MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

B.M.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

April 5, 2022

Court of Appeals Case No.
21A-JS-2476

Appeal from the
Lake Superior Court

The Honorable
Jeffrey Miller, Magistrate

Trial Court Cause No.
45D06-2105-JS-23

Molter, Judge.

[1] B.M., a high school junior, accumulated over sixty-five unexcused absences from September to February of the 2020–2021 school year. As a result, the

State filed a petition alleging B.M. committed the status offense of truancy. After a fact-finding hearing, the juvenile court adjudicated him as a delinquent for truancy. He now appeals claiming the evidence was insufficient to support the adjudication. Finding no error, we affirm.

Facts and Procedural History

[2] During the 2020–2021 school year, B.M. was a junior at Merrillville High School. He participated in homebound education—a program for children with special needs—due to several of his medical conditions, including autism spectrum disorder. He was only required to attend one hour of instruction every school day, and those hours could be completed outside typical school hours, including on weekends. But between September 2020 and February 2021, B.M. accumulated sixty-six unexcused absences, and he was no longer on track to graduate. The school made many attempts to improve B.M.'s attendance, including sending letters and meeting with his parents, but the absences continued.

[3] On May 10, 2021, the State filed a petition alleging B.M. committed the status offense of truancy. After a fact-finding hearing held on September 2, 2021, the juvenile court adjudicated B.M. delinquent for truancy, then ordered him to participate in probation for six months and submit to a psychological evaluation. He now appeals.

Discussion and Decision

[4] B.M. argues the evidence was insufficient to support his delinquency adjudication for truancy. When reviewing a claim of insufficient evidence regarding juvenile delinquency adjudications, we neither reweigh the evidence nor judge witness credibility, and we only consider the evidence and reasonable inferences favorable to the judgment. *R.B. v. State*, 839 N.E.2d 1282, 1283 (Ind. Ct. App. 2005). We will affirm if there is substantial evidence of probative value to support the judgment. *Id.* Under Indiana Code section 31-37-4-1, a finding by a juvenile court adjudicating a child to be a delinquent for violating the compulsory school attendance law must be based on proof beyond a reasonable doubt. *Id.*

[5] Truancy is the violation of the compulsory school attendance law in Indiana. Ind. Code § 31-37-2-3. That law requires students to attend school each year for the number of days public schools are in session unless their absence is excused. Ind. Code § 20-33-2-5. Truancy is a "status offense," meaning the conduct would not be a crime if committed by an adult. *R.B.*, 839 N.E.2d at 1284. Indiana Code section 31-37-2-1 provides the following two-prong inquiry to adjudicate juvenile delinquency for status offenses:

> A child is a delinquent child if, before becoming eighteen (18) years of age, the child:
>
> (1) commits a delinquent act described in this chapter; and
>
> (2) needs, care, treatment, or rehabilitation that:

(A) the child is not receiving;

(B) the child is unlikely to accept voluntarily; and

(C) is unlikely to be provided or accepted without the coercive intervention of the court.

[6] Juveniles may only be adjudicated delinquent if the State proves both subparts—they committed a delinquent act and they need care, treatment, or rehabilitation. *R.B.*, 839 N.E.2d at 1284. There was sufficient evidence to satisfy both prongs here.

[7] First, as to delinquency, the State introduced the testimony of Candace Lillie, the Merrillville High School assistant principal, that B.M. had 100.5 unexcused absences at the time of the fact-finding hearing. The State also introduced into evidence as Exhibit A the school's truancy referral, which reflected 66 unexcused absences as of the time of the State's petition. B.M. did not object to any of this evidence, and we have previously held that a school record reflecting unexcused absences is sufficient for a delinquency adjudication. *See G.N.*, 833 N.E.2d 1071, 1075–77 (Ind. Ct. App. 2005) (holding that the State's primary exhibit detailing fifteen unexcused absences was sufficient to support a delinquency adjudication); *R.B.*, 839 N.E.2d at 1284–85 (holding that a State's exhibit listing numerous absences was sufficient for a delinquency adjudication).

[8] B.M contends the testimony and exhibit were insufficient because the exhibit was not accompanied by an affidavit that his mother had submitted to the

school doctors' notes for some absences. Lillie testified on cross-examination that the paperwork B.M.'s mother had submitted was not the proper documentation for excused absences. Bennett Jennifer Gallivan, the attendance secretary testified to the same effect. Moreover, Lille's testimony was that because B.M. was in the homebound program, his scheduling was flexible, so a doctor's appointment on a particular day would not preclude him from one hour of instruction some other time in the day or on an alternative day like a weekend day. B.M.'s argument is therefore simply a request that we reweigh the evidence, which we are not permitted to do. *R.B.*, 839 N.E.2d at 1283.

[9] Second, as to the need for care, treatment, and rehabilitation which B.M. is not receiving, is unlikely to accept voluntarily, and requires the court's coercive intervention, the State introduced school records and Lillie's testimony that the absences continued even though the school repeatedly sent letters to B.M.'s parents and met with them about the unexcused absences. Gallivan also testified that B.M. did not attend a single day of school for the 2021–2022 school year. This is enough to satisfy the second prong, and B.M. does not seem to argue otherwise.

[10] Thus, we conclude the evidence was sufficient to support the juvenile court's determination of B.M.'s delinquency beyond a reasonable doubt.[1]

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[1] B.M. also claims he did not have a meaningful opportunity to consult with an attorney at one point during the proceedings. Appellant's Br. at 9. However, B.M. does not develop this argument or support it by citing

[11] Affirmed.

Riley, J., and Robb, J., concur.

to authority, so it is waived. *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004) (concluding appellant waived claim by failing to present a cogent argument).