

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of K.S.,
A Child in Need of Services,
R.S., Father and S.S., Mother,¹
Appellants-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

June 9, 2021

Court of Appeals Case No.
21A-JC-119

Appeal from the
Washington Circuit Court

The Honorable
Larry W. Medlock, Judge

Trial Court Cause No.
88C01-2009-JC-112

¹ Mother is not participating in this appeal, but since she is a party of record in the trial court, she is a party on appeal. See Ind. Appellate Rule 17(A).

Kirsch, Judge.

- [1] R.S. (“Father”) appeals the juvenile court’s order finding that K.S. (“Child”) is a Child in Need of Services (“CHINS”) and raises two issues for our review.

I. Whether the CHINS proceedings denied Father’s right to due process; and

II. Whether there was sufficient evidence to support the requirements for services imposed on Father by the juvenile court’s dispositional order.

- [2] We affirm.

Facts and Procedural History

- [3] Father and S.S. (“Mother”) are the parents of K.S. (“Child”), who was born on December 14, 2009. *Appellant’s App. Vol. Two* at 11. In September 2019, the Indiana Department of Child Services (“DCS”) investigated an incident where Father allegedly physically abused Child, and DCS substantiated that instance of abuse or neglect. *Id.* at 12-13.² DCS did not file a CHINS petition based on this incident, and the matter was resolved as to Mother and Child through an informal adjustment. *Id.* at 20, 33, 42, 48. Father refused to participate in the informal adjustment. *Tr. Vol. 2* at 21. The State criminally charged Father with neglect of a dependent resulting in bodily injury and domestic battery with

² Soon after, Mother and Father’s marriage was dissolved, and Father moved into a separate home. *Appellant’s App. Vol. Two* at 49.

bodily injury. *Id.* at 5, 18. The State also filed a petition for no contact order in that case on September 4, 2019, which was granted, and a copy of the order was served on Father on September 5, 2019. *Id.* at 5-7; *Ex. Vol.* at 15-17. The no contact order prevents Father from having any contact with Child, whether direct or indirect contact. *Appellant's App. Vol. Two* at 56; *Tr. Vol. 2* at 6, 14.

[4] On September 9, 2020, DCS investigated a report that Mother was neglecting Child because Mother was consuming illegal drugs in the presence of Child. *Tr. Vol. 2* at 4. Father was not living with Mother and Child at the time and was not at Mother's residence that day. *Id.* at 15-16. Family Case Manager Amanda Tedrow ("FCM Tedrow") and police officers arrived at Mother's home to investigate the report, and FCM Tedrow administered a drug screen to Mother, who tested positive for methamphetamine and amphetamine. *Id.* FCM Tedrow and the police officers concluded that Mother was under the influence of illegal substances based on her "pinpoint pupils," slurred speech, inability to follow the conversation, and nodding off to sleep during the investigation. *Ex. Vol.* at 7. Mother admitted to using marijuana but denied other drug use. *Tr. Vol. 2* at 4. Child told FCM Tedrow that Mother and Mother's boyfriend smoked marijuana in Child's presence. *Ex. Vol.* at 8. Child was removed from Mother's home on September 10, 2020 and was placed in the care of a relative. *Appellant's App. Vol. Two* at 15, 23.

[5] Two days later, on September 11, 2020, DCS contemporaneously filed its "Preliminary Inquiry," which set forth facts to support DCS's claim that Child was a CHINS, and its Verified Petition Alleging Child to be a Child in Need of

Services (“Verified CHINS Petition”). *Id.* at 11-14, 15-22. In the Preliminary Inquiry, DCS cited Mother’s drug use, Mother testing positive for methamphetamine, and the observations of FCM Tedrow and police officers that Mother exhibited signs that she was under the influence of illegal substances. *Id.* at 15. The Preliminary Inquiry also provided details about Father’s criminal charges and the no contact order. *Id.* at 16, 19, 20. Even so, the Preliminary Inquiry only recited the details of Mother’s drug use as the basis to remove Child from Mother’s home. *Id.* at 21. However, the contemporaneously filed Verified CHINS Petition mentioned both Mother’s drug use and Father’s criminal charges and the no contact order as facts supporting the request that the juvenile court determine that Child was a CHINS. *Id.* at 12.

- [6] On September 11, 2020, the juvenile court held an initial/detention hearing, confirming Child’s removal from Mother’s home and placement in the home of a relative. *Id.* at 23-24. Also on September 11, 2020, the juvenile court issued an order authorizing the filing of the Verified CHINS Petition. *Id.* at 3. This order was served on Father. *Id.* On September 16, 2020, an attorney appeared on behalf of Father. *Id.* at 4. On September 23, 2020, the trial court issued a detention order based on the initial hearing, ordering that Child should continue to be removed from the home. *Id.* at 23-24. On October 27, 2020, the juvenile court held a second initial hearing because neither Mother nor Father appeared at the first initial hearing. *Id.* at 6, 25-26. At this hearing, Father denied the allegations in the Verified CHINS Petition. *Id.* at 25.

[7] On November 10, 2020, the juvenile court held a fact-finding hearing at which Mother admitted to the allegations that she had failed multiple drug screens and had taken illegal substances; she agreed to participate in services designed to address her substance abuse issues. *Id.* at 30; *Tr. Vol. 2* at 4. At the same hearing, the juvenile court granted Father's request to continue the fact-finding hearing, as to the allegations against him, to November 17, 2020. *Appellant's App. Vol. Two* at 30. On November 23, 2020, the juvenile court issued an order regarding the November 10, 2020 fact-finding hearing. *Id.* In that order, it court found that Mother admitted the allegations in the Verified CHINS Petition regarding her drug used and failed drug screens and thus declared Child to be a CHINS. *Id.*

[8] On November 17, 2020, the juvenile court held a fact-finding hearing for Father. *Id.* at 8. At the hearing, Father's attorney acknowledged that Father had been charged with neglect of a dependent for allegedly causing bodily injury to Child and that there was a no contact order preventing him from contacting Child, even indirectly, and FCM Tedrow testified that Father had violated the no contact order by having indirect contact with Child. *Tr. Vol. 2* at 5, 15. 5, 7, 11, 15, 24, 27-28. FCM Tedrow testified that Father should participate in family team meetings, individual therapy, and case management. *Id.* at 25.

[9] On December 3, 2020, the juvenile court issued findings of fact and conclusions of law, determining that Father was unable to meet his parental obligations for Child because of the no contact order, and on December 9, 2020, the juvenile

court issued amended findings of fact and conclusions of law. *Appellant's App. Vol. Two* at 45-53, 54-62. The amended findings and conclusions provided, in part:

Findings of Fact

. . . .

7. The instant case is a case of child neglect.

. . . .

11. That the pending criminal action involving Father is 88C01-1909-F5-000726, Neglect of a Dependent Resulting in Bodily Injury and Domestic Battery with Bodily Injury of a person under the age of 14.

12. The pending criminal action against Father involves allegations of abuse and domestic violence wherein [Child] is a victim.

13. That the pending criminal action has not been completed

14. That the State of Indiana through its prosecuting attorney petitioned on September 4, 2019 and obtained a no contact order against Father preventing the Father from having contact with the Child

. . . .

17. That as of the date of the Fact-Finding hearing of November 17th, the no contact order issued in the criminal case was still in effect and no party had petitioned this Court to modify the terms of the no contact order.

Conclusions of Law

. . . .

9. The State of Indiana has prevented contact between the Father and [Child] by use of the no contact order sought by the State of Indiana. . . . [T]herefore Father is unable to provide for [Child's] basic needs. The Court has considered Father's argument that the State has imposed the condition on Father that prevents Father from caring for [Child] and finds it unpersuasive. But for Father's actions, Father would not be prevented from having contact with [Child] through a Protective Order.

. . . .

11. Due to the conditions that Mother has admitted to and due to the No Contact Order preventing the Father from caring for [Child], it is clear that at the time of the Fact Finding Hearing [Child] cannot safely be returned to the home of either parent.

. . . .

15. [Child's] physical and/or mental condition is seriously impaired or seriously endangered due to the inability, failure, or neglect of both Mother and Father to provide [Child] with appropriate supervision and shelter.

16. Specifically, . . . without the coercive intervention of the Court, there would be no safe place for [Child] to reside, for the reasons that Mother has admitted to and due to Father’s inability to have any contact with [Child] due to the No Contact Order.

Id. at 54-56, 60-61. Thus, the juvenile court adjudicated “[Child] to be a [CHINS] under I.C. 31-34-1-1 with regard to [Father].”³ *Id.* at 61.

[10] On December 8, 2020, the juvenile court held a dispositional hearing. *Tr. Vol. 2* at 48-71. At that hearing, Family Case Manager Jessica Lewis (“FCM Lewis”) testified that a parenting assessment of Father was important to determine whether Father had appropriate expectations regarding his relationship with Child and to develop a more specific plan to target services. *Id.* at 51-52. The parenting assessment would also help Father to “narrow down any underlying issues [with] domestic violence issues.” *Id.* at 52. FCM Lewis believed case work and therapy would “help [Father] understand what our expectations are for [Child] as she gets older” and would be relevant to Father being able to care for her. *Id.* at 51. FCM Lewis testified Father and Child needed to work on their relationship because they had not been in contact with each other for over a year. *Id.* at 51, 52.

³ When one parent admits that a child is a CHINS, but the other parent denies the child is a CHINS, the child is usually not declared a CHINS as to a particular parent. *See In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010). The issue in such cases, as here, is whether the evidence supports the imposition of requirements on the parent who denies that a child is a CHINS. *See In re K.D.*, 962 N.E.2d 1249, 1256, 1261 (Ind. 2012).

[11] On December 23, 2020, the juvenile court issued the dispositional order. *Id.* at 63-70. The dispositional order, inter alia, directed Father to complete a parenting assessment and follow all recommendations, not commit any acts of domestic violence, complete a domestic violence assessment, and follow all recommended services, abide by the no-contact order, engage in home-based case work, and participate in individual therapy. *Id.* at 68-69. Father now appeals.

Discussion and Decision

[12] A CHINS proceeding is a civil action; therefore, DCS must prove by a preponderance of the evidence that a child is a CHINS. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* We consider only the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id.* We will reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.* When a trial court supplements a CHINS judgment with findings of fact and conclusions law, we normally apply a two-tiered standard of review. *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017). We consider, first, whether the evidence supports the findings and, second, whether the findings support the judgment. *Id.* Here, however, because Father does not claim that the findings are not supported by the evidence in the record, we need only determine whether the findings support the juvenile court's legal conclusions. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (Unchallenged findings "must be accepted as correct."). We will reverse a CHINS determination only

if it was clearly erroneous. *In re K.D.*, 962 N.E.2d at 1253. A decision is clearly erroneous if the facts do not support the findings or if it applies the wrong legal standard to properly found facts. *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). A CHINS proceeding focuses on the best interest of the child, not the guilt or innocence of parents. *In re E.T.*, 152 N.E.3d 634, 640 (Ind. Ct. App. 2020), *trans. denied*.

I. Due Process

[13] Father argues that the adjudication of Child as CHINS as to Father violated his right to due process under the Fourteenth Amendment to the United States Constitution. He correctly observes that that the Preliminary Inquiry filed by the DCS based its request to remove Child from Mother's care solely on Mother's actions, specifically her use of illegal drugs and the drug-impaired condition she was in when FCM Tedrow and police officers first investigated the allegations about Mother's behavior. Father also contends the CHINS adjudication violated his right to due process because the Verified CHINS Petition only relied on facts regarding Mother's drug use.⁴

[14] The interest of parents in the care, custody, and control of their children "is perhaps the oldest of the fundamental liberty interests recognized by this

⁴ Father purports to raise a due process argument when he claims that the juvenile court violated his right to due process because the dispositional order requires Father to participate in services "that have no rational relation to the allegations in this case." *Appellant's Br.* at 15. Even though Father couches this argument in the language of due process, the crux of his argument is that DCS failed to present sufficient evidence to justify that he participate in these services, so we will address this argument in the next section of our decision where we deal with Father's sufficiency-of-evidence claim.

Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The liberty interest protected by the due process clause of the Fourteenth Amendment to the United States Constitution includes the right of parents to establish a home and bring up their children. *Id.* Regarding the due process rights of a parent in a CHINS case, our Supreme Court held:

Due process requires “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). We have previously written that the process due in a termination of parental rights action turns on balancing three *Mathews* factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. *In re C.G.*, 954 N.E.2d 910, 917 (2011). *We hold these same factors apply to a due process analysis of a CHINS adjudication.*

In re K.D., 962 N.E.2d at 1249 (emphasis added).

[15] Last year, we described the right to due process as follows:

It is well settled that “[t]he Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty or property without a fair proceeding.” *Lawson v. Marion Cnty. Office of Family & Children*, 835 N.E.2d 577, 579 (Ind. Ct. App. 2005). Due process is essentially “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). . . . “[D]uring a CHINS proceeding, a parent is entitled to (1) cross-examine witnesses, (2) obtain witnesses or tangible evidence by compulsory process, and (3) introduce

evidence on his behalf.” *In re V.C.*, 967 N.E.2d 50, 52-53 (Ind. Ct. App. 2012).

In re E.T., 152 N.E.3d at 640-41.

- [16] We first observe that Father has waived his due process claim because he failed to raise it to the juvenile court. It is axiomatic that an argument cannot be presented for the first time on appeal. *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015); *see also Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013) (“[A]ppellate review presupposes that a litigant’s arguments have been raised and considered in the trial court.”); *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003) (“It is well established, however, that a party on appeal may waive a constitutional claim.”).
- [17] However, to the extent possible, we will address Father’s due process arguments on the merits, but with at least one of those arguments, Father has waived the claim for failure to make cogent argument. In that argument, Father correctly observes that assessing a due process claim in a CHINS case requires us to balance 1) the private interests affected by the CHINS proceeding; (2) the risk of error created by the State’s chosen procedure in the CHINS case; and (3) the countervailing governmental interest supporting use of the State’s challenged procedure. *See In re C.G.*, 954 N.E.2d at 917. However, Father’s argument consists of nothing more than 1) claiming that a parent’s right to raise a child is of constitutional dilemma and that a CHINS adjudication puts a parent “one step closer” to a proceeding for termination of parental rights and

2) the risk of error “created by DCS’s actions is significant because Father has been set up to fail by requiring services that have no rational relation to the allegations in this case thereby bringing him one step closer to having his parental rights terminated based on allegations that have nothing to do with him.” *Appellant’s Br.* at 15. Among other things, this bare-bones analysis fails to identify which specific procedure or procedures used during the proceedings below denied Father’s right to due process. Thus, to the extent that Father has raised a due process claim under *Matthews* as explained in *In re K.D.*, 962 N.E.2d at 1257, he has waived that claim for failure to support it with a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a) (argument section of appellant’s brief “must contain the contentions of the appellant on the issues presented, supported by cogent reasoning”); *Jarman v. State*, 114 N.E.3d 911, 915 n.2 (Ind. Ct. App. 2018), *trans. denied*.

[18] Father’s remaining due process argument, generously construed, is that he did not have notice that his criminal charges and the no-contact order would be considered by the juvenile court because the Preliminary Inquiry only listed the allegations about Mother’s drug use as a basis to remove Child from Mother’s home. Father also argues that the charges and no-contact order should not have been considered by the juvenile court because they were addressed through an informal adjustment that was completed well before DCS filed the Preliminary Inquiry and Verified CHINS Petition.

[19] These arguments hold no water. Even though the Preliminary Inquiry cited only Mother’s behavior as a basis to remove Child, it also mentioned Father’s

criminal charges and the no-contact order. *Appellant's App. Vol. Two* at 16, 19, 20. The Verified CHINS Petition, which was filed contemporaneously with the Preliminary Inquiry, listed Mother's behavior *and* Father's criminal charges and the no-contact order as facts supporting the Verified CHINS Petition's request to declare Child a CHINS, and once the juvenile court authorized the filing of the Verified CHINS Petition, it provided notice to Father that the criminal charges and the no-contact order would be considered by the juvenile court as it considered DCS's request to find that Child was a CHINS. *Id.* at 3, 12. The subsequent proceedings showed that Father's due process rights were protected throughout the proceedings. Soon after the Verified CHINS Petition was filed, an attorney appeared on behalf of Father and represented Father throughout the entire CHINS matter. *Id.* at 4. Because neither Father nor Mother attended the initial hearing, the juvenile court scheduled and held a second initial hearing, which Father attended. *Id.* at 6, 25-26. Later, the juvenile court granted Father's request to continue the fact-finding hearing, giving Father an extra week to prepare his defense against DCS's case. *Id.* at 7, 30. Father appeared at the fact-finding hearing, and his attorney thoroughly cross-examined DCS's witnesses. *Tr. Vol. 2* at 2-4. After the fact-finding hearing had concluded, DCS prepared a pre-dispositional report, and Father does not claim that he did not receive a copy of that report. Father, again

represented by counsel, appeared at the dispositional hearing⁵ where he thoroughly cross-examined DCS's witnesses. *Id.* at 51-70.

[20] Due process requires “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews*, 424 U.S. at 333. The Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty or property without a fair proceeding.” *In re E.T.*, 152 N.E.3d at 640. “[D]uring a CHINS proceeding, a parent is entitled to (1) cross-examine witnesses, (2) obtain witnesses or tangible evidence by compulsory process, and (3) introduce evidence on his behalf.” *Id.* The record shows that Father was afforded all these rights, so at no stage during the CHINS proceedings did the juvenile court deny Father’s right to due process.

II. Sufficiency of Evidence

[21] Father contends DCS failed to present sufficient evidence that the government’s coercive intervention was necessary to ensure that Child received the necessary care, treatment, and treatment necessitated by the juvenile court’s finding that Child was a CHINS. Father concedes that the juvenile court’s findings are supported by the record but disputes that the findings “support the conclusion that Child is a [CHINS] requiring services for Father.” *Appellant’s Br.* at 18.

⁵ Father declined to testify at both the fact-finding hearing and the dispositional hearing.

[22] The Verified CHINS Petition alleged Child was a CHINS under the terms of 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:

(A) when the parent, guardian, or custodian is financially able to do so; or

(B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so; 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.*

Id (emphasis added).

[23] The juvenile court's order of services and conditions in a CHINS case is reviewed for an abuse of discretion. *In re R.G.*, 130 N.E.3d 1171, 1181 (Ind. Ct.

App. 2019), *trans. denied*. The requirements must relate to some behavior or circumstances that was revealed by the evidence. *In re K.D.*, 962 at 1258.

[24] In greater detail, Father argues that DCS failed to prove that the requirements the juvenile court placed on Father were necessary. He also contends these requirements are setting him up to fail because he will not be able to participate in some of these requirements because the no contact order prevents him from having even indirect contact with Child. Father correctly notes that the juvenile court acknowledged that while the no-contact order is in effect, Father will not be able to fulfill some of the requirements of the dispositional order. *Appellant's App. Vol. Two* at 69.

[25] We find that Father has waived his argument that DCS failed to prove that the requirements the juvenile court placed on Father through the dispositional order were necessary. Father does not identify which requirements are unnecessary and why such requirements are unnecessary. Thus, he has waived this issue for failure to make cogent argument. *See* App. R. 46(A)(8)(a) (argument section of appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning"); *Jarman*, 114 N.E.3d at 915 n.2.

[26] Waiver aside, we find that DCS presented sufficient evidence to prove that the requirements the juvenile court placed on Father through the dispositional order were necessary. Once a child's CHINS status has been determined, to start the process of addressing the child's CHINS status, the juvenile court is

required to hold a dispositional hearing to consider “(1) Alternatives for the care, treatment, rehabilitation, or placement of the child[, and] (2) The necessity, nature, and extent of the participation by a parent, a guardian, or a custodian in the program of care, treatment, or rehabilitation for the child.” Ind. Code § 31-34-19-1.

[27] Here, Father declined to participate in the informal adjustment that was arranged after DCS substantiated that Father had physically abused Child. *Tr. Vol. 2* at 21. Also, he offered no evidence that he had participated in counseling or taken other steps to address the issues that prompted him to physically abuse Child. This supported the juvenile court’s finding that the coercive intervention of the government was necessary to address the circumstances that gave rise to Father’s abuse of Child. *Appellant’s App. Vol. Two* at 50, 52, 59, 61. Moreover, the services ordered by the juvenile court, including parenting and domestic violence assessments, case management, and individual counseling, are reasonably related to Child’s CHINS status. *Id.* at 68-69. FCM Lewis testified that the purpose of the case work and Father’s individual therapy would be to address the underlying causes of the domestic violence and address the year he had not had contact with Child. *Tr. Vol. 2* at 51. FCM Lewis also testified the parenting assessment would help develop whether Father had unrealistic expectations for Child and to narrow down any underlying issues that might be impacting the domestic violence. *Id.* at 52.

[28] Finally, we reject Father’s argument that the requirements of the dispositional order are setting him up for failure because, as he correctly observes, he will not

be able to participate in some of those activities because the no contact order prevents him from having contact with Child, even indirect contact. Indeed, the juvenile court noted, “Due to the current no contact order issued by this Court at the request of the State of Indiana and based upon the evidence presented at the fact-finding hearing, [Father] will not be able to comply with” nine of the requirements of the dispositional order. *Appellant’s App. Vol. Two* at 69. However, the trial court further observed that Father would be able to participate in those activities once “the protective order is dismissed or modified allowing [Father] contact with [Child].” *Id.* There is nothing in the dispositional order, the juvenile court’s findings of facts and conclusions of law, the juvenile court’s statements at the fact-finding hearing or the dispositional hearing, or the filings or testimony of DCS to suggest, or even remotely imply, that Father’s current inability to comply with some of the terms of the dispositional order would be held against him. Thus, we reject Father’s argument that the dispositional order set Father up to fail, and, accordingly, we conclude that the conditions imposed on Father by the juvenile court through the dispositional order were not an abuse of discretion.

[29] Affirmed.

Altice, J., and Weissmann, J., concur.