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IN THE
COURT OF APPEALS OF INDIANA

HEATHER PARMETER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 09A02-0806-JV-553
	)	
CASS COUNTY DEPARTMENT OF CHILD SERVICES,	)	
	)	
	)	
Appellee.	)	

APPEAL FROM THE CASS CIRCUIT COURT
The Honorable Robert McCallen, III, Special Judge
Cause Nos. 09C01-0606-JC-15 and 09C01-0606-JC-16

October 31, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Heather Parmeter ("Mother") appeals from the trial court's determination, on remand, that her minor children, a son C.P. ("son") and a daughter C.P. ("daughter") (collectively "the children"), are children in need of services ("CHINS"). Mother raises two issues for our review, which we consolidate and restate as whether the trial court's determination is supported by sufficient evidence.

We affirm.

FACTS AND PROCEDURAL HISTORY

Facts and procedural history relevant to this appeal were stated in our prior opinion in Parmeter v. Cass County Department of Child Services, 878 N.E.2d 444, 446-47 (Ind. Ct. App. 2007), trans. denied ("Parmeter I"):

> While Mother was married to Shonn Parmeter ("Father"), she gave birth to twin children, son and daughter. Sometime after the children were born, Mother and Father separated, and, in 2006, dissolution proceedings were initiated. The parties' divorce was final in the fall of 2006.
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> On June 7, 2006, the Cass County Department of Child Services ("DCS") investigated a report that naked photographs had been taken of son. As a result of that investigation, on June 8, 2006, DCS filed petitions for authorization to file petitions alleging son and daughter to be CHINS. After receiving permission from the trial court, the DCS filed the CHINS petitions and requested the immediate detention of the children. At the detention hearing on June 8, the trial court denied Mother's motion to dismiss the petitions and heard evidence on the detention request. The trial court then ordered the children to be temporary wards of DCS for placement in a foster home and appointed Lisa Traylor-Wolff as [Guardian Ad Litem].
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> * * *

> On August 15, 2006, Mother again filed a motion to continue the fact-finding hearing, which the trial court denied. The fact-finding hearing commenced on October 16, 2006, but, on October 17, 2006, the trial court again continued the hearing on Mother's motion and because of "technical difficulties." Appellant's Supp. App. at 129. The trial court resumed the fact-finding hearing on November 17 and, at the conclusion of evidence, took the matter under advisement. On November 28, 2006, the trial court entered its order finding the children to be CHINS. After a review hearing on December 4, 2006, the trial court continued the children's placement with Father.

(Footnotes omitted.)

At the fact-finding hearing, Mother testified that she had taken the nude photos of her son at the direction of doctors and local authorities to document bruising caused, according to Mother, by Father. Mother also testified that, while she was taking those photos, her son told her that Father "sticks his finger up [son's] bottom." Appellant's App. at 328. In response to her son's statement, Mother decided to create a videotape of the children in an "attempt[] to document the boy's voluntary statement." Appellant's Remand Brief at 18. In that video, Mother engaged the children in "repeated and hysterical questioning" and asked the children questions about their "bad daddy." Appellant's App. at 16-17.

After reviewing various other issues raised by Mother on appeal in Parmeter I, we addressed the question of whether the evidence supported the trial court's conclusion in the dispositional decree that the children were CHINS. On that issue, we noted as follows:

> Indiana Code Section 31-34-1-2 provides that a child under eighteen years old is a CHINS if:

> (1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and
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> (2) the child needs care, treatment, or rehabilitation that:
>
> (A) the child 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 by a preponderance of evidence that a child is a CHINS. See Ind. Code § 31-34-12-3.

We first consider whether the evidence supports the trial court's findings in the dispositional decree. In the decree, the trial court stated several reasons for its disposition:

> The Care, treatment, or placement under this Decree provides the least restrictive (most family[-]like) and most appropriate setting available, which, under the circumstances, is in [Father's] home. This disposition is consistent with the best interest and special needs of the children, least interferes with family autonomy, is least disruptive of family life, imposes the least restraint on the freedom of the children and their parent(s), and provides a reasonable opportunity for participation by the children(s) parents.
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> The initial removal of the children was based upon actions by [Mother] which were harmful to the children's mental health and well-being. As the Court indicated at the dispositional hearing, perhaps the most telling of all the evidence presented at the fact finding hearing was the Court's observation of [M]other's expert, Dr. Larry Davis, as he reacted (and appeared to the Court to be very upset) upon seeing [Mother's] Exhibit 1, being a video tape taken by [M]other based upon her belief (which was not substantiated) that one of the children had been harmed or abused and showing her repeated and hysterical questioning of the

children (in a leading manner) and referencing their father as "bad daddy."

Accordingly, for reunification to occur the behaviors of [Mother] that gave rise to the children's removal must be addressed. This may require further appropriate psychological testing/evaluation/counseling. To date, certain assessments/evaluations made of [Mother] either in anticipation of the divorce between [her] and [Father]; as a part of that proceeding; or related to this proceeding; and, the results or conclusions thereof; have not been made available to all service providers or the [DCS]. For an informed plan toward reunification to be developed and implemented, any mental health issues related to [M]other, if any, must be identified and addressed. To determine if further testing and/or treatment is necessary, [M]other must release all of her mental health evaluations and records immediately. In fairness, however, for a complete assessment, [F]ather must ensure that any such information is similarly made available so that any and all services provided are compatible with the needs of both parents and children.

Further and as stated above, [Mother] must participate without resistance in services offered. Hopefully the Court's requirement that all future Team Building sessions be recorded with the videos retained pending further hearing will allay [M]other's concerns that things are not what they seem or are not memorialized accurately, allowing her to resume full participation. Progress has occurred ([M]other even acknowledged improvement in her communication with [F]ather as regards co-parenting of the children, as a result of the services provided) but for the full benefits thereof to be realized, toward the goal of reunification, [M]other must participate more fully and willingly.

Appellant's App. at 16-17 (emphasis added). Mother does not deny the findings, the description of Dr. Davis's reaction to the video tape, or the description of Mother's behavior on the tape.

As this court has recently stated,

> findings which indicate that the testimony or evidence was this or the other are not findings of fact. Instead, [a] finding of fact must indicate, not what someone said is true, but what is determined to be true, for that is the trier of fact's duty. [T]he trier of fact must adopt the testimony of the witness before the "finding" may be considered a finding of fact.
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> Parks v. Del. County Dep't of Child Servs., 862 N.E.2d 1275, 1279 (Ind. Ct. App. 2007) (emphasis in original) (internal citations and quotation marks omitted). In the present case, the only fact-specific reasons stated in the decree merely report the trial court's impression of a witness' reaction to evidence and the fact that Mother had apparently resisted the services offered by DCS. The decree does not include any findings of fact to support the CHINS determination, and, therefore, the "findings" are deficient. As a result, we must remand to the trial court for proper findings that support the judgment.

Parmeter I, 878 N.E.2d at 450-52 (alterations and emphases in original).

On remand, the trial court entered an Amended Dispositional Decree ("Amended Decree"). In the Amended Decree, the court reiterated its original statements and also stated the following new language:

> The Court finds that Dr. Davis' reaction reflected his opinion that [M]other's actions (as shown in the video) seriously endanger the children's mental, if not also their physical, well-being. The Court similarly finds such actions as shown in the video, along with [M]other's taking or arranging to be taken nude photos of her son[,] seriously endangered the children's mental, if not also their physical, well-being.
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> * * *
>
> **1. CHINS.** The children are children in need of services because their [M]other's actions seriously endangered their mental well-being, if not also their physical well-being[,] and the children need care, treatment, or rehabilitation that they are not receiving and are unlikely to be provided or accepted without the coercive intervention of the court.

Appellant's Remand App. at 35. This appeal ensued.

DISCUSSION AND DECISION

The only issue raised by Mother on appeal is whether Dr. Davis' testimony supports the trial court's finding that Mother's actions seriously endangered the mental or physical health of the children.[1] We stated our standard of review for such issues in Parmeter I:

> Mother requested that the trial court make findings of fact and conclusions, and the parties submitted proposed findings and conclusions. Therefore, we apply a two-tiered standard of review, see Vega v. Allen County Dep't of Family & Children (In re J.V.), 875 N.E.2d 395, 402 (Ind. Ct. App. 2007), and we may not set aside the findings or judgment unless they are clearly erroneous, Ind. Trial R. 52(A); Perrine v. Marion County Office of Child Servs., 866 N.E.2d 269, 273 (Ind. Ct. App. 2007).
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> In our review, we first consider whether the evidence supports the factual findings. Id. Second, we consider whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Id.; Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. Perrine, 866 N.E.2d at 273. We give due regard to the trial court's ability to assess the credibility of witnesses. T.R. 52(A). While we defer substantially to findings of fact, we do not do so to conclusions of law. Perrine, 866 N.E.2d at 274. We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Id.
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> Indiana Code Section 31-34-1-2 provides that a child under eighteen years old is a CHINS if:

[1] Contrary to Mother's assertion, we did not reach this issue in Parmeter I. Rather, on this issue we held only that the trial court had failed to properly enter findings indicating "not what someone said is true, but what is determined to be true." See 878 N.E.2d at 451 (quoting Parks v. Del. County Dep't of Child Servs., 862 N.E.2d 1275, 1279 (Ind. Ct. App. 2007)). Further, Mother does not address whether the trial court on remand properly found that the children are in need of care, treatment, or rehabilitation that they were not receiving and were not likely to receive without the coercive intervention of the court. Accordingly, any potential error on that issue has been waived. See Ind. Appellate Rule 46(A)(8)(a).

> (1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and
>
> (2) the child needs care, treatment, or rehabilitation that:
>
> (A) the child 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 by a preponderance of evidence that a child is a CHINS. See Ind. Code § 31-34-12-3.

878 N.E.2d at 450.

Here, Parmeter argues that "Dr. Davis' demeanor [during his testimony] did not reflect that he was greatly disturbed by the tape." Appellant's Remand Brief at 7. Parmeter then argues that Dr. Davis did not testify that he was greatly disturbed by the tape, and that Mother testified that making the tape "was a one-time isolated incident." Id. at 10. Mother continues her argument by stating that "the court should have considered [her] situation at the time the case was heard by the court," id. at 12, that other sources of evidence suggest that her children were not, in fact, emotionally distressed, and that other testimony suggests that Mother has a "very good relationship" with her children, id. at 16.

In essence, Mother's various arguments are nothing more than a request for this court to reweigh the evidence, which we will not do. See Perrine, 866 N.E.2d at 274. The trial court expressly relied on Dr. Davis' "reaction" during his testimony, and not necessarily the testimony itself. Appellant's Remand App. at 35. The trial court is in the

best position to interpret and give weight to the demeanor of witnesses, and here the trial court interpreted Dr. Davis' demeanor as a "reflect[ion of] his opinion that [M]other's actions . . . seriously endangered the children's . . . well-being." Id. That finding is squarely within the province of the trial court. See Perrine, 866 N.E.2d at 274.

Nonetheless, there are other facts that support the trial court's finding that Mother's actions seriously endangered the children's mental well-being. Mother does not dispute the trial court's finding that she took or arranged to have taken the nude photos of her son.[2] Dr. Bart Ferraro testified that Mother's actions towards the children in the video were "enough to cause emotional distress." Appellee's App. at 11. Dr. Deborah L. Lukens likewise found Mother's conduct in the video "inappropriate" and was further "concerned about the impact of having those photos taken on the children." Id. at 122. Dr. Lukens then concluded that, "if [Mother's] behavior continues[,] it's likely to . . . produce emotional harm in the children," and that Mother did not "seem[] to have an understanding that her own behavior might be harming her children." Id. at 128-29. Both Dr. Ferraro and Dr. Lukens testified, respectively, that Mother's behavior "reflect[ed] someone . . . overwhelmed [by] their own emotional state" and that Mother "may need further testing in order to rule in or rule out" behavioral or personality disorders. Id. at 11, 125-26.

In addition, the trial court did not improperly limit its focus, as Mother alleges, to an isolated event. See Montgomery v. Marion County Office of Family & Children (In re

[2] The trial court expressly stated that Mother's justification for the photos—that Father had abused their son—was "not substantiated." Appellant's Remand App. at 35.

C.S.), 863 N.E.2d 413, 418 (Ind. Ct. App. 2007) ("we do not believe it is Montgomery's situation at the time the petition was filed that is the only factor relevant to the trial court's determination. Rather, the trial court should also consider his situation at the time the case was heard by the court."), trans. denied. Instead, the trial court clearly, if not expressly, considered Mother's behavior to be indicative of a continuing and underlying "psychological" or "mental health" issue. Appellant's Remand App. at 35-36. In light of that fact, the court has ordered Mother to "participate without resistance" in mental health "testing/evaluation/counseling," to "release all of her mental health evaluations and records immediately," and to participate in recorded "Team Building sessions." Id. Again, the trial court's assessments are supported by the record. Hence, we cannot say that the record contains "no facts," either directly or by inference, to support the court's finding that Mother's conduct seriously endangered the children's mental or physical well-being. See Quillen, 671 N.E.2d at 102.

Further, the court's findings support its judgment. Having concluded, based on evidence in the record, that Mother's behavior had seriously endangered the mental well-being of her children, the trial court adjudicated the children to be CHINS. As such, the trial court's Amended Decree is consistent with the evidence and with Indiana Code Section 31-34-1-2. We affirm the trial court's decision.

Affirmed.

ROBB, J., and MAY, J., concur.