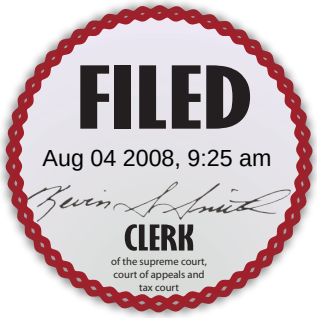

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF L.A.R., a Child in Need of Services,	)	
JANEL R., Mother,	)	
Appellant-Respondent,	)	
vs.	)	No. 79A02-0712-JV-1125
TIPPECANOE COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Les A. Meade, Special Judge
Cause No. 79D03-0702-JC-36

August 4, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Janell R.[1] ("Mother") appeals the determination her daughter was a Child in Need of Services ("CHINS"). Procedural errors during the proceedings did not deny Mother due process, and the evidence supports the determination L.A.R. is in need of services. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY

L.A.R. was born July 12, 2006, to Mother and Adrian R. ("Father"). At birth, L.A.R. weighed six pounds, six ounces and was 19 inches long. Based on standard growth charts for children in the United States, L.A.R.'s length was near the 25th percentile and her weight was between the 10th and 25th percentiles.

In the second half of 2006, Father called police twice because of threats by Mother, one of which was a threat to kill L.A.R. Those calls led to an investigation by the Tippecanoe County Department of Child Services ("DCS").[2] On November 12, 2006, Parents signed an agreement with DCS that required: Parents take a CPR course, Mother take an anger management course scheduled to start in January 2007, Parents attend three sessions of marital counseling with Karen Cover, Mother attend five individual sessions of counseling with Karen Cover, Parents provide medical attention for L.A.R. "as needed," Father keep informed of "any new issues," and Parents apply for Hoosier

[1] The documents filed on appeal indicate the mother's name is "Janel." (*See, e.g.* Appellant's Br.) All documents filed in the trial court indicate her name is "Janell." Because the record contains a document mother signed as "Janell," (App. at 691), we use that spelling.

[2] During the events herein, the name of the State agency responsible for investigating CHINS changed from Child Protective Services ("CPS") to Department of Child Services ("DCS"). For simplicity, we changed all references to CPS to DCS.

Healthwise for L.A.R. (Petitioner's Exhibit #7.) In exchange, DCS agreed to close its investigation.

On February 15, 2007, Chris Reynolds, a family case manager for DCS, went to Parents' home because he had received a report that L.A.R. was failing to thrive and that Father was violent with Mother. Mother's initial reaction to Reynolds' arrival was concern about how Father would react when he found out DCS came to the house. She reported she and Father had "rehearsed . . . what she would say if [DCS] would come to the home." (Tr. at 178.) She would not let Reynolds enter until a police officer arrived. She said, "[Father]'s going to kill me," and "if I'm not home he's going to divorce me." (*Id*. at 179.) She finally agreed to take L.A.R. to a medical clinic to be checked.

At the clinic on February 15, 2007, Certified Family Nurse Practitioner Susan O'Neill saw L.A.R.:

> The first time I saw the child she just struck me as very thin. Uhm, uh had what I would describe as dark circles under her eyes. Was not sitting up and uhm, with the weight that was given to me by the assistant I was concerned. They had plotted the graph and there was concern that her head circumference, her length, and her weight were all below the growth chart for her age.

(*Id*. at 97.) L.A.R.'s length, weight, and head size were below the third percentile on the standard growth charts. She weighed only 10 pounds, 11.7 ounces. Newborns should gain 25 to 35 grams per day for three or four months, then their growth rate should decrease to 20 to 30 grams per day. L.A.R. had gained an average of only 7.5 grams per day from birth.

During that first visit, O'Neill asked Mother to demonstrate breast feeding, so O'Neill could determine if L.A.R. had difficulty sucking or swallowing. As L.A.R. "was trying to nurse[, Mother] started yelling at the baby about how she was nursing." (*Id*. at 99.) When O'Neill confronted Mother about yelling at the child, Mother admitted she has "anger management issues." (*Id*.) O'Neill also found it strange that Mother gave "inconsistent" statements regarding L.A.R.'s calorie intake. O'Neill diagnosed L.A.R. as failure to thrive ("FTT").

Reynolds asked Mother if she would apply for Medicaid so L.A.R. could have weekly follow-up appointments to check her weight; Mother refused. Reynolds asked Mother about Parents' progress on the tasks agreed to in November 2006. Mother reported she had not completed an anger management course, and they had not attended the agreed marital or individual counseling. Reynolds decided to remove L.A.R. instead of putting services in place.

Dr. James Livermoore and physicians at Riley Hospital confirmed L.A.R.'s diagnosis as FTT. Standard labs found no metabolic explanation for her failure to gain weight. Genetic tests could not rule out an abnormality, and the report recommended the tests be repeated. Dr. Livermoore therefore opined "a lack of calories or an environmental issue went to her initial low weight and height." (*Id*. at 50.) Dr. Livermoore explained the risk of not treating FTT: "The majority of brain growth occurs in the first two years of life. . . . There is such rapid head growth and so calorie depravation in that period . . . developmentally could have long term implications for the child." (*Id*. at 90.)

As of July 13, 2007, L.A.R.'s head size was between the fifth and tenth percentiles, her length was at the third percentile, and her weight was just below the third percentile. Her weight in July was 16 pounds, 2.6 ounces. She gained six pounds in five months of foster care, after gaining less than four pounds in 7 months with Parents.

Angela Stone, the visitation facilitator, testified Father attended the first visit with L.A.R. on February 19, 2007. He came to the second visit, dropped off Mother, greeted L.A.R., and then left to run errands. Thereafter, Father did not attend visitation with L.A.R. Stone had no substantive communication with Father afterward. Mother actively participated in visitation and services with Stone. Mother expressed interest in following through with all the requirements, but indicated she would need transportation because Father was not willing to transport her and he would not permit her to ride the bus "where she would be exposed to other men." (*Id*. at 282.)

Mother repeatedly expressed to Stone a desire to return to regular baby formula, as opposed to the high-calorie formula prescribed by the pediatrician, because Mother thought L.A.R. was gaining too much weight and "she didn't want a baby with a fat pumpkin head." (*Id.* at 286.) At visitations, Mother was unable to learn "distraction techniques" for moving L.A.R. away from inappropriate items or activities; instead, Mother would end up "smacking" L.A.R. (*Id.* at 289.) Although Stone believes Mother has "tried very hard," Mother is "not ready at this time" to parent L.A.R. without assistance. (*Id.* at 292.)

L.A.R.'s court-appointed special advocate, Valeska Hilbun, met with Mother and L.A.R. during visitation at least once a week from March 2007 to October 2007. She had

not met Father. While Hilbun believes Mother has made improvement, she does not believe Mother is ready to care for L.A.R. without supervision.

The court found L.A.R. was a CHINS because:

> . . . her 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.
>
> In that: The Child's rate of growth while in parents' care resulted in a diagnosis of Failure to Thrive. The parents failed to secure prompt and adequate medical care for the child.
>
> The Mother has significant limitations in her ability to provide necessary and safe care for the child.
>
> The Mother has a history of violent behavior and has threatened harm to the child. Although the Mother has demonstrated increased responsibility and growth in working on these issues during the period of detention, additional coercive intervention by the court is still necessary. The parents have expressed and demonstrated hostility toward the idea of receiving services and toward various service providers.
>
> The Mother has participated in parenting training, but the Father has refused to participate in that training, asserting that he does not need it. The Father has refused to participate in parenting the child and to address the immediate needs of the child. The Father's testimony contained repeated statements indicating that his refusal was not an isolated incident, but was reflective of his ongoing attitude that he expected the Mother to meet these needs of the child.
>
> The Court has observed in the courtroom inappropriate controlling and verbally abusive behavior of the Father directed to the Mother. The behavior in the courtroom is consistent with and supports the credibility of the numerous other accounts of witnesses of controlling and abusive behavior by the Father, each of which accounts have been denied by the parents.

(App. at 18-19) (formatting altered).

DISCUSSION AND DECISION

1. Due Process

Mother first asserts the combination of four procedural violations denied her due process during the CHINS proceedings. "Choices about marriage, family life, and the upbringing of children are among associational rights the Indiana Supreme Court has ranked as of basic importance in our society and are rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *A.P. v. Porter County Office of Family & Children*, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), *trans. denied sub nom. Phelps v. Porter County Office of Family & Children*, 753 N.E.2d 8 (Ind. 2001). "The Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty or property without a fair proceeding." *Lawson v. Marion County Office of Family & Children*, 835 N.E.2d 577, 580 (Ind. Ct. App. 2005). A fair proceeding requires "the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* (quoting *Thompson v. Clark County Div. of Family & Children*, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003), *trans. denied* 804 N.E.2d 755 (Ind. 2003)). Due process is "flexible and calls for such procedural protections as the particular situation demands." *Id.*

A. Emergency Custody

Mother asserts Chris Reynolds improperly removed L.A.R. from Parents' custody immediately after O'Neill examined her on February 15, 2007. A caseworker "acting with probable cause to believe the child is a child in need of services" may take a child into custody if:

> (1) it appears that the child's physical or mental condition will be seriously impaired or seriously endangered if the child is not immediately taken into custody;
> (2) there is not a reasonable opportunity to obtain an order of the court; and
> (3) consideration for the safety of the child precludes the immediate use of family services to prevent removal of the child.

Ind. Code § 31-34-2-3(a). "[A] parent suffers no prohibited lack of due process when her child is temporarily removed from her if a reasonable basis exists to believe that the child is a child in need of services." *Wardship of Nahrwold v. Dept. of Pub. Welfare of Allen County*, 427 N.E.2d 474, 480 (Ind. Ct. App. 1981).

Mother argues "L.R.'s physical or mental condition would not have been seriously impaired or seriously endangered [because] O'Neill testified that there was no emergency regarding L.R.'s condition." (Appellant's Br. at 17.) O'Neill testified at the final hearing that L.A.R.'s condition on February 15, 2007, was not "a medical emergency where one would need to go to the emergency room." (App. at 148.) However, O'Neill was not asked about, nor did she address, the statutory requirement – whether L.A.R.'s physical or mental condition was being seriously impaired or seriously endangered.

At the initial Detention Hearing, held a few days after L.A.R. was taken into custody, the court found probable cause for the filing of the CHINS petition and "removal of the child was authorized and necessary under I.C. 31-34-1." (App. at 15.) Mother has not provided a transcript of the detention hearing to permit our review of the court's finding. Nor has Mother provided a copy of the documentation Reynolds should

have filed within 24 hours of taking L.A.R. into custody,[3] which should have contained substantially similar evidence. Accordingly, she has waived this argument for our review. *See Tucker v. Marion County Dept. of Public Welfare*, 408 N.E.2d 814, 819 (Ind. Ct. App. 1980) (We cannot analyze whether "the least restrictive alternative was not utilized . . . . Any analysis of what alternatives were in fact available is prevented by the absence of the transcript of evidence on appeal.").

B. Placement of Child

Next, Mother alleges the court erred by allowing L.A.R. to be placed in foster care because the legislature expressed a preference that children be placed with relatives: "A court shall consider placing a child alleged to be a child in need of services with an appropriate family member of the child before considering any other placement for the child." Ind. Code § 31-34-6-2.

The Court's March 2, 2007 Detention Order provided:

> Temporary Wardship is granted to the Tippecanoe County Department of Child Services.
> The child is to be placed in an appropriate placement.

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[3] "If a person takes a child into custody under this section, the person shall make written documentation not more than twenty-four (24) hours after the child is taken into custody as provided in section 6 of this chapter." Ind. Code § 31-34-2-3(c). Section 6 requires written documentation of the following evidence:

> (1) The facts establishing probable cause to believe that the child is a child in need of services.
> (2) Why the child's physical or mental condition will be seriously impaired or seriously endangered if the child is not immediately taken into custody.
> (3) Why the person is unable to obtain a court order and what steps have been taken to obtain a court order.
> (4) Why the department of child services is unable to protect the safety of the child without taking the child into custody.
> (5) Why the person is unable to obtain the assistance of a law enforcement officer if the child is taken into custody by a probation officer or caseworker without the assistance of a law enforcement officer.

Ind. Code § 31-34-2-6.

> Court authorizes placement of the child in the parents' home on the condition that one of the maternal grandparents resides in the parents' home and provides twenty-four (24) hour direct supervision of the child.
> [DCS] shall conduct a background check on the maternal grandparents prior to such placement.

(App. at 15.) Accordingly, the court tried to place L.A.R. with a relative by allowing the grandparents, who could not get immediate custody at their home because they live in Michigan, to move into Parents' home and take custody of L.A.R. there.

The record contains no other mention of the child's placement until the order regarding the July 17, 2007, scheduling hearing:

> Counsel for Mother filed Motion for Interstate Compact. Argument is submitted. The Court now grants said motion and ORDERS the Department of Child Services to immediately begin the Interstate Compact with the State of Michigan for possible placement of the child with the maternal grandparents, which process is to be completed by September 6, 2007. The Department of Child Services is ORDERED to provide verification of their initiation of the Interstate Compact with this court no later than Tuesday July 24, 2007. The Court further ORDERS the Department of Child Services to submit to this Court the authority by which State guidelines or State statute authorizes it to state local policy that an Interstate Compact is not to be pursued without court order.

(*Id*. at 7.) Accordingly, when Mother moved for Interstate Compact, the court immediately addressed the motion and ordered DCS to complete the paperwork necessary for L.A.R. to be placed in the grandparents' home in Michigan.[4]

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[4] At the final hearing, Mother argued "DCS has a statutory obligation to uhm, find a relative placement." (App. at 417.) The court stated: "you have heard me express my disappointments with the timing in which that has been done." (*Id.*) Mother then asked to make an offer of proof for the record:

> The offer of proof would be that the maternal grandparents requested information from the Department of Child Services immediately upon removal of how they – how [L.A.R.] could be placed with them rather than in foster care, and they were told that was not possible because they lived outside of the State of Indiana. Furthermore they were told that they would need to take urine drugs screens and they would have their finger prints taken, which they did so promptly. They were never provided any information after that

The CCS entry for the status hearing on September 14, 2007 states:

> The court is advised that documents relating to the Interstate Compact for the Placement of Children have not yet been received in Indianapolis. In the presence of the parties, the court initiates a telephone call to attempt to determine where those documents are and the timeframe for readiness of the agreed-upon placement.

(*Id*. at 6.)

On September 20, 2007, Mother filed an Emergency Petition to Change Placement of the Child. The court held a hearing on the petition four days later, but Parents failed to appear. At a scheduling conference on September 28th, when the court determined the parties were not going to resolve their issues by agreement, the court set the fact-finding to resume on October 4, 2007. On October 4, the court concluded the fact-finding hearing, determined L.A.R. was a CHINS, held the dispositional hearing, and placed L.A.R. in the custody of maternal grandparents.

These facts demonstrate the court tried at every opportunity to facilitate the placement of L.A.R. with her maternal grandparents. We cannot find the court violated its statutory obligation to "consider" such a placement, nor can we find the court's inability to effectuate such placement earlier violated Mother's right to due process.

> point of what the outcome of that was or how they could move forward with this process to get this child out of . . . foster care, and that's contrary to the statutory obligation of the Department of Child Services.

(*Id*. at 418.)

On appeal, Mother asserts the DCS refused to "begin an interstate compact . . . without a court order. The refusal was contrary to any statutory or procedure requirement." (Appellant's Br. at 18.) However, Mother has not provided any citation to statute or procedural rules regarding interstate compacts for the placement of children. The one statute she cites, Ind. Code § 31-34-6-2, requires the "court" to consider placing the child with a relative; that statute does not require DCS to take any action to facilitate placement with an out-of-state relative. Accordingly, she has waived such argument. *See* Ind. App. R. 46(A)(8).

C. Delay of Final Hearing

A CHINS fact-finding hearing is to be held "not more than sixty (60) days after a petition" is filed. Ind. Code § 31-34-11-1(a). The court may delay the hearing "an additional sixty (60) days if all parties in the action consent to the additional time." Ind. Code § 31-34-11-1(b). Mother asserts her due process rights were violated when, without her consent, the fact-finding hearing regarding L.A.R. did not occur until 203 days after the petition was filed.

The trial court initially set the fact-finding hearing for March 22, 2007, which was within thirty days of the filing of the petition. Thereafter, Father filed numerous motions, which the court had to address when the parties appeared for the fact-finding hearing. The court's orders included:

> Father's Motion to change Venue file-marked March 20, 2007 is granted as to the Judge only. The parties being unable to agree to a Special Judge, the Court now submits the following panel from whom the parties shall strike in accordance with the Indiana Rules of Trial Procedure . . . . Court authorizes parents to strike jointly if they so desire no later than March 27, 2007. The Department of Child Services and the CASA shall strike jointly no later than three (3) days thereafter. Court notes Father's request for change of venue from Tippecanoe County is denied. Tippecanoe County is not a party to the CHINS proceeding and Father fails to allege sufficient bias or prejudice other than the fact he has filed a federal lawsuit.
>
> Father's Motion to Dismiss Based on Judicial Misconduct file-marked on March 5, 2007, Motion for Mistrial file-marked on March 16, 2007, and Motion to Dismiss file-marked March 19, 2007 are continued pending acceptance of this cause by the Special Judge.

(App. at 13.)

Special Judge Les Meade assumed jurisdiction of the case on April 4, 2007, and ordered the parties to appear on April 20, 2007 for a hearing. Father again filed

numerous motions, and the hearing was used to address those motions. The CHINS fact-finding was set for May 31, 2007, but on May 30, the court cancelled that hearing in an order stating:

> The court, on its own motion, now reconsiders its ruling on the Motion to Recuse filed by the father. In that the father has filed a complaint against the judge with the Indiana Commission on Judicial Qualifications which has not been summarily dismissed and will still be pending at the time of the hearing now set for May 31, 2007, the court determines that there could be perceived to exist an appearance of impropriety by this judge continuing to preside in the case. Therefore, pursuant to Trial Rule 79(C)(3) and (H), the judge now disqualifies and recuses himself from this case, and certifies to the Indiana Supreme Court the issue of the appointment of a Special Judge because the particular circumstances of this case, the court believes, warrants selection of a special judge by the Indiana Supreme Court.

(*Id*. at 9.)

On June 26, 2007, our Supreme Court remanded the case and ordered Judge Meade to reassume jurisdiction. Judge Meade reassumed jurisdiction on July 10, 2007, and set a scheduling hearing for seven days later. At that scheduling hearing, the CHINS fact-finding was set for September 6, 2007. On September 6th, at the fact-finding, the "parties . . . advised the Court they have reached an agreement." (*Id*. at 7.) The Court therefore continued the hearing so that "[c]ounsel for the Mother [could] prepare the proposed agreed order." (*Id.*)

However, at a status hearing on September 14th, Father announced he might not be willing to go forward with the agreement because "there were matters that he had not clearly understood earlier." (*Id*. at 6.) At a scheduling conference on September 28th, the court determined the parties were not going to come to an agreement, and the court

set the fact-finding to resume on October 4, 2007. On October 4, the court concluded the fact-finding hearing.

These facts demonstrate the court did its best to hold the final hearing as quickly as possible. The initial final-hearing dates were delayed by Father's numerous motions and his complaint to the Judicial Commission regarding the sitting judge. Once Judge Meade reassumed jurisdiction, nearly five months after the petition was filed, he set a new date for the final hearing. At that hearing, the parties informed the court they had reached an agreement to settle the matter. When Father backed out of that agreement, the court held the final hearing within a month. Accordingly, the court held the final hearing as quickly as the parties' actions permitted. We see no violation of due process. *See, e.g., Parmeter v. Cass County Dept. of Child Services*, 878 N.E.2d 444, 448 (Ind. Ct. App. 2007) (Ind. Code § 31-34-11-1's use of "shall" for the setting of the hearing within thirty days is "directory and not mandatory. If we were to hold otherwise, CHINS cases would have to be dismissed where a continuance beyond the statutory time frame was necessary and legitimate, an absurd and unjust result."), *reh'g denied*; *see also In re A.D.*, 737 N.E.2d 1214, 1216-17 (Ind. Ct. App. 2000) (where guardian ad litem failed to object to continuances of the final hearing in a termination proceeding, guardian ad litem waived for appeal any argument the court failed to hold the hearing within the statutorily allotted time).

D. Efforts to Prevent Removal

Finally, Mother claims DCS did not use reasonable efforts to provide services to prevent a child's removal from his or her parents.[5] *See* Ind. Code § 31-25-2-11(c) ("Reasonable efforts must be made to provide family services designed to prevent a child's removal from the child's parent, guardian, or custodian.").[6]

To support her argument, Mother notes the Disposition Order states: "Reasonable efforts have been made to prevent or eliminate the need for removal of the child from her home consisting of: The Court herein incorporates the reasonable efforts as set forth in Department's CHINS Petition and Affidavit." (Appellant's App. at 20.) The CHINS Petition provides:

> 7. The child . . . has been removed from the home of her parent . . . and is currently in protective custody of the Department of Child Services. Efforts were made to eliminate or prevent the need for removal of the child . . . as shown in the Affidavit of Probable Cause and/or the Preplacement Preventative or Reunification Services Certification which are attached hereto and incorporated herein.

(*Id*. at 700.)

Mother claims the Affidavit of Probable Cause simply "states that 'consideration for the safety of the children's [sic] precluded the immediate use of services prior to removal of the children [sic].'" (Appellant's Br. at 20.) However, Mother's Appendix does not contain a copy of the Affidavit of Probable Cause. Because the Affidavit was "attached" to the CHINS Petition and "incorporated" therein, it should have been made a

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[5] Mother notes this obligation helps the State fulfill its goal to "remove children from families only when it is in the children's best interest or in the best interest of public safety." Ind. Code § 31-10-2-1(6).
[6] Mother cites Ind. Code § 31-33-2-3, which was repealed in 2006. *See* P.L. 145-2006, § 376.

part of the record on appeal. Because Mother has not provided the evidence that would permit us to address her argument, it is waived for appeal. *See* Ind. App. R. 46(A)(8).

2. Sufficiency of Evidence

Pursuant to Ind. Code § 31-34-1-1, a child under eighteen years of age 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 that the child:
>
> (A) is not receiving; and
>
> (B) is unlikely to be provided or accepted without the coercive intervention of the court.

A DCS must prove those elements by a preponderance of the evidence. Ind. Code § 31-34-12-3.

When we review a CHINS determination, we consider only the evidence most favorable to the judgment and the reasonable inferences therefrom. *Perrine v. Marion County Office of Child Servs.*, 866 N.E.2d 269, 273 (Ind. Ct. App. 2007). We may neither reweigh the evidence nor reassess the credibility of the witnesses. *Id.* Mother's three challenges to the CHINS determination are, in essence, requests that we reweigh the evidence.

Mother first claims the evidence does not support the finding Parents failed to secure prompt and adequate medical care for L.A.R. We disagree. Parents took L.A.R. to the health department for immunizations. The health department record for October 3, 2006, includes the following note: "baby very tiny[.] weighed 6 lb @ birth[.] 11 weeks

now and only 7 lb 11.5 oz. Mom advised to see pediatrician and that baby is very tiny." (Mother's Exhibit A at 2.) The health department record for December 5, 2006, states: "Baby still very small[.] 9 lb 11 oz. Mom very strange states only sees Dr. Bell if an emergency." (*Id.*) The February 5, 2007, record indicates: "Today 10# 7oz. Baby very small but very alert, laughs. Encourage mom for baby to see doctor. Mom states they have no insurance." (*Id.* at 3.) Despite the encouragement by health department workers, Parents did not take L.A.R. to see a pediatrician.

When Reynolds took Mother and L.A.R. to the appointment with O'Neill on February 15, O'Neill diagnosed L.A.R. as failing to thrive because she was gaining inadequate amounts of weight and had fallen from the growth charts. Nevertheless, Mother would not apply for Medicaid so Parents could return L.A.R. to the clinic weekly for weight checks. Mother indicated Father would not agree to return L.A.R. for another doctor visit. After L.A.R. was removed from Parents' care, Mother repeatedly asked the visitation facilitator if they could stop feeding the high-calorie food to L.A.R. because Mother thought L.A.R. was gaining too much weight and "she didn't want a baby with a fat pumpkin head." (Tr. at 286.) This evidence permits the inference Mother was not willing to take L.A.R. to the doctor or feed her in accordance with the pediatrician's orders without coercive intervention from the court.

Second, Mother challenges the finding she has a history of violent behavior and threatened harm to L.A.R. Mother points to her own testimony and that of her friend, while discounting the evidence most favorable to the judgment. The visitation facilitator testified Mother had smacked L.A.R.'s hand and face as punishments, and Father testified

police had been called to their house prior to removal of L.A.R. because Mother threatened him and threatened to kill L.A.R. Accordingly, the evidence supports that finding.

Third, Mother challenges the finding Father inappropriately controlled Mother with verbally abusive behavior. Mother acknowledges the testimony of Stone and Reynolds supports the court's finding, but she asks us to ignore their testimony because it was based on statements Mother made to them:

> Case Manager Reynolds testified that on February 15, 2007 while at the Community Health Clinic for the medical examination of L.R., [Mother] told him that [Father] would not allow her to get medical treatment for [L.A.R.] that was not covered. The only other statements that might be construed as controlling are Angela Stone's testimony that [Mother] told her she would not have transportation for services because [Father] would not bring her and he would not allow her to take the bus because that is where she would be exposed to other men.
>
> [Mother] has been diagnosed with ADHD. She has been described by her treating physician as verbally impulsive and very talkative. The statement [Mother] made to Case Manager Reynolds was made at a time that [Mother] was very anxious and frightened. Given [Mother]'s tendency to be verbally impulsive, the veracity of her statements to Case Manager Reynolds and Angela is certainly questionable.

(Appellant's Br. at 14) (internal citations omitted). We decline her invitation to ignore testimony based on her statements and to which she did not object.

Nevertheless, we note that, even if Mother's reports to Reynolds and Stone were inaccurate, other findings by the trial court are more than adequate to support the determination L.A.R. is a CHINS. *See, e.g.*, *In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) ("Because there is evidence sufficient to support the trial court's ultimate findings on the elements necessary to sustain the judgment, we hold that the erroneous finding

was merely harmless surplusage that did not prejudice Mother and, consequently, is not grounds for reversal."), *trans. denied*.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.