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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF Au.B., Al.B., K.B. and)
M.B., Children in Need of Services.)
J.B.,)
Appellant-Respondent,)

vs.)

No. 49A04-0703-JV-132

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
Appellee-Petitioner.)

IN THE MATTER OF A.H., K.H., and D.H.,)
Children in Need of Services,)
J.H.,)
Appellant-Respondent,)

vs.)

No. 49A05-0703-JV-132

MARION COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gregory, Magistrate
Cause Nos. 49D09-0601-JC-2085-88
The Honorable Christopher Piazza, Magistrate
Cause Nos. 49D09-0601-JC-2062-64

November 8, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

We consider two findings of Children In Need of Services (“CHINS”) as to two sets of siblings (“Children”), heard essentially as one matter by the trial court. J.B. and J.H.¹ (“Appellants”) each appeal the trial court’s determinations that their children were CHINS. We affirm.

Issues

J.H. raises three issues on appeal. J.B. raises the same three issues, as well as a fourth.

We re-state the issues as follows:

- (1) Whether the Appellants waived appellate consideration of the trial court’s exclusion of certain evidence by failing to make an offer of proof;
- (2) Whether there was sufficient evidence to find the seven Children CHINS;

¹ J.B. requested this Court to omit her last name. For consistency, we omit the last names of all parties.

- (3) Whether the trial court violated Appellants' rights to procedural due process by not holding a dispositional hearing after closing the case; and
- (4) Whether the finding of CHINS should be vacated because J.B. did not have the services of an interpreter during investigation of the case.

Facts and Procedural History

J.B. and J.H. resided together,² along with J.B.'s four children (Au.B., Al.B., K.B., and M.B.) and J.H.'s three children (A.H., K.H., and D.H.).³ Based upon a report of child abuse, the Marion County Department of Child Services ("DCS") investigated and alleged that all seven Children were CHINS. The trial court found probable cause that all seven Children were CHINS and ordered them to be wards of DCS. After a hearing, the trial court found that Au.B., Al.B., K.B., and M.B. were CHINS as to J.B. and that A.H., K.H., and D.H. were CHINS as to J.H.

Subsequently, the trial court scheduled a Disposition Hearing for October 31, 2006, continued at DCS's request to December 14, 2006. A week prior to the scheduled Disposition Hearing, however, DCS filed its Motion for Release of Wardship, asking the trial court to close all of the cases. DCS indicated that the "family has successfully completed all services requested by MCDCS and the Courts." J.H. Appendix at 227. The trial court released the wardship of the Children and closed the cases.

² Prior to this litigation, all nine lived together. In January of 2006, DCS removed the Children from the home. After receiving certain services, six of the Children returned to their home in June of 2006. At the time of the hearing, Au.B. was living with his biological father and receiving services.

³ The Children were born between January of 1994 and July of 2001.

J.B. and J.H. now appeal, asking that we vacate the CHINS finding.⁴

Discussion and Decision

I. Exclusion of Evidence

Appellants argue that the trial court violated their rights to procedural due process by excluding evidence of post-petition conduct. During the direct examination of J.H. by Appellants' counsel Janice Smith ("Smith"), the following exchange occurred:

Smith: Now, the Court did not order you to do home based counseling, is that correct?

J.H.: No.

DCS: Your Honor, I'm gonna object. I guess I think we're here today to determine the relevance of the CHINS petition and whether the children are in need of services. It's commendable what the parents have done in the last six months. However, I think that based on their denial, we're here today to address the denial, not what they've done in the last six months. And what actions have they taken or not taken.

Court: So your objection is relevance to anything that occurred after the filing of the petition?

DCS: Correct.

Court: Ms. Smith?

Smith: Your Honor, I would just, the reason for my asking that question, is to determine that he knew that he was not under any Court obligation to do anything.

⁴ On appeal, the parties make no argument regarding mootness or whether a CHINS finding, or closing the case following a CHINS finding, constitutes a final judgment. We decline to reach the issue sua sponte. Nevertheless, we prefer to resolve cases on their merits. See In re Infant Girl W., 845 N.E.2d 229, 239 (Ind. Ct. App. 2006), trans. denied. This is especially true in light of the significant collateral consequences that could result from a finding of CHINS. Roark v. Roark, 551 N.E.2d 865, 868 (Ind. Ct. App. 1990) (noting that the case had been dismissed after a finding of CHINS, but concluding that the case was not moot because record of the finding could potentially be used within the context of a prosecution, a litigation of custody or support, or a subsequent CHINS action).

Court: Okay, but that's still after the CHINS petition. Anything that's happened after [is] commendable, very commendable. It's only relevant at this point to determine what was in place or available prior to the petition being filed. So I'm gonna sustain the objection.

Smith: Thank you.

Transcript at 115-16. This Court has held recently that a parent's post-petition conduct is relevant in a CHINS proceeding. Montgomery v. Marion Cty. Office of Family and Children, 863 N.E.2d 413, 418 (Ind. Ct. App. 2007), trans denied.

A ruling excluding evidence is erroneous if a substantial right of the party is affected, and the substance of the evidence was made known to the court by a proper offer of proof or was apparent from the context within which the questions were asked. Ind. Evidence Rule 103(a)(2). "An offer of proof should show the facts sought to be proved, the relevance of that evidence, and the answer to any objection to exclusion of the evidence." State v. Wilson, 836 N.E.2d 407, 410 (Ind. 2005), reh'g denied. During argument regarding DCS's objection, Appellants' attorney stated the substance of the testimony she sought to elicit – "to determine that he knew that he was not under any Court obligation to do anything." Tr. at 116. Once the trial court ruled on the objection, however, Appellants' attorney neither offered legal argument on the issue nor indicated the relevance of the testimony she sought to have admitted. Accordingly, the Appellants failed to preserve this issue for appeal.

Regardless of waiver, we disturb a judgment only where refusing to do so appears "inconsistent with substantial justice." Ind. Trial Rule 61; In re E.T., 808 N.E.2d 639, 645-46 (Ind. 2004). In light of the evidence discussed below, we conclude that any error was harmless.

II. Sufficiency of the Evidence

Our standard of review when considering the sufficiency of the evidence is well settled. We will not reweigh the evidence or assess the credibility of witnesses. Bester v. Lake Cty. Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. When, as here, the trial court has entered findings of fact and conclusions of law, we apply a two-tiered standard of review. Id. We determine whether the evidence supports the findings, and whether the findings support the judgment. Id.

DCS alleged that the Children were CHINS, pursuant to Indiana Code Sections 31-34-1-1 and -3. Because Section One is the more general statute and pertains potentially to all seven Children, we begin, and given the result, conclude our analysis with Section One.⁵ A child is in need of services if the child's mental or physical condition is seriously endangered as a result of the parent's inability, refusal, or neglect to supply the child with necessary shelter, medical care, or supervision, and the child needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to receive absent coercive court intervention. Ind. Code § 31-34-1-1(a). DCS had the burden of proving these elements by a preponderance of the evidence. Ind. Code § 31-34-12-3.

J.H. had a half-brother, Jo.Ba., who was "mentally slow."⁶ Tr. at 130. Beginning at

⁵ Indiana Code Section 31-34-1-3 pertains to: (1) children who are victims of sex offenses, and (2) children who live in the same household with such victims and "the adult who committed the sex offense." Ind. Code § 31-34-1-3 (emphasis added). Here, there was evidence that three of the seven Children were victims of sex offenses committed allegedly by adults living outside the household and by one of the Children living inside the household. Accordingly, Section Three does not apply to four of the Children.

⁶ Apparently sometime during the litigation, J.H. learned that Jo.Ba. had "the mentality of a twelve-year-

age seventeen, Jo.Ba. would occasionally watch all seven Children. During the summer of 2005, J.H.'s daughter, A.H., then-nine years old, wept as she told the Appellants that Jo.Ba. "had smacked her on the butt a couple of times and had brushed with the back of his hand, in her vaginal area." Tr. at 128. After dinner that night, the Appellants spoke to A.H. about the incident. A.H. went to bed, but returned later to tell them that she had lied and that no inappropriate conduct had occurred. During the hearing, however, J.H. testified, "I believe that something happened." Tr. at 130. After these conversations with A.H., the Appellants allowed Jo.Ba. into their home, but did not leave any of the Children with him unattended.

In addition, J.B. had a brother, R.D., whom the Appellants knew to have been convicted of child molestation eighteen years prior to the hearing in this case. Appellants allowed Au.B. and the other Children to stay overnight with R.D. Just before Thanksgiving in 2005, J.B.'s son, Au.B., told the Appellants that R.D. had touched Au.B.'s penis and that Au.B. had observed R.D. molest R.D.'s grandson. The Appellants believed Au.B.'s assertions. J.B. called her mother, who said, "Please don't call the police." Tr. at 189. Prior to the investigation discussed below, Appellants did not inform any law enforcement officials regarding Au.B.'s assertions. J.H. explained that, "We, right, well Christmas time is hectic for everybody so right at the beginning of the year we were discussing therapy for [A.H. and Au.B.]." Tr. at 133-34.

Through Good Touch / Bad Touch, a program conducted in the Children's school by the Indianapolis Police Department ("IPD"), DCS received information about the Children and removed them from their home. After the investigation began, Au.B. told his mother

old." Transcript at 131.

J.B. that he had molested his sister M.B.

Ranaye Miles (“Miles”), a DCS child protection investigator, testified as follows regarding how all seven Children were endangered by sex offenses being committed against three of them:

. . . [I]f mom and dad do not understand the dynamics of molestation and how it continue[s] if you’ve been victimized. How the victims many times will . . . victimize other children. . . . [H]ow [parents] will continue to down play it as oh it’s just puberty, or they’ll grow out of it. They will all, all of them will be endangered eventually, and they will do it to each other. One will learn it and it will be a domino effect. And that’s why it is endangerment and even though [Jo.Ba.] may, may be slow or whatever, I mean, it’s still endangerment.

Tr. at 42.

The trial court found that the Appellants allowed the Children to stay overnight with R.D., despite his past incarceration for child molestation. The trial court found that Jo.Ba. molested A.H., that R.D. molested Au.B. and R.D.’s grandson while Au.B. watched, and that Au.B. molested his sister, M.B. The Appellants reported R.D.’s conduct to authorities only after the investigation began. The trial court further determined that, “[when the investigation began], neither [Au.B. nor A.H.] had received appropriate counseling.” J.H. App. at 199. The record contained evidence of all three molestations found by the trial court, R.D.’s past conduct, and the Appellants’ omissions to address the psychological consequences of these events. Accordingly, the findings were supported by sufficient evidence.

Three of the Children were victims of sex offenses. The three included the eldest child of J.B., Au.B, and the eldest child of J.H., A.H. After being victimized, Au.B. molested the youngest of his siblings. On notice that one or two of the Children had been victimized,

the Appellants failed to secure relevant counseling. Based upon the evidence, the trial court concluded as follows:

[The Appellants] do not understand the dynamics of molest and how a victim of molest can become a perpetrator without intervention, and how downplaying acts of molest can have a negative domino effect on the entire family.

There was a significant amount of molesting going on in the family, known and unknown to [Appellants] and neither sought counseling assistance for their children in need.

J.H. App. at 204. As such, the trial court concluded that DCS had established by a preponderance of the evidence that the Children were CHINS, pursuant to Indiana Code Section 31-34-1-1. In effect, the trial court concluded that the Appellants had seriously endangered the Children's mental condition by neglecting to secure appropriate counseling. Only upon intervention by the authorities did the Children begin to receive appropriate services. We find no deficiency of evidence.

III. Procedural Due Process

The Appellants argue that the trial court denied them their rights to procedural due process by not holding a dispositional hearing. The Appellants moved to dismiss the CHINS petition, arguing that the case was moot as all of the Children had been returned to residing with a biological parent. After the CHINS finding, DCS filed its Motion for Release of Wardship, and the trial court closed all seven cases. In essence, the Appellants prevailed. The cases were closed and six of the seven Children were once again in their household. Au.B. was residing with his biological father as a function of his pending juvenile matter. The Appellants were due no additional process.

IV. Services of an Interpreter

Finally, J.B. argues that DCS and IPD violated Indiana Code Section 34-45-1-3 by failing to provide her with an American Sign Language (“ASL”) interpreter during their interrogations of her.⁷ Every person who has difficulty in communicating with other persons because of hearing impairment, and who is a party or witness in a civil proceeding is entitled to an interpreter “to assist the person throughout the proceeding.” Ind. Code § 34-45-1-3.⁸

J.B. is profoundly deaf in her left ear. With a hearing aid, which she wears even in her sleep, her right ear functions at eighty-two percent of the average capacity. When interviewed by DCS and IPD, J.B. did not have an ASL interpreter. DCS’s Miles testified that through reading lips, exchanging written notes, and speaking with her, J.B. understood their conversation. When Miles would ask whether J.B. understood, J.B. would respond, “I understood.” Tr. at 23. Meanwhile, IPD’s Detective Genae Gehring (“Detective Gehring”) testified that J.B. responded quickly and appropriately to the detective’s questions. Under cross-examination, J.B. acknowledged that she did not request the services of an interpreter during her conversation with Detective Gehring. In light of evidence in the record that J.B. understood her communications with DCS and IPD, that her right ear has significant function, especially when she uses a hearing aid, and that she did not ask for an interpreter, we decline J.B.’s request that we reverse the CHINS finding on this basis.⁹

⁷ During all three days of the fact-finding hearing, the trial court provided two ASL interpreters to assist J.B.

⁸ Despite being enacted in 1998, this section has not been cited previously.

⁹ Given the conclusion above, we decline to address whether the statute applies to these communications.

Conclusion

The Appellants failed to preserve their evidentiary argument by failing to make an offer of proof. There was sufficient evidence to support the finding of CHINS as to all seven Children. Once the trial court closed the cases, it had no duty to conduct a dispositional hearing. Finally, J.B. did not establish that DCS and IPD violated a statute by not providing her with an ASL interpreter during their communications with her.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.