held a review of the record "yields evidence that could support either outcome, but we are in no position to reweigh such evidence." Id. The court also held "we are concerned that procedural irregularities, like an absence of clear findings of fact, in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to a potential subsequent termination of parental rights." Id. at 967. The court held that in order to properly balance the protection of the rights of parents and give effect to the State's legitimate interest in protecting children from harm, "the trial court needs to carefully follow the language and logic laid out by our legislature in these separate statutes." Id. The court remanded the CHINS determination with instructions that the trial court more specifically follow the requirements of Ind. Code § 31-34-19-10. Id.

Here, the juvenile court's findings in its order declaring the Children to be CHINS are very similar and in places identical to the language used by the juvenile court in J.Q. We also note that the evidence presented to the juvenile court was not undisputed. Based on J.Q., we reverse and remand with instructions that the trial court more specifically follow the requirements of Ind. Code § 31-34-19-10.¹

For the foregoing reasons, we reverse the trial court's determination that K.L., T.R., and B.M. were CHINS and remand for proceedings consistent with this opinion.

Reversed and remanded.

MAY, J. and VAIDIK, J. concur

¹ Because we remand on this basis, we need not address whether the evidence is sufficient to support the trial court's finding that K.L., T.R., and B.M. were CHINS.