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ATTORNEY FOR APPELLANT:

WILLIAM S. FRANKEL
Wilkinson, Goeller, Modesitt,
Wilkinson & Drummy, LLP
Terre Haute, Indiana

ATTORNEY FOR APPELLEE:

ELIZABETH A. LEWIS
Indiana Department of Child Services
Vigo County Office
Terre Haute, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of J.F., S.O., and H.S.,)
)
Melissa O.,)
)
Appellant,)
)
vs.)
)
VIGO COUNTY DIVISION OF)
FAMILY AND CHILDREN,)
)
Appellee.)

No. 84A04-0804-JV-204

APPEAL FROM THE VIGO JUVENILE COURT
The Honorable David R. Bolk, Judge
The Honorable R. Paulette Stagg, Magistrate
Cause Nos. 84C01-0708-JC-747, 84C01-0708-JC-748, and 84C01-0708-JC-749

October 31, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The Vigo Juvenile Court entered an order finding that that the children of Melissa O. (“Mother”), were children in need of services (“CHINS”). Mother appeals and argues that the CHINS determination should be reversed because the trial court’s dispositional decree did not include sufficient written findings. Concluding that the trial court’s written dispositional decree was indeed deficient, we remand with instructions to enter more specific findings.

Facts and Procedural History

Mother has three children who are involved in the instant case: J.F., S.O., and H.S. (collectively “the Children”). In January 2006, Mother was hospitalized after she overdosed on methamphetamine. As a result, the Vigo County Department of Child Services (“DCS”) removed the Children from Mother’s care and initiated CHINS proceedings. The Children were reunited with Mother in August 2006. In January 2007, the CHINS action was dismissed and the DCS entered into an “informal adjustment” with Mother, which was approved by the trial court on January 9, 2007. Per the terms of the informal adjustment, Mother was required, among other things, to abstain from illicit drugs, participate in random drug screens as requested by her case manager, attend Narcotics Anonymous (“N.A.”) meetings twice a week, and have the Children participate in therapy.

By August 20, 2007, DCS determined that the informal adjustment had failed because Mother had missed numerous drug screens and had provided no proof that she had attended N.A. meetings as required. Therefore, on August 21, 2007, the DCS again filed petitions alleging that the Children were in need of services. The petitions alleged

that Mother had failed to comply with the terms of the informal adjustment and that Mother had reported that H.S. had been sexually abused. A fact-finding hearing was held on February 11, 2008, where the trial court heard evidence regarding Mother's failure to comply with the conditions of the informal adjustment. Mother's excuse for her failure was to claim that she did not recall being asked to undergo drug screens. The trial court found Mother's testimony to be "absolutely unbelievable." Tr. p. 38. Noting that Mother had failed to show for 110 drug screens, the trial court took this as evidence that Mother was using methamphetamine again and stated, "I find the [C]hildren are children in need of services as to [M]other as well." Tr. p. 40. A dispositional hearing was held on March 4, 2008, after which the trial court entered its dispositional orders concerning the Children. In its dispositional orders, the trial court ordered that the Children remain in foster care and that Mother continue to undergo drug screening. Mother now appeals.¹

Discussion and Decision

Mother argues that the trial court's written findings are statutorily insufficient to support the CHINS determination. Mother specifically refers to Indiana Code section 31-34-19-10 (2008), which provides:

- (a) The juvenile court shall accompany the court's dispositional decree with written findings and conclusions upon the record concerning the following:

¹ Mother filed her notice of appeal on March 3, 2008, the day before the trial court entered its dispositional orders. We note that a CHINS finding is not a final appealable order; only after a dispositional order has been entered have the rights of the parties been finally determined. *In re K.F.*, 797 N.E.2d 310, 315 (Ind. Ct. App. 2003). However, the premature filing of a notice of appeal is simply a defect in form that is capable of being cured, and where the premature filing has not adversely affected the substantial rights of either party, the appellant's right to review will not be forfeited. *Ivy v. State*, 847 N.E.2d 963, 965 (Ind. Ct. App. 2006). Here, neither party claims that their substantive rights have been affected by the timeliness of Mother's notice of appeal.

- (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; or
 - (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.

Mother now claims that the trial court's March 4 dispositional orders fail to meet the requirements of section 10.

The trial court's March 4 dispositional orders read in relevant part:

Matter comes on for Dispositional Hearing. Witnesses are sworn and evidence is heard. The [DCS] submits into evidence its Exhibit "A", the Pre-dispositional Report and Exhibit "B", the Case Plan which are admitted. Mother is not in agreement with the case plan and therefore does not sign.

The Court finds that wardship on the [C]hild[ren] should be established for a period of 6 months with the child to remain in foster care.

The Court now accepts the recommendations as contained in Exhibit "A" and incorporates same into the order by reference. Mother is to do drug screens each Tuesday and Thursday until further order of the Court.

* * *

The Court finds that services which have been offered in an effort to reunite the [C]hildren have been ineffective and that continued placement of the child[ren] outside the home of the parent is necessary and in the best interest of the minor child[ren] at this time.

Appellant's App. p. 55.²

In its dispositional orders, the trial court incorporated pre-dispositional report, as permitted by Indiana Code section 31-34-19-10(b). The pre-dispositional report reads in relevant part:

Recommendation for Care/Treatment/Rehabilitation of child(ren)

The [DCS] recommends that:

1. Wardship is established and continues for a period of at least six (6) months.
2. A case plan is signed on this date.
3. [The Children] remain[] . . . wards in . . . foster placement.
4. A periodic review is set for August 5, 2008.

Necessary Participation of Parent(s) and Guardian(s)

The [DCS] recommends that:

1. [Mother] . . . attend regular visitation with [the Children].
2. [Mother] schedules and keeps appointments with her therapist and psychiatrist.
3. [Mother] maintains suitable housing for herself and [the Children].
4. [Mother] signs releases of information such that DCS can communicate with agencies involved with the family.
5. [Mother] notifies the DCS office of any changes in address, phone and or household composition immediately.
6. [Mother] completes drug screens as requested on Tuesdays and ~~Thursdays~~ Fridays.
7. [Mother] schedules and completes a drug and alcohol evaluation.
8. Adults living in the household submit to random drug screens at DCS request.
9. [Mother] attends AA/NA at least twice weekly and presents documentation of attendance at meetings by providing a signature sheet to DCS.

Appellant's App. p. 57.³

² The quoted material comes from the trial court's dispositional order regarding the child H.S. The dispositional orders regarding S.O. and J.F. are substantially the same. See Appellant's App. pp. 47, 51.

³ The quoted material comes from the pre-dispositional report concerning H.S., and the pre-dispositional reports regarding S.O. and J.F. are substantially the same. See Appellant's App. pp. 49, 53.

As set forth above, Indiana Code section 31-34-19-10(a) required the trial court in the present case to make written findings and conclusions concerning: (1) the needs of the Children for care, treatment, rehabilitation, or placement; (2) the need for participation by Mother in the plan of care for the Children; (3) the efforts made to reunite the Children with Mother; (4) the family services that were offered and provided to the Children and/or Mother; and (5) the trial court's reasons for its disposition.

The trial court's written findings say little about the needs of the Children for care, treatment, rehabilitation, or placement, other than to say that a wardship should be established and the Children should remain in foster care. Similarly, the findings are inadequate regarding Mother's need to participate in a plan for the care of the Children. The findings do say that efforts to reunite the Children with Mother have been ineffective, but give no detail as to how or why such efforts have been ineffective. Likewise, the findings say little about the family services provided to Mother and/or the Children. Finally, the findings go into no detail with regard to the trial court's reasons for its disposition. As such, we conclude that the trial court's findings are inadequate.⁴

A trial court decree which includes no true findings in support of a CHINS determination is deficient. Parmeter v. Cass Count Dep't of Child Servs., 878 N.E.2d 444, 452 (Ind. Ct. App. 2007). Similarly, findings that consist of "boilerplate" language

⁴ The DCS admits that the trial court's findings are similar to those found inadequate in In re J.Q., 836 N.E.2d 961 (Ind. Ct. App. 2005), but argues that the trial court's incorporation of the pre-dispositional reports and the trial court's oral statements make up for any inadequacy in the written findings. However, we have considered the pre-dispositional reports as part of the trial court's written findings, and conclude that they do not cure the inadequacies of the written findings. With regard to the trial court's oral statements, we cannot use these as a substitute or supplement to the trial court's written findings because the relevant statute requires the trial court to make written, not oral, findings. See I.C. § 31-34-19-10(a).

are not helpful to us as a reviewing court and are generally insufficient to permit appellate review. In re T.S., 881 N.E.2d 1110, 1113 (Ind. Ct. App. 2008) (citing In re J.Q., 836 N.E.2d 961, 966-67 (Ind. Ct. App. 2005)). The “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.” J.Q., 836 N.E.2d at 967.

Although the trial court’s written findings are inadequate, our review of the record reveals evidence which could support a finding that the Children are in need of services. However, we are in no position to make such a determination. See J.Q., at 966. We therefore remand the CHINS determination with instructions that the trial court enter more specific findings as required by Indiana Code section 31-34-19-10. See id.; Parmeter, 878 N.E.2d at 452.

Conclusion

The trial court’s written findings are statutorily insufficient to support the trial court’s CHINS determinations. We therefore remand with instructions that the trial court enter more specific findings as required by statute.

Remanded with instructions.

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