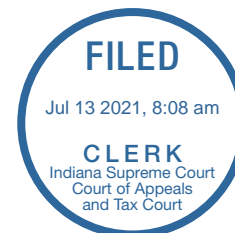


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Valerie K. Boots
Marion County Public Defender Agency

Danielle L. Gregory
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Monika P. Talbot
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Matter of D.L. (Minor
Child),

M.L. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

July 13, 2021

Court of Appeals Case No.
20A-JC-2108

Appeal from the Marion Superior
Court

The Honorable Mark A. Jones,
Judge

The Honorable Beth L. Jansen,
Magistrate

Trial Court Cause No.
49D15-2002-JC-590

Mathias, Judge.

[1] The Indiana Department of Child Services (“DCS”) filed a petition alleging that M.L.’s (“Father”) minor child, D.L., was a child in need of services (“CHINS”). Because Father is serving an eighty-year sentence in the Department of Correction and is unable to care for D.L., the Marion Superior Court granted DCS’s petition and adjudicated D.L. a CHINS. Father appeals and raises three issues, which we restate as:

I. Whether Father’s due process rights were violated when the dispositional hearing was held in his absence.

II. Whether the trial court abused its discretion when it refused to take judicial notice of Father’s pending petition for post-conviction relief.

III. Whether DCS proved by a preponderance of the evidence that D.L. is a CHINS.

[2] Concluding that Father had not established reversible error and that the evidence supports the trial court’s CHINS adjudication, we affirm.

Facts and Procedural History

[3] D.L. was born on March 18, 2003, and therefore, she celebrated her eighteenth birthday while this appeal was pending.¹ In November 2017, Father was convicted of two counts of attempted murder, and he is serving an aggregate eighty-year sentence in the Department of Correction. His earliest possible

¹ The juvenile court’s jurisdiction over D.L. may continue until she is twenty-one. *See Ind. Code § 31-30-2-1.*

release date is in 2076. His attempted murder convictions were affirmed on direct appeal.

[4] Father's sister was named D.L.'s guardian when Father could no longer care for her due to the attempted murder charges.² In February 2020, D.L.'s guardian contacted DCS and explained that she could not remain D.L.'s guardian because of D.L.'s behavioral issues. On February 18, DCS removed D.L. from her guardian's care, and, two days later, filed a petition alleging that D.L. was a CHINS.

[5] The juvenile court held a CHINS fact-finding hearing on October 19, 2020. Father refused to admit that D.L. was a CHINS and maintained that his attempted murder convictions were obtained by fraud and deceit. Father informed the court that he had a pending petition for post-conviction relief and was preparing a petition for a writ of habeas corpus. Father asked the court to take judicial notice of his pending post-conviction petition. The court declined because it could not access the matter "on Quest." Tr. p. 20.

[6] The only person Father trusted to care for D.L. was his sister whose guardianship over the child was dissolved. The family case manager testified that D.L. does not have "anyone available to provide her with housing and meet her needs." Tr. p. 14. Father planned to care for D.L. by obtaining his

² The whereabouts of D.L.'s mother are unknown. She was served by publication, and she did not participate in the CHINS proceedings.

release from incarceration pursuant to his pending PCR. He stated that he would have family support upon his release and income from his pension and disability benefits. Tr. p. 27.

- [7] At the conclusion of the fact-finding hearing, the court found that D.L. was a CHINS because Father “is currently incarcerated and unable to provide her with care.” Tr. p. 39. At D.L.’s and DCS’s request, the court awarded placement of D.L. to the Crisis Center in Gary, Indiana. *Id.* at 40. DCS explained that the Crisis Center provides services that would assist D.L. when she is able to transition to independent living. *Id.*
- [8] The trial court set the dispositional hearing for November 9, 2020. DCS moved to continue the hearing after it learned that Father was quarantined in isolation at the prison due to possible Covid-19 exposure and would not be able to attend hearings via video until November 13, 2020. The juvenile court denied DCS’s motion.
- [9] At the November 9 hearing, Father’s counsel objected to the court holding the hearing in Father’s absence. *Id.* at 43. The court told counsel that the court “only [has] communication when we set things up with both video and audio.” Tr. pp. 43-44. The court noted Father’s objection but proceeded with the dispositional hearing in his absence. Tr. p. 44.
- [10] The court determined that allowing Father to communicate with D.L. was appropriate and ordered DCS to arrange for D.L. to have contact with Father

in a supervised setting. The court maintained D.L.’s placement at the Crisis Center. The court did not order any additional services for Father.

[11] Father now appeals the CHINS adjudication.

I. Due Process

[12] First, we address Father’s claim that his due process rights were violated when the juvenile court held the dispositional hearing in his absence.³ “The Due Process Clause of the U.S. Constitution and the Due Course of Law Clause of the Indiana Constitution prohibit state action that deprives a person of life, liberty, or property without a fair proceeding.” *In re C.G.*, 954 N.E.2d 910, 916 (Ind. 2011) (quoting *In re Paternity of M.G.S.*, 756 N.E.2d 990, 1004 (Ind. Ct. App. 2001), *trans. denied*).

[13] In the context of a CHINS proceeding, 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 (1976); *In re G.P.*, 4 N.E.3d 1158, 1165–66. “[D]ue process protections at all stages of CHINS proceedings are ‘vital’ because ‘[e]very CHINS proceeding has the potential to interfere with the rights of parents in the upbringing of their children.’” *In re G.P.*, 4 N.E.3d at 1165 (quoting *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012)). To determine whether Father was denied due process, we balance: “(1) the private interests affected by

³ Because DCS requested a continuance of the dispositional hearing and Father objected to holding the hearing in his absence, we do not address DCS’s claim that Father waived his due process argument.

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 K.D.*, 962 N.E.2d at 1257.

[14] Beginning with the first factor, we observe that Father's interest in the care, custody, and control of his child is "certainly a weighty concern of constitutional import." *In re C.C.*, See *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (explaining that a parent's interest in the upbringing of his or her child is perhaps the oldest of the fundamental liberty interests). Father claims that because the dispositional hearing was held in his absence, he was unable to provide evidence and assist counsel with advocating for necessary services and potential placements for D.L.

[15] Although this factor weighs in Father's favor, it is tempered by Father's inability to have custody of and care for D.L. due to his incarceration. And Father has not advocated for any services or potential placements for D.L. at any stage of these CHINS proceedings. Importantly, Father was represented by counsel at the dispositional hearing. A parent's appearance by counsel has been held to satisfy the requirements of due process. See, e.g., *Hite v. Vanderburgh Cnty. Off. of Fam. & Child.*, 845 N.E.2d 175, 184 (Ind. Ct. App. 2006) (finding no due process violation where incarcerated father appeared only by counsel at permanency hearing).

[16] When considering the second factor, we are required to assess the risk of error created by DCS's decision to proceed with the dispositional hearing in Father's

absence. *In re G.P.*, 4 N.E.3d at 1166. Following a CHINS adjudication, the juvenile court must conduct a dispositional hearing to consider the alternatives for the child’s care, treatment, placement, or rehabilitation; the participation of the parent, guardian or custodian; and the financial responsibility for the services provided. *Ind. Code* § 31-34-19-1. The court must then issue a dispositional order that sets forth the plan of care, treatment, or rehabilitation necessary to address the child’s needs. *I.C.* § 31-34-19-10; *see also In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017) (explaining that the purpose of a dispositional hearing is for the court “to determine [the] next steps in the child’s placement, care, treatment, or rehabilitation and the nature and extent of the parent’s . . . role in fulfilling those steps”).

[17] Because Father is serving an eighty-year sentence, the juvenile court’s paramount concern during the dispositional hearing was seventeen-year-old D.L.’s placement. At the fact-finding hearing, Father admitted that there were no family members available to care for D.L. and he did not offer suggestions for any alternative placements. D.L., who was approaching her eighteenth birthday. Father also agreed with DCS’s recommended placement at the Gary Crisis Center. The Crisis Center provides services that will assist D.L. with her transition to independent living. Father did not request to participate in those services and DCS did not request Father’s participation. Under these unique facts and circumstances, there was little risk of error when the court held the dispositional hearing in Father’s absence, especially because Father was represented by counsel at the hearing.

[18] Third, “the State’s *parens patriae* interest in protecting the welfare of a child is [] substantial.” See *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011). The court and DCS proceeded with the dispositional hearing as scheduled and the court issued the dispositional order, which finalized her placement, after the hearing was completed. Doing so enabled the court to provide D.L. much needed stability.

[19] While we are concerned with the trial court’s apparent disregard for Father’s inability to attend the dispositional hearing due to possible exposure to Covid-19, it is not unreasonable to conclude that the court’s, attorneys’, and DCS service providers’ schedules would have made it difficult to quickly reschedule the hearing. And, importantly, Father was represented by counsel at the dispositional hearing. We cannot conceive of any other outcome for the dispositional hearing given Father’s incarceration, D.L.’s age, and the evidence in the record before us.

[20] For all of these reasons, we conclude that Father’s due process rights were not violated when the juvenile court held the dispositional hearing in his absence.

II. Judicial Notice

[21] Next, Father argues that the juvenile court erred when it refused to take judicial notice of his pending petition for post-conviction relief during the CHINS fact-finding hearing. The court denied Father’s request because the court could not

access the records “on Quest.”⁴ Tr. p. 20. Father claims that the juvenile court’s belief that it could not access his post-conviction records was incorrect.

Appellant’s Br. at 22.

[22] As with all evidentiary questions, we review a trial court’s decision regarding judicial notice for an abuse of discretion. *Horton v. State*, 51 N.E.3d 1154, 1157 (Ind. 2016). A trial court abuses its discretion only if its decision regarding the admission of evidence is clearly against the logic and effect of the facts and circumstances before it, or if the court has misinterpreted the law. *Harrison v. State*, 32 N.E.3d 240, 250 (Ind. Ct. App. 2015), *trans. denied*. Moreover, a claim of error in the admission or exclusion of evidence will not prevail on appeal unless a substantial right of the party is affected. *Ind. Evidence Rule 103(a)*; *In re Des.B.*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014) (stating that “errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party”).

[23] *Indiana Evidence Rule 201(a)(2)(C)* provides that a court may take judicial notice of the “records of a court of this state.” A court may take judicial notice “at any stage of the proceeding.” *Evid. R. 201(d)*. Furthermore, a court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” *Evid. R. 201(c)(2)*.

⁴ Quest is a juvenile case management system that some Indiana counties use instead of the statewide Odyssey case management system. This is one of the weaknesses in using Quest as a standalone case management system.

- [24] Even if we were to conclude that the juvenile court abused its discretion when it refused to take judicial notice of Father's post-convictions proceedings, Father does not claim that the court's alleged error affected his substantial rights. Father testified that he believes that he is unlawfully incarcerated and has filed a petition for post-conviction relief challenging his attempted murder convictions. Tr. pp. 23–26. However, Father's pending post-conviction proceedings were irrelevant to the juvenile court's CHINS determination because Father remains incarcerated and is therefore unable to care for D.L.
- [25] For all of these reasons, we conclude that Father cannot establish that the juvenile court committed reversible error when it refused to take judicial notice of Father's pending post-conviction proceedings.

III. CHINS Adjudication

- [26] Finally, Father argues that the trial court erred when it adjudicated D.L. a CHINS. When reviewing a CHINS determination, we neither reweigh the evidence nor judge the credibility of witnesses. *In re D.J.*, 68 N.E.3d 574, 577–78 (Ind. 2017). Rather, we consider only the evidence supporting the court's decision and the reasonable inferences drawn therefrom. *Id.* at 578.
- [27] Where, as here, the court supplemented its CHINS determination with findings of fact and conclusions of law, we undertake a two-step process. *Id.* We first consider whether the evidence supports the court's findings and, second, whether the findings support the ultimate decision. *Id.* Reversal of a CHINS determination is warranted if the court's decision was clearly erroneous. *Id.* "A

decision is clearly erroneous if the record facts do not support the findings or if it applies the wrong legal standard to properly found facts.” *Id.* (cleaned up).

[28] To establish that D.L. is a CHINS, DCS was required to prove the following elements by a preponderance of the evidence:

- (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:

(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.

[I.C. § 31-34-1-1](#). The latter element “guards against unwarranted State interference in family life, reserving that intrusion for families ‘where parents lack the ability to provide for their children,’ not merely where they ‘encounter difficulty in meeting a child’s needs.’” [D.J.](#), 68 N.E.3d at 580 (quoting [S.D.](#), 2 N.E.3d at 1287).

[29] Here, Father is incarcerated and unable to meet D.L.'s needs. He is unable to provide her with food, clothing, shelter, medical care, education or supervision. DCS and Father could not identify any other person or family member who is able to care for D.L. while Father is incarcerated. Therefore, D.L. needs care that she is not receiving and will not be provided without the coercive intervention of the court.

[30] DCS proved by a preponderance of the evidence that D.L. is a CHINS.

Conclusion

[31] Father has not established that his due process rights were violated or that the juvenile court abused its discretion when it refused to take judicial notice of his pending post-conviction relief petition. And DCS proved that D.L. is a CHINS. We therefore affirm the juvenile court's order adjudicating D.L. a CHINS.

[32] Affirmed.

Riley, J., and Crone, J., concur.