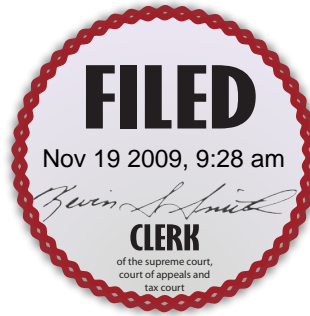


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE R.C. and L.C.,)
Children in Need of Services,)
)
D.C.,)
)
Appellant-Respondent,)
)
vs.)
)
MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner,)
)
And)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee.)

No. 49A02-0905-JV-450

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Beth L. Jansen, Magistrate
Cause Nos. 49D09-0809-JC-41102, -41103

November 19, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent D.C. (Father) appeals the trial court's conclusion that his two minor children, R.C. and L.C., are children in need of services (CHINS). Father argues that the trial court erred by admitting hearsay evidence and that the evidence is insufficient to support the CHINS finding. Finding sufficient evidence and no reversible error, we affirm.

FACTS

Father and S.S. (Mother) had two children: R.C., born January 29, 2004, and L.C., born November 9, 2007. Father and Mother were unmarried, and the children lived with Mother. On September 4, 2008, the Department of Child Services (DCS) received a report that the children were being neglected. At that time, there were pending charges of domestic violence against Father, with Mother being the alleged victim of his violence. Additionally, Father was facing felony battery charges for allegedly severely beating a woman who was seven months pregnant at the time.

On September 5, 2008, a DCS case manager went to Mother's home to discuss the allegations. While gathering paperwork in her car, the case manager observed Mother and another female walk from another apartment to Mother's apartment, with no children in their care. The case manager observed Mother open the door to her apartment and

pick up a baby that was sitting by the front door as she walked in. The case manager then entered the apartment and observed that no other adults were present; therefore, Mother had left the infant and four-year-old child alone. L.C. had a full diaper that was saturated with urine and had no clothes on. She was also very dirty and sticky. R.C. was wearing only pants and was also very dirty. The case manager observed multiple scars on R.C.'s face and chest, and R.C. reported that one of the scars was from Mother's curling iron. The home itself was dirty, had a stained couch, appeared to have little food, and an unkempt, dirty carpet.

Mother denied that Father hit her in front of the children but admitted that he had pulled her hair and verbally abused her in front of the children. She told the case manager that Father was incarcerated on charges of battery and unpaid child support at that time. Mother stated that she did not intend to press charges against Father for allegedly battering her—though she had pressed charges in the past—and that she wanted him to be a part of the children's lives. Mother admitted to using marijuana but denied doing so in front of the children. R.C. told the case manager that he had seen Father hit Mother more than once.

DCS removed the children from Mother's care that same day, and on September 10, 2008, filed a petition alleging them to be CHINS. With respect to Father, the petition stated that he had "not come forward to successfully demonstrate to the DCS the ability or willingness to appropriately parent his child[ren]. He is currently incarcerated."

Appellant's App. p. 23. On October 30, 2008, Mother admitted the allegations of the petition.

Six hearings took place in the CHINS case between September 10, 2008, and March 16, 2009, and Father was incarcerated for all of them. On March 16, 2009, the trial court held a factfinding hearing regarding the CHINS allegations with respect to Father. Father was still incarcerated and not present for the hearing, though his attorney attended on his behalf.

At the factfinding hearing, Father stipulated to the admission of a number of documents, including a record of his criminal history. A DCS case manager testified that she had spoken to Father that morning and that he was still incarcerated at that time. Father had indicated to DCS that he wanted the children to be placed with his sister. DCS had contacted his sister multiple times, with no response: "those relatives have not contacted DCS. We've tried to get them to call us about placement after we made our initial phone call and we just don't ever hear anything back." Tr. p. 14. The trial court found the children to be CHINS because Father was incarcerated and unable to parent his children, ordering that the children be removed from his care and directing that they remain in therapeutic foster care. Father now appeals.

DISCUSSION AND DECISION

I. Sufficiency

Father argues that the evidence is insufficient to support the trial court's determination that the children are CHINS. DCS has the burden of proving by a

preponderance of the evidence that a child is in need of services. In re T.S., 881 N.E.2d 1110, 1112 (Ind. Ct. App. 2008). When reviewing a CHINS determination, we will consider only the evidence most favorable to the judgment and the reasonable inferences that may be drawn therefrom. Id. We will neither reweigh the evidence nor assess witness credibility. Id. A child is in need of services 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:
 - (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

Ind. Code § 31-34-1-1.

Here, the record establishes that Father was incarcerated during the entire CHINS proceeding, including the day of the factfinding hearing. He was incarcerated on charges of class C felony battery on a pregnant woman, class A misdemeanor domestic battery, and class A misdemeanor battery.

Additionally, Father's substantial criminal history should be considered. Since 1998, he has been arrested eight times for class A misdemeanor battery, seven times for class A misdemeanor domestic battery, for operating a vehicle while intoxicated, six times for operating a vehicle never having received a license, for class D felony criminal recklessness, for class D felony maintaining a common nuisance, for class D felony

criminal confinement, and for class D felony residential entry. He has also been convicted of class D felony theft, class D felony receiving stolen property, class D felony resisting law enforcement, class C felony carrying a handgun without a license, and class A misdemeanor criminal trespass. Furthermore, the CHINS petition and the case manager's probable cause affidavit establish that there is a history of domestic violence between Father and Mother and that R.C. had seen Father hit Mother more than once.

We find this evidence sufficient to establish the trial court's conclusion that the children are CHINS with respect to Father. Father's arguments to the contrary amount to an invitation to reweigh the evidence, which we may not do when considering a trial court's CHINS determination.

II. Hearsay

Father also argues that the trial court erroneously admitted DCS's Exhibit 6 over his hearsay objection. Exhibit 6 was evidently entered into evidence when Mother admitted to the allegations of the CHINS petition. It is entitled "Amended Petition" and contains a new Paragraph 5A. It is signed by Mother, her attorney, the DCS attorney, and the DCS case manager, but does not bear a file stamp or other court signature:

On or about September 7, 2008, [DCS] determined by its Family Casemanager [sic] (FCM) Kathryn Connel, these children to be in need of services because the mother, [S.S.], admitted to marijuana use. In addition, [Mother and Father], the alleged father of the children, had an incident of domestic violence in front of the children in July of 2008. Therefore, the family can benefit from services.

Petr. Ex. 6. The trial court found it to be a statement of a party opponent that did not constitute hearsay and admitted it into evidence. Ind. Evid. Rule 801(d)(2).

For argument's sake, we will accept Father's position that this evidence is inadmissible hearsay. Even if that were the case, its admission would have amounted to harmless error. See In re A.J., 877 N.E.2d 805, 813 (Ind. Ct. App. 2007) (holding that erroneously admitted evidence does not automatically require reversal and we should reverse only if that admission affected a party's substantial rights), trans. denied. In concluding that there is sufficient evidence supporting the trial court's CHINS determination, we have not relied upon the information contained within Exhibit 6.

Exhibit 6 is primarily cumulative of other evidence in the record. The case manager's probable cause affidavit states that Mother admitted to her that she had used marijuana as recently as two days before DCS's initial visit to the home. Furthermore, Mother admitted that Father had pulled her hair in front of the children and R.C. told the case manager that he had seen Father hit Mother more than once. This entirely independent evidence, plus the evidence establishing that Father was incarcerated during the entire CHINS proceeding and demonstrating his substantial criminal history, suffices to support the trial court's CHINS determination. Therefore, any error in the admission of Exhibit 6 was harmless.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.