MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of Ro.B, Rh.B, and Te.N
(Children in Need of Services):

Hamilton County GAL/CASA Program,
Appellant,

v.

Indiana Department of Child Services,
Appellee.

January 31, 2024

Court of Appeals Case No. 23A-JC-2149

Appeal from the Hamilton Superior Court

The Honorable Michael A. Casati, Judge

The Honorable Valorie S. Hahn, Magistrate

Trial Court Cause No.
29D01-2301-JC-122
29D01-2301-JC-123
29D01-2301-JC-125

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

[1] The Indiana Department of Child Services ("DCS") filed petitions alleging that three children were Children in Need of Services ("CHINS"). DCS subsequently moved to dismiss the petitions, over the objection of the Guardian Ad Litem ("GAL"). The court held that dismissal was not in the best interest of the children but nonetheless found that it did not have discretion to deny DCS's motions and dismissed the petitions. The GAL now appeals and raises one issue, namely, whether the court erred when it granted DCS's motions to dismiss.[1] We reverse and remand with instructions.

Facts and Procedural History

[2] K.D. ("Mother") has three children: Ro.B., born September 28, 2010; Rh.B., born October 17, 2011; and Te.N., born May 4, 2015 (collectively, "the Children"). R.B. is the father to Ro.B. and Rh.B. Te.N.'s father is T.N. On November 29, 2022, DCS received a report alleging that Te.N. was a victim of neglect. In particular, the report stated that Te.N. had missed twenty-five days of school. DCS then learned that Mother has an "extensive history regarding

[1] Neither the children's mother nor either of the fathers participates in this appeal.

educational neglect" for Ro.B. and Rh.B., which includes eight reports to DCS, three unsubstantiated assessments, and one substantiated assessment. Appellant's App. Vol. 2 at 32. Ro.B. has missed twenty-three and one-half days of school and has been tardy on thirty-seven days. Rh.B. has missed seventeen days of school and has been tardy on thirteen occasions. At the time of the report, the Children resided with Mother in Fishers but were enrolled in school in Indianapolis. Mother admitted to DCS that she could not ensure that the Children attended school every day. DCS did not remove the Children from Mother's care.

[3] On January 31, 2023, DCS filed petitions alleging that the Children were CHINS based on the absences and the effect the absences had on the Children's academic performance. The court held an initial hearing on DCS's petitions on February 10. Mother and R.B. appeared, but T.N. did not. The court then appointed a GAL for the Children. At a subsequent pretrial conference, R.B. waived his right to a fact-finding hearing. The court then ultimately scheduled a fact-finding hearing as to Mother for August 25. DCS attempted to contact Mother on a regular basis, but those attempts were unsuccessful.

[4] On June 28, DCS filed motions to dismiss its CHINS petitions. In the motions, DCS alleged that the "circumstances that initially resulted in the filing of the petition[s] . . . have substantially changed and there is no longer a legally sufficient basis to proceed under this cause." *Id*. at 109. In an attached affidavit, the DCS Family Case Manager ("FCM") stated that the family no longer had "connections" to Hamilton County because they had moved to

Indianapolis and that the allegations of educational neglect were no longer "of interest" because the prior school year had ended, the Children had been promoted to the next grade, and they were not required to attend summer school. *Id*. at 111. DCS acknowledged that attempts to contact Mother had been "unsuccessful" and that it was aware of a report that Ro.B. had been treated at Riley Hospital after having been shot in the buttocks at a party with friends. *Id*. at 112. The GAL objected to DCS's motions to dismiss. The GAL reported the shooting to the DCS child abuse and neglect hotline, but the report was "screened out." *Id*.

[5] On August 9, the GAL submitted her report further objecting to DCS's motions to dismiss. In that report, the GAL stated that she had "concerns about the number of unexcused absences, tardies, and quantity and seriousness of misbehaviors" as well as the "lack of supervision over the Children." *Id*. at 129. The GAL further stated that she "does not believe Mother will do what is necessary to improve her children's attendance, grades, or behavior without the intervention of the Court." *Id*. at 130. She stated that, in her opinion, the Children "qualify as Children in Need of Services" and that the coercive intervention of the court is necessary. *Id*. at 132. In support of her report, the GAL submitted letters from the Children's school. The letters indicated that Ro.B. and Rh.B. had frequently used inappropriate language, caused disruptions, and engaged in fights at school. *See id*. at 155-57; 164-66.

[6] The court held a hearing on DCS's motions to dismiss on August 11. During the hearing, DCS argued that the court should dismiss the CHINS petitions

because the family had moved to Marion County; the Children "haven't missed any school this year"; and there "is school-based therapy available to" the Children, though the Children had not been enrolled. Tr. at 4. DCS also argued that the GAL does not have the ability "per statute" to file a CHINS petition or to file a counterclaim if DCS's petitions were to be dismissed. *Id*. at 5. The GAL responded that she had "concerns" because Mother has been "involved" with DCS "at least 12 times since the year 2020." *Id*. at 7. The GAL also had concerns regarding the Children's mental health. *Id*. at 7. The GAL argued that Mother "has been hard to get a hold of" and that the "intervention of the court would be warranted[.]" *Id*. The GAL further argued that the court had discretion to grant or deny DCS's motions to dismiss and schedule a fact-finding hearing on the CHINS petition.

[7] The court "share[d]" the GAL's concerns and noted that the Children "still need to have involvement with" DCS. *Id*. at 8. However, the court stated that it did "not have the authority to require DCS to prosecute a case" and that the GAL "cannot stand in the shoes of DCS to prosecute a case." *Id*. The court specifically found that it did not have "discretion" and that it was "required to grant" DCS's motions "even though [the court did] not feel it is in the best interest of the [C]hildren to do that." *Id*. Accordingly, the court granted DCS's motions to dismiss. This appeal ensued.

Discussion and Decision

[8] The GAL contends that the trial court erred when it dismissed DCS's CHINS petitions. While this case involves the grant of motions to dismiss, the parties agree that our resolution of the issue presented turns on our interpretation of Indiana Code Section 31-34-9-8 (the "Dismissal Statute"). As our Supreme Court has stated:

> statutory interpretation is a question of law that we review de novo. *Andrews v. Mor/Ryde Int'l, Inc.*, 10 N.E.3d 502, 504 (Ind. 2014). In interpreting a statute, the first step is to determine whether the Legislature has spoken clearly and unambiguously on the point in question. [*City of North Vernon v.*] *Jennings* [*Nw. Reg'l Utils.*], 829 N.E.2d [1,] 4 [(Ind. 2005)]. When a statute is clear and unambiguous, we apply words and phrases in their plain, ordinary, and usual sense. *Id*. "[W]hen a statute is susceptible to more than one interpretation it is deemed ambiguous and thus open to judicial construction." *Id*. When faced with an ambiguous statute, our primary goal is to determine, give effect to, and implement the intent of the Legislature with well-established rules of statutory construction. *Id*. We examine the statute as a whole, reading its sections together so that no part is rendered meaningless if it can be harmonized with the remainder of the statute. *Id*. at 4-5. "And we do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result." *Id*. at 5.

Anderson v. Guadin, 42 N.E.3d 82, 85 (Ind. 2015). Further, when "we interpret a statute, we are mindful of both what it does say and what it does not say." *Town of Darmstadt v. CWK Investments-Hillsdale, LLC*, 114 N.E.3d 11, 14 (Ind. Ct. App. 2018) (quotation marks omitted). We may not add new words to a statute which are not the expressed intent of the legislature. *Id*.

[9] The Dismissal Statute provides as follows:

> (a) A person representing the interests of the state may file a motion to dismiss a petition that the person has filed under this chapter.
>
> (b) If a person files a motion to dismiss under subsection (a), the person must provide to the court a statement that sets forth the reasons the person is requesting that the petition be dismissed.
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> (c) Not later than ten (10) days after the motion to dismiss is filed under subsection (a), the court shall:
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> (1) summarily grant the motion to dismiss; or
>
> (2) set a date for a hearing on the motion to dismiss.
>
> (d) If the court sets a hearing on the motion to dismiss under subsection (c)(2), the court may appoint:
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> (1) a guardian ad litem;
>
> (2) a court appointed special advocate; or
>
> (3) both a guardian ad litem and a court appointed special advocate;
>
> to represent and protect the best interests of the child.

Ind. Code § 31-34-9-8 (2023).

[10] The GAL contends that this statute provides "trial court with discretion as to dismissal of any CHINS petition." Appellant's Br. at 21. DCS contends that the "plain language" of the statute "does not provide trial courts with discretion to deny a motion for voluntary dismissal of a CHINS petition." Appellee's Br. at 16 (bold removed). We must agree with the GAL.

[11] The version of the Dismissal Statute in effect during the underlying proceedings has only been interpreted once by this Court. In *Hamilton Cnty. GAL/CASA Program v. Ind. Dep't of Child. Servs. (In the Matter of Z.H.)*, this Court held that a

> plain reading of the statute reveals that the Indiana General Assembly did not intend for the filing of a motion to dismiss to mandate dismissal of a CHINS case. Rather, the General Assembly intended for trial courts to review reasons proffered in support of dismissal in light of the evidence and allegations and then determine whether dismissal is in the child's best interests. In other words, the decision regarding whether to dismiss the CHINS case rests in the trial court's sound discretion.

219 N.E.3d 187, 192 (Ind. Ct. App. 2023), *trans. not sought.*[2] While DCS asks us to hold that *In the Matter of Z.H.* was wrongly decided, we decline to do so because we find support for the Court's decision in two places: in the history of the statute and in the plain language of the statute itself.

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[2] We note that, in *In the Matter of Z.H.*, DCS took a different stance and "agree[d] that trial courts have discretion regarding whether to grant a motion to dismiss a CHINS case." 219 N.E.3d at 193.

[12] Regarding the history of the statute, a prior version of the statute provided that, "[u]pon motion by the person representing the interests of the state, the juvenile court *shall* dismiss any petition the person has filed." I.C. § 31-34-9-8 (2004) (emphasis added). In other words, that statute mandated that the court dismiss a CHINS petition if the State sought a dismissal. However, that version of the statute was repealed in 2005 and replaced with the current version. While the 2004 version explicitly required a trial court to dismiss a CHINS petition on the motion of the State, the Indiana Generally Assembly removed the "shall dismiss" language in 2005, and that language does not appear in the current version. We agree with this Court's statement in *In the Matter of Z.H.* that we "cannot read the current version of the dismissal statute to still require dismissal upon the filing of a motion to dismiss in light of the General Assembly's deliberate choice to remove the language that mandated dismissal." 219 N.E.3d at 193.

[13] We also find support for this Court's holding in *In the Matter of Z.H.* in the text of the statute itself. Indeed, the statute provides that, after a person representing the interests of the State files a motion to dismiss, the court shall either summarily grant the motion or set a date for a hearing on the motion. If the court chooses to set a hearing, it may then appoint a GAL to protect the interests of the child. Here, contrary to DCS's argument, there is nothing in that statute that requires the court to dismiss the petition. Rather, the statute gives the court the option of either dismissing the petition or setting it for a hearing and appointing a GAL. And the statute is silent regarding any action a

court can or must take following a hearing. It would be counterintuitive to allow the court to hold a hearing if it were required to dismiss any and every motion to dismiss filed by DCS. Instead, we hold only that, once DCS files a CHINS petition, the court has the authority to hear evidence at a hearing and the discretion to deny DCS's motion to dismiss. If DCS believes that a child is no longer a CHINS and that it no longer wishes to pursue the action, it can present evidence and argument to that effect at the hearing.

[14] We acknowledge that only an attorney for DCS or a prosecuting attorney can seek permission from the court to file a CHINS petition.[3] *See* I.C. § 31-34-9-1. Be that as it may, the fact remains that nothing in the Dismissal Statute mandates that a court dismiss a CHINS petition on DCS's motion. Rather, as outlined above, the court retains discretion to hold a hearing and determine whether to grant or deny DCS's motion. We therefore reaffirm this Court's holding in *In the Matter of Z.H.* that "the decision regarding whether to dismiss the CHINS case rests in the trial court's sound discretion." 219 N.E.3d at 192.

[15] Still, DCS contends that, even if the trial court had discretion regarding DCS's motions to dismiss, the court did not abuse that discretion when it granted the motions. DCS contends that "the best interests of the child is not a dispositive factor for CHINS dismissals" and that "the circumstances that led to the filing

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[3] The General Assembly has explicitly granted a GAL the authority to file a petition to terminate a parent's parental rights. *See* I.C. § 31-35-2-4(a)(2). However, similar language has not been included in the CHINS statute.

of the CHINS petition had been changed to the extent that DCS no longer felt a need to pursue the coercive intervention of the court." Appellee's Br. at 31-32.

[16] However, we are not persuaded by DCS's argument. First, it is clear that the court only dismissed DCS's petitions because it believed that it had to do so.[4] Indeed, at the conclusion of the hearing, the court stated that it did "not have the authority" to deny DCS's motion. Tr. at 8. In addition, while the court wrongfully believed that it was "required" to grant DCS's motions to dismiss, the court specifically stated that the Children "still need to have involvement with" DCS and that it did "not feel it is in the best interest of the [C]hildren to" dismiss the petitions. *Id*. Stated differently, on the facts of this case, the court would not have dismissed the petitions if it believed it had the discretion to deny DCS's motion. We therefore reverse the trial court's grant of DCS's motions to dismiss.

Conclusion

[17] It is within the discretion of the trial court to grant or deny a motion to dismiss a CHINS petition. Here, the court wrongfully believed that it lacked discretion and that it was obligated to grant DCS's motions to dismiss. Because the court

[4] The court dismissed DCS's petitions on August 14, 2023, which was more than one month before this Court issued its opinion in *In the Matter of Z.H.*

was mistaken, we reverse the court's dismissal of the CHINS petitions and remand for further proceedings consistent with this opinion.

[18] Reversed and remanded with instructions.

Crone, J., and Pyle, J., concur.