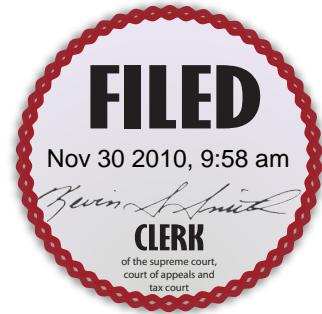


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF E.H., ALLEGED TO BE)
A CHILD IN NEED OF SERVICES:)
)
J.H.,)
Appellant-Respondent,)
)
vs.) No. 49A02-1004-JC-539
)
MARION COUNTY DEPARTMENT OF CHILD)
SERVICES,)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Julie Cartmel, Magistrate
Cause No. 49D09-0911-JC-052502

November 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

J.H. (“Father”) appeals the determination that his son, E.H., is a Child in Need of Services (“CHINS”). We affirm.

Issues

Father presents two issues:

- I. Whether there is sufficient evidence to support the CHINS adjudication; and
- II. Whether the findings of the dispositional decree were so deficient as to deprive Father of procedural due process.

Facts and Procedural History

E.H. was born to B.M. (“Mother”) on September 18, 2009. On November 14, 2009, Mother brought E.H. to the emergency room of Riley Children’s Hospital in Indianapolis for treatment of a red and swollen right foot. Examination of E.H. revealed that both of E.H.’s legs had been fractured. Mother provided several inconsistent explanations for the injuries.¹ Suspecting child abuse, Riley staff alerted the Marion County Department of Child Services (“the DCS”).

On November 17, 2009, the DCS filed a petition requesting to take custody of E.H., alleging that Mother was not compliant with her mental health services plan and had failed to protect E.H. from injury. On the same date, the juvenile court granted the DCS temporary custody of E.H. At the initial hearing, Mother first identified Father as E.H.’s putative father.

On February 18, 2010, Father appeared at a hearing and requested, as “a non-

¹ At that time, Mother was involved in CHINS proceedings with respect to her older child, E.H.’s half-sibling. She initially refused to identify E.H.’s father.

offending parent,” that he be given custody of E.H. (App. 60.) On March 15, 2010, the juvenile court held a fact-finding hearing at which the parties stipulated that Father is the biological father of E.H., that E.H. had suffered injuries to his legs, and that physician’s reports indicated that the injuries appeared to be of non-accidental origin. At the conclusion of the hearing, the juvenile court found that E.H. should be a ward of the DCS.² The juvenile court also placed E.H. in Father’s physical custody, subject to Father’s submission of proof of child care arrangements.

Father appeals, requesting that the CHINS proceedings be dismissed.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

The State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. Ind.Code § 31-34-12-3; In re N.E., 919 N.E.2d 102, 105 (Ind. 2010). Indiana Code sections 31-34-1-1 through 11 specify the elements of the CHINS definition that the State must prove. Each section requires that the State prove that the child is under the age of eighteen and “needs care, treatment, or rehabilitation that: (A) the child is not receiving; or (B) is unlikely to be provided or accepted without the coercive intervention of the court.”

To establish that a child is a CHINS under Indiana Code section 31-34-1-1, the State must prove, in addition to the requirements stated above, that “the child’s physical or mental

² The juvenile court also found E.H.’s older half-sibling (who is not Father’s child) to be a CHINS.

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.” Similarly, under Indiana Code Section 31-34-1-2, the State must prove “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[.]”

When we review a case where the trial court has entered findings of fact and conclusions of law, we will not set aside the judgment of the trial court unless it is clearly erroneous. In re S.W., 920 N.E.2d 783, 787 (Ind. Ct. App. 2010). The trial court’s findings of fact, conclusions of law and judgment are considered to be clearly erroneous only if a review of the whole record leads us to a definite and firm conviction that a mistake has been made. Id. We will neither reweigh the evidence nor judge the credibility of the witnesses. Id. Rather, we consider only the evidence and reasonable inferences drawn therefrom which support the judgment. Id.

B. Analysis

Indiana Code Section 31-34-12-4 establishes a rebuttable presumption that a child is a CHINS because of an act or omission of the child’s parent, guardian, or custodian, if the State introduces competent evidence of probative value that:

- (1) the child has been injured;
- (2) at the time the child was injured, the parent, guardian, or custodian:
 - (A) had the care, custody, or control of the child; or
 - (B) had legal responsibility for the care, custody, or control of the child; and

- (3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian.

Here, the parents stipulated that E.H. had suffered injuries to his legs while in Mother's care. The State adduced evidence that E.H.'s health care providers had determined that the injuries were consistent with non-accidental trauma, likely a hard jerking motion. Thus, the juvenile court's determination that E.H. is a CHINS has evidentiary support and is not clearly erroneous.

Father essentially argues that E.H. cannot be a CHINS as to Father because there is an absence of evidence that Father was responsible for E.H.'s injuries. However, "[a] CHINS adjudication focuses on the condition of the child." In re N.E., 919 N.E.2d at 105. A CHINS adjudication may be precipitated by the act or omission of one parent, or the adjudication may "come about through no wrongdoing on the part of either parent." Id. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent, but is simply a determination that a child is in need of services. Id. The purpose of a CHINS adjudication is to protect children, not punish parents, and the resolution of a juvenile proceeding focuses on the best interests of the child, not guilt or innocence of a parent as in a criminal proceeding. Id. at 106.

The State alleged that E.H. was injured while in Mother's care and she had failed to protect him. It was not necessary for the CHINS petition to include allegations as to Father. Nor was the juvenile court required to make any finding that Father had injured E.H. in order to adjudicate E.H. a CHINS. Based upon the evidentiary record, E.H. was properly adjudicated a CHINS.

II. Procedural Due Process

Father contends that the dispositional decree failed to comply with the requirements of Indiana Code Section 31-34-19-10, 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) 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.

The State concedes that the dispositional decree (largely consisting of boilerplate language) was not fully compliant with Indiana Code Section 31-34-19-10. It argues that Father was not prejudiced by any omission because he was given custody of E.H.

Our Indiana Supreme Court has observed that "such omission [is] of consequence for two related reasons. In re N.E., 919 N.E.2d at 108. First, when a juvenile court makes decisions during a CHINS hearing as to whether the child will become a ward of the State or orders services, this has the potential to interfere with the rights of parents in the upbringing of their children. Id. Our legislature has enacted an interlocking statutory scheme governing

CHINS and involuntary termination of parental rights; thus, procedural irregularities in a CHINS proceeding, such as an absence of clear findings of fact, may be of such import that the irregularities deprive a parent of procedural due process with respect to a potential subsequent termination of parental rights. Id. Second, the juvenile court is required to enter a dispositional decree that is the least restrictive, inasmuch as the policy inherent in the CHINS scheme is the encouragement and support of the integrity and stability of an existing family environment and relationship. Id.

While we acknowledge that the dispositional decree may have had adverse consequences in other circumstances, here there was no contemplation of the future termination of Father's parental rights. Moreover, E.H. was placed in the most family like placement available, that of Father's residence. The instant case does not present circumstances like those in N.E., where the juvenile court's dispositional decree omitted reasons for non-placement with a father. Here, while the juvenile court's sparse findings may have amounted to technical non-compliance with statutory authority, Father has sustained no discernable harm that might be remedied by our remand for more specific findings of fact. Accordingly, we affirm the decision of the juvenile court.

Affirmed.

RILEY, J., and KIRSCH, J., concur.