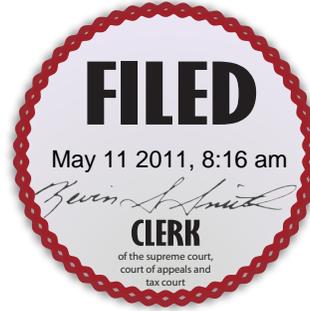


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF)
J.J. & C.W., Children in Need of Services,)
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)
)
)
J.W. (Father),)
)
)
Appellant-Respondent,)
)
)
vs.)
)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
)
Appellee-Petitioner.)
)

No. 67A01-1011-JC-610

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew L. Headley, Judge
Cause Nos. 67C01-1007-JC-38 and 67C01-1007-JC-39

May 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

J.W. (Father), a long-time methamphetamine user, appeals the juvenile court's determination that his children are in need of services (CHINS). Father contends that the evidence is insufficient to support the CHINS determination because there is no evidence that he used drugs while the children were in his care or custody or that the children were affected by his drug use in any way. We find, however, that the evidence is sufficient based on the facts that Father was the custodial parent of the children, he has a lengthy history of drug abuse, he used drugs in his truck, and at least one of his children knew about his illegal drug activity. We therefore affirm.

Facts and Procedural History

Father and T.J. (Mother) have two children, J.J., born January 31, 2003, and C.W., born December 1, 1999. Father was the custodial parent of both children. Mother, who did not live with Father and the children, went to Father's house once or twice a week to watch the children.

On Thursday, July 22, 2010, the Department of Child Services received a report that Father was selling and using methamphetamine in his Greencastle, Indiana, home and was also using methamphetamine with Mother.¹ That afternoon, DCS Family Case Manager Trish Guinn along with two police officers went to Father's home. Mother happened to be there at the time watching both children. Mother said she was not using

¹ Mother admitted that her children were CHINS in September 2010; therefore, she is not part of this appeal.

drugs, was not using methamphetamine with Father, and would pass a drug screen. Mother gave FCM Guinn a phone number to contact Father; however, the number was incorrect. Seconds later, Mother received a phone call from Father. When Mother told Father that DCS was there, he told Mother to tell FCM Guinn that he was not available and would contact DCS when he returned. Based on exigent circumstances, a DCS director went to Father's home to interview the children. C.W. was either unable or unwilling to give a statement regarding any drug use by Father, but J.J. reported that he had seen "papers" and Father "placing things in papers." Tr. p. 6. J.J. also said that Father "at times" acts "mad." *Id.* at 18. FCM Guinn tried to contact Father again, and this time the call went straight to his voicemail. FCM Guinn left Father a message that she needed to speak with him "right away." *Id.* FCM Guinn then asked Mother if she would be able to take the children, but Mother responded that she "would not be the most appropriate caregiver for the children at that time." *Id.* In fact, Mother agreed to take a drug test that day and tested positive for THC, amphetamine, and methamphetamine. The children were removed from Father and placed in relative care with Father's mother.

Father did not immediately call FCM Guinn back on her cell phone on Thursday as instructed; instead, he left a message for her in DCS's general voicemail box over the weekend. Despite the emergency removal of his children, Father first spoke with FCM Guinn on Monday, July 26, 2010, which was the day of the detention hearing. When FCM Guinn asked Father to submit to a drug screen, he refused. The detention hearing was held later that day, during which the juvenile court ordered Father to submit to a drug screen that day as well as on a weekly basis. Before submitting to the drug screen that

day, Father told FCM Guinn that he would test positive for THC and methamphetamine. Father tested positive for amphetamine and methamphetamine. Father told FCM Guinn that he used methamphetamine and marijuana in his truck, outside the presence of the children, and that he carried drugs and paraphernalia on his person.

Also on July 26, 2010, the State filed a petition alleging that J.J. and C.W. were CHINS.

Following the detention hearing, Family Case Manager Virginia Rundell was able to get Father to submit to only four drug screens. The other three times Father refused to do so. Father failed drug screens on August 6, September 7, September 14, and September 23, 2010; all four of them tested positive for amphetamine and methamphetamine, and three of them tested positive for THC. FCM Rundell said that when Father appeared for his drug screens, he repeated himself and had “rapid or jerky movements” and “nervous movements of his hands and arms.” *Id.* at 47-48. FCM Rundell offered to provide Father services through DCS, including drug treatment, but he refused.

The fact-finding hearing was held on October 7, 2010. FCMs Guinn and Rundell testified as well as the lab director at the Michigan lab where Father’s samples were sent. The lab director testified that Father’s positive test results for methamphetamine and amphetamine were in the normal range for chronic users. After closing arguments, the juvenile court told Father that if he wanted visitation with his children, he would have to produce a clean drug screen. Father said he would try, but it would be hard because he had been using drugs for almost twenty years.

The juvenile court entered an order on the fact-finding hearing on October 14,

2010. The order contains the following relevant findings:

3. The Court finds that DCS caseworker Trisha Guinn followed DCS protocol by investigating an allegation that [Father] was using/selling drugs out of his home. Upon her arrival at the home of [Father], she discovered the children were being watched by [Mother]. The home showed no signs of drug paraphernalia. However, one of the children did express that he saw dad smoking “papers” and it made him angry when he smoked it and he keeps them in his cigarette packet. [Mother] and [Father] played their own version of “Where’s Waldo” with Guinn and did not give reliable information to DCS, providing wrong phone numbers, telling DCS of different places to find [Father] and basically not being too cooperative. After several attempts to get a drug test from [Father], DCS decided to detain the children. During this time, DCS asked [Mother] if she would pass a drug test, and she said she would (she did submit to a test, the results came back a few days later positive for meth). When DCS offered to [Mother] the responsibility of care giving/placement, [Mother] declined because of her living conditions. DCS detained the children to [Father’s] mother.

4. DCS caseworker continued conversations with [Father]. In one communication, he denied using meth with [Mother], or even using meth.

5. On July 26, 2010, [Father] declined to do a drug test, some four days after the detention, then later that same day, did submit to a drug test after the detention hearing in which the Court ordered the testing.

6. [Father] tested positive for meth. [Father] admitted that the test would be positive, but said he uses meth/marijuana in his truck, but not around the kids.

7. During the time period between the detention and the fact-finding hearing, the Court ordered drug tests. [Father] failed to come to three of those tests. He did take a drug test four or five times, each time testing positive for meth, as well as other substances on the tests.

8. Court finds that Lab Director Lemberg’s testimony revealed that meth has a “half life” of approximately four to eight hours (i.e. 1/2 of it goes out of your system every four to eight hours).

9. Court finds from Lab Director Lemberg's testimony that [Father's] test results show[] he is a chronic meth user, due to his multiple positive test results.

10. Another DCS caseworker, Ginny Rundel, observed that [Father], when she did see him, repeated himself and had rapid/jerky movements.

11. By [Father's] own admission, he is a meth user.

Appellant's App. p. 44-46. In light of the evidence that J.J. told FCM Guinn about Father and the "papers," Father is a chronic meth user, and every single test leading up to the fact-finding hearing was positive for methamphetamine, the court concluded that the children were CHINS. *Id.* at 47. The court ordered the preparation of a pre-dispositional report and set the matter for a dispositional hearing. At the dispositional hearing, the juvenile court ordered Father, among other things, to contact the FCM weekly, complete a drug assessment through Cummins Behavioral Health and follow all recommendations, complete a parenting assessment through Cummins and follow all recommendations, submit to weekly random drug screens within one hour of request, and have no visitation with the children until he provides consistent, negative drug screens. Although wardship of the children was awarded to DCS, the children remain in the care of Father's mother.

Father now appeals the juvenile court's determination that his children are CHINS.

Discussion and Decision

Father contends that the evidence is insufficient to support the juvenile court's determination that his children are CHINS because "there was no evidence that Father used drugs while the children were in his care or custody or that the children were affected by the drug use in any way." Appellant's Br. p. 1. He highlights that when DCS

came to his house, it was clean, the children were well taken care of, and there was no evidence of drug use inside.

Because a CHINS proceeding is a civil action, 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). Upon review of a juvenile court's CHINS determination, we consider only the evidence most favorable to the judgment and the reasonable inferences therefrom. *In re T.S.*, 881 N.E.2d 1110, 1112 (Ind. Ct. App. 2008). We neither reweigh the evidence nor reassess the credibility of the witnesses. *Id.* Here, the juvenile court made findings of fact and conclusions of law in adjudicating the children CHINS. Where a juvenile court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* We will set aside the juvenile court's judgment only if it is clearly erroneous. *Id.*

DCS alleged that the children were CHINS according to Indiana Code section 31-34-1-1, which provides:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(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.

The CHINS statutes do not require that a court wait until a tragedy occurs to intervene. *Roark v. Roark*, 551 N.E.2d 865, 872 (Ind. Ct. App. 1990). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is to protect children, not to punish parents. *N.E.*, 919 N.E.2d at 106. The resolution of a juvenile proceeding focuses on the best interests of the child, rather than guilt or innocence as in a criminal proceeding. *Id.*

Father argues that the juvenile court's CHINS determination rests "solely on the premise that if a parent uses methamphetamine, even outside of the presence of their children, their children are *defacto* CHINS and no further evidence of the effect of that drug use is necessary for the trial court to conclude that its coercive intervention is necessary." Appellant's Br. p. 5. Father asserts that more evidence is needed: "DCS should be required to present at least some evidence demonstrating . . . the impacts of such drug use or predictable impacts of such drug use, upon the children alleged to be CHINS." *Id.* Father relies on this Court's opinion in *Perrine v. Marion County Office of Child Services*, 866 N.E.2d 269 (Ind. Ct. App. 2007). In *Perrine*, a mother was arrested after a routine probation sweep revealed paraphernalia commonly used for methamphetamine consumption in a houseguest's bag. *Id.* at 271. The mother admitted that she had used methamphetamine a few days before her arrest. *Id.* at 272. The DCS filed a petition alleging that the mother's daughter was a CHINS based on her failure to provide her daughter with a home free from drug use and neglect. *Id.* The juvenile court

determined that the daughter was a CHINS. *Id.* at 273. This Court reversed that determination on appeal, holding that “a single admitted use of methamphetamine, outside the presence of the child and without more, is insufficient to support a CHINS determination.” *Id.* at 277.

This case stands in sharp contrast to *Perrine*. By all accounts, Father is a chronic methamphetamine abuser. Each and every drug test he took from July to September 2010 was positive for methamphetamine; three of them tested positive for THC. Notably, these tests were positive even in the face of DCS involvement and a pending CHINS petition. Although Father claims that he consumes drugs only in his truck, J.J. told DCS that he had seen “papers” and Father “placing things in papers.”² This is evidence that Father either used drugs in his children’s presence or exposed them to drugs. *Perrine* does not control this case.

The bottom line is that Father, the custodial parent of the children, has a lengthy history of drug abuse. He used drugs in his truck and kept drugs on his person, apparently to hide his drug abuse from his children. However, at least one of his children knew about it, telling DCS about Father putting things in “papers.” When the children were removed from his home, Father was not present, made no effort to come home to address the situation, and did not contact FCM Guinn for several days. Even the filing of the CHINS petition was not enough to deter Father from using drugs, as he continued to test positive for methamphetamine and THC up until the fact-finding hearing. In addition, at the time of the fact-finding hearing, Father had refused DCS’s offers to

² Father contends that this evidence is contained only in the CHINS petition and therefore cannot be used as evidence. However, FCM Guinn also testified to this information (although in less detail) at the fact-finding hearing without objection from Father. *See* Tr. p. 6.

provide him services and had showed no interest in getting help for his drug problem. Father points out that there is no evidence in the record that Father actually used drugs while the children were in his care or custody. However, the reasonable inference from the evidence presented is that because Father is a chronic abuser of illegal drugs, had custody of his children, and Mother watched the children only once or twice a week, Father was under the influence of illegal drugs³ while the children were in his care or custody and therefore exposed them to an environment of illegal drug use. *See In re J.L.*, 919 N.E.2d 561, 564 (Ind. Ct. App. 2009) (finding that Mother, who had a lengthy history of drug abuse and admitted to using drugs while her child was sleeping, had essentially abandoned her child without any responsible supervision and therefore knowingly exposed her child to an environment of illegal drug use). Father's refusal to come home while DCS and two police officers were at his house on the brink of removing his children, failure to contact FCM Guinn for several days despite the children being removed from him, refusal to get help for his drug abuse during the CHINS proceedings, and positive drug results throughout the duration of the CHINS proceedings reflect the magnitude of his drug problem. The magnitude of Father's drug abuse is no doubt affecting his children.

We conclude that DCS has proven that the children's physical or mental condition is seriously endangered as a result of Father's inability to supply them with necessary supervision and that the children need care, treatment, or rehabilitation that they are not

³ Father argues that there is no evidence that he was ever intoxicated from his use of methamphetamine. Father asserts that in order for him to be intoxicated from methamphetamine, he had to show symptoms. DCS does not have to prove a certain level of intoxication from the use of illegal drugs. The mere use of the drugs is illegal. Moreover, FCM Rundell testified that when Father showed up for his drug screens, he would often repeat himself and had jerky movements.

receiving and is unlikely to be provided or accepted without the coercive intervention of the court. We therefore affirm the juvenile court's determination that the children are CHINS.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.