

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

M.T.,
Appellant-Respondent

v.

Indiana Department of Child Services,
Appellee-Petitioner



March 8, 2024

Court of Appeals Case No.
23A-JC-2414

Appeal from the Madison Circuit Court
The Honorable Stephen J. Koester, Judge

Trial Court Cause No.
48C02-2305-JC-128

Memorandum Decision by Chief Judge Altice
Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

- [1] M.T. (Father) appeals the trial court’s dispositional order following the determination that his daughter, S.F., was a Child in Need of Services (CHINS). Father argues that the dispositional order infringed on his constitutional right against self-incrimination, and that he was required to participate in “unreasonable services” through the Department of Child Services (DCS) because the dispositional order included terms and conditions unrelated to the basis of the CHINS factual basis. *Appellant’s Brief* at 8.
- [2] We affirm.

Fact and Procedural History

- [3] In May 2023, thirteen-year-old S.F.¹ was living with Father in Anderson. S.F.’s mother, D.F. (Mother), resided in Fort Wayne. DCS initially became involved with S.F. and Father on May 19, 2023, when S.F. telephoned Mother and told her that Father had been sexually molesting her. S.F. reported to a DCS caseworker during an interview that Father had been abusing her for nearly two years, and that Father became angry and hit her when she refused to participate in sexual activity. The next day, Father was arrested and charged

¹ S.F. was born on October 8, 2009.

with child molestation,² and S.F. was removed from his care and custody and placed with DCS who was responsible for her placement. At some point, the trial court in the criminal matter issued a no contact order against Father as to S.F.

[4] On May 23, 2023, DCS filed a verified petition alleging that S.F. was a CHINS because Father “has failed to provide [her] with a safe and stable home, free of sexual abuse.” *Appellant’s Appendix Vol. II* at 11. Father denied the allegations of child molesting and claimed that S.F. falsely accused him of abusing her because she wanted to live with Mother.

[5] Pursuant to the parties’ agreement on July 17, 2023, Father denied any criminal liability, admitted that S.F. was a CHINS, and agreed that “coercive intervention” by the trial court was necessary. *Id.* at 13. The trial court then set the matter for dispositional hearing. At that hearing on August 16, 2023, Father objected to participating in domestic violence and parenting classes because he believed that his participation in DCS services could be construed as an admission of guilt in the pending criminal case. The trial court overruled the objection and ordered Father to participate in the following reunification and parenting services:

(1) Contact the family case manager every week to allow the FCM (Family Case Manager) to monitor compliance with the CHINS matter;

² The State’s charging information is not included in the record.

- (2) Allow the FCM or other service providers to make announced or unannounced visits to the home;
- (3) If a program is recommended by the FCM or other service provider, enroll in that program within a reasonable time, not to exceed 30 days and participate in that program as scheduled without delay or missed appointments;
- (4) Keep all appointments with any service provider, DCS, or CASA/GAL, or give advance notice and good cause to the service provider, CASA/GAL and FCM for the missed appointment;
- (5) Maintain suitable, safe, and stable housing with adequate bedding, functional utilities, and adequate supplies of food and food preparation facilities. Keep the family residence in a manner that is structurally sound, sanitary, clean, free from clutter and safe for the child;
- (6) Secure and maintain a legal and stable source of income;
- (7) Assist in the formulation and implementation of a protection plan which protects the child from abuse or neglect from any person;
- (8) Obey the law;
- (9) Complete a parenting assessment and successfully complete all recommendations developed as a result of the parenting assessment, which may include parenting classes;
- (10) Follow all terms of probation currently ordered in any existing probation order;
- (11) Not commit any acts of domestic violence;
- (12) Actively participate in, cooperate with, and successfully complete all recommendations as a result of any domestic violence assessment programs;
- (13) Not . . . have access to . . . [the] child . . . [or communicate with child], will abide by the terms of any no-contact order and/or protective order, and will cooperate fully with any prosecution for noncompliance;
- (14) Become engaged in an individual counseling program referred by the FCM and will actively participate to the extent recommended by the

provider and DCS. Father will demonstrate positive changes in his life as a result of the counseling; and

(15) Participate in a psychosexual assessment and follow all recommendations of such assessment.

Appellant's Appendix Vol. II at App. 6-9.

[6] Father now appeals.³

Discussion and Decision

I. Self-Incrimination

[7] Father argues that the dispositional order must be set aside because the trial court's order directing him to participate in various DCS services violated his privilege against self-incrimination under the Fifth Amendment to the United States Constitution. More particularly, Father claims that the programs and services offered by DCS would impermissibly require him to confess to have sexually molested S.F.

[8] The Fifth Amendment to the United States Constitution prohibits a person from being "compelled in any criminal case to be a witness against himself." answer. U.S.C.A. Const.Amend.5. Generally, in any proceeding—civil or

³ We note that the trial court conducted a review hearing on November 22, 2023, and determined, among other things, that while Father is "beginning to engage in individual therapy," he has "not enhanced [his] ability to fulfill [his] parental obligations." *Appellant's Appendix Vol. II* at 23.

criminal—the Fifth Amendment protects an individual from being forced to answer questions when the answers might be used in a future criminal proceeding. *Matter of Ma.H.*, 134 N.E.3d 41, 46 (Ind. 2019). We review a Fifth Amendment challenge de novo. *See Matter of Ma.H.*, 134 N.E.3d 41, 47 (Ind. 2019).

[9] The purpose of a CHINS adjudication is to “protect children, not punish parents.” *In re D.J. v. Ind. Dep’t of Child Servs.*, 68 N.E.3d 574, 580–81 (Ind. 2017). Thus, in a CHINS proceeding, a court cannot compel a parent to admit to a crime if that admission could be used against the parent in a future criminal proceeding. *See Matter of Ma.H.*, 134 N.E.3d at 47. When a Fifth Amendment violation claim is raised in a CHINS proceeding, the question is whether any court action forced the parent to choose between losing his parental rights and waiving his right against self-incrimination. *Id.* A court-ordered case plan that mandates admission of culpability for family reunification violates the Fifth Amendment, whereas a case plan that requires meaningful therapy for family reunification does not. *Id.* Also, a trial court’s dispositional order that requires a parent to complete sex-offender treatment does not violate the Fifth Amendment because the order itself it does not compel the parent to admit to a crime. *Id.*

[10] In this case, the trial court’s order did not compel Father to admit to a crime as part of his treatment. Instead, the order required Father to engage in services toward family reunification including psychosexual, domestic violence, and parenting assessments. In accordance with the order, Father was to take

remedial steps to address the reasons for S.F.'s removal, and to protect S.F. from abuse and neglect. Father was required to work towards becoming an effective and skilled caregiver for S.F.

[11] Finally, we note that the circumstances here are similar to those in *Ma.H.*, in that Father points to no evidence that he sought out alternative programs that would better address his parenting issues, that he requested DCS to provide him with other options, or that there were no other treatment programs available that would better assist him in becoming a fit parent. *See id.*

[12] In light of these circumstances, we conclude that the trial court did not violate Father's Fifth Amendment privilege against self-incrimination when it issued its dispositional order, as there was no requirement that he admit to any crime or wrongdoing.

II. Abuse of Discretion

[13] Father contends that the trial court abused its discretion in ordering him to participate in DCS unification services. Father maintains that the programs he was ordered to complete were unnecessary to address the concerns that were relevant to S.F.'s removal from his care.

[14] We review a juvenile court's order of services and conditions in a CHINS case for an abuse of discretion. *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006). The choice of specific services or consequences ordered at disposition are left to the juvenile court's sound discretion. *C.C. v. State*, 831 N.E.2d 215, 216 (Ind. Ct. App. 2005). An abuse of discretion occurs when the court's action is clearly

erroneous and against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *A.C. v. State*, 144 N.E.3d 810, 813 (Ind. Ct. App. 2020).

[15] Although the juvenile court has broad discretion in determining the programs and services in which a parent is required to participate, the requirements must relate to some behavior or circumstances that was revealed by the evidence. *In re K.D.*, 962 N.E.2d 1249, 1258 (Ind. 2012). Forcing unnecessary requirements upon parents whose children have been adjudicated as CHINS could set them up for failure with the result being not only a failure to achieve the goal of reunification, but potentially, the termination of parental rights. *In re A.C.*, 905 N.E.2d 456, 464-65 (Ind. Ct. App 2009). The dispositional decree must be “consistent with the best interest[s] and special needs of the child.” Ind. Code § 31-34-19-6, -10.

[16] Here, Father asserts that the trial court abused its discretion in ordering him to maintain suitable housing, maintain a source of income, not use illegal drugs, provide necessities, participate in a domestic violence assessment, abide by the no-contact order from his criminal case, and use his prescription drugs as prescribed. Father, however, admitted that S.F. required the care, treatment, or rehabilitation that she was not receiving and would likely not obtain, absent court intervention.

[17] The domestic violence assessment related to sexual abuse, which was the reason for DCS’s involvement. The CHINS petition specifically alleged that if

S.F. told Father that she “did not want him to participate in sexual activity with her, he would get mad and hit her.” *Appellant’s Appendix Vol. II* at 8. The trial court’s order related directly to Father’s behavior toward S.F. And suitable housing is one that is safe for the child, which means one that is free from abuse. Ensuring that Father provides that type of housing is directly related to the issues that prompted DCS’s involvement.

[18] Father claimed that he was not using drugs, had an income and housing, and provided necessities. Thus, the dispositional order directing Father to comply with those requirements was not burdensome, as they had no effect on Father. In other words, Father—along with all similarly situated parents—is already subject to those obligations, including the requirement to tend to S.F.’s needs and provide necessities to her.

[19] Finally, as for the no-contact order that was issued in Father’s criminal case, we note that the trial court here was without authority to overturn another court’s no-contact order. Indeed, a “court cannot control the execution of the orders or process of any other court of equal jurisdiction.” *State v. Downey*, 14 N.E.3d 812, 815 (Ind. Ct. App. 2014). Moreover, the dispositional order in this case does not require Father to attend any scheduled visits with S.F. Hence, Father has not shown how the no-contact order is relevant in this case.

[20] In sum, the trial court did not abuse its discretion in ordering Father to comply with the services and requirements set forth in the dispositional order. Several of those requirements pertained to sexual abuse, which was the reason for

DCS's involvement. The remaining requirements have no effect on Father because he is already subject to those directives in the absence of the dispositional order. Thus, we cannot say that the trial court ordered Father to participate in services that were not relevant to S.F.'s removal from his care.

[21] Judgment affirmed.

Bradford, J. and Felix, J., concur.

ATTORNEY FOR APPELLANT

Michael C. Price
Zionsville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana