MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

I.M. and Q.M. (Minor Children)

and

T.M. (Father)

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner

May 4, 2023

Court of Appeals Case No. 22A-JC-2664

Appeal from the Madison Circuit Court

The Honorable Stephen J. Koester, Judge

Trial Court Cause No. 48C02-2201-JC-36
48C02-2201-JC-37

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] T.M. ("Father") appeals the Madison Circuit Court's adjudication of his minor children, I.M. and Q.M. ("the Children"), as Children in Need of Services ("CHINS"). Father raises three issues for our review, namely:

> 1. Whether the Indiana Department of Child Services ("DCS") presented sufficient evidence to support the Children's adjudication as CHINS.
>
> 2. Whether DCS or the trial court violated Father's statutory process rights.
>
> 3. Whether DCS or the trial court violated Father's constitutional process rights.

[2] We affirm.

Facts and Procedural History

[3] Father and E.S. ("Mother") are the parents of the Children. Father and Mother had an on-and-off relationship for several years, and it appears that they never married. In 2019, they separated, and, in February, Father filed a petition for emergency custody over the Children on the Madison Circuit Court's paternity docket, alleging drug use by Mother.[1] After a hearing, in March the paternity

[1] The parties agree that Father filed this petition, but the record on appeal suggests Mother filed it. *See* Appellant's App. Vol. 2, pp. 148, 150, 152.

court entered an order placing custody of the Children with Father.[2] However, it appears neither Mother nor Father received that order.

[4] One year later, in March 2020, Father filed another petition for emergency custody with the paternity court. After a hearing, the paternity court appeared to again grant Father's petition by way of affirming the first order.[3] Neither Mother nor Father learned of the paternity court's second order until early 2022.

[5] Although the record on appeal is unclear on the precise details, at some point Father appears to have pleaded guilty to Level 6 felony intimidation of Mother, for which he was incarcerated for five months. *See* Tr. Vol. 2, pp. 105, 161. Soon thereafter, it appears that Mother obtained an order for protection against Father, which was also around the time of the parents' last separation in 2020. Father also obtained a no-contact order against Mother. *See id.* at 118.

[6] Meanwhile, at all times since the parents last separated, the Children lived with Mother. During that time, Father made no attempts to reach out to the Children. *Id.* at 113. Shortly after the beginning of the Children's 2021-22 academic year in the Pendleton school system, the Children stopped attending

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[2] Again, the parties agree to this, but the record on appeal suggests that the paternity court's order ambiguously awarded emergency custody to both Mother, as the Petitioner, and to Father. *See* Appellant's App. Vol. 2, pp. 152-53.

[3] Once more, this is a point the parties agree on, but the record on appeal suggests that the paternity court's second order clarified that the first order was intended to place custody only with Father. *See* Appellant's App. Vol. 2, pp. 153-54.

school. Q.M. had an Individualized Education Program ("IEP") at the school based on a diagnosis of severe autism.

[7] In December 2021, school officials contacted DCS. DCS assigned Shelby Phipps as the initial family case manager ("FCM"). FCM Phipps spoke with Mother, who stated she had transportation issues getting the Children to the Pendleton schools because the three of them had moved to Anderson. Mother informed FCM Phipps of "previous domestic violence with [F]ather" as the reason Mother and the Children had left Pendleton, which in turn was "what le[d] into them no longer being able to go to those schools." *Id.* at 40. Mother acknowledged that she did not enroll the Children in Anderson's school system or another school, which she attributed in part to concern for the Children "adapting to [new] schools." *Id.* FCM Phipps also spoke with Father, who confirmed that he was aware of the Children's nonattendance at school and stated that he could not "take the [C]hildren into his care at this immediate time." Appellant's App. Vol. 2, p. 133.

[8] About one month later, DCS filed its petition alleging the Children to be CHINS. After that filing but prior to the initial hearing, Father filed a third petition for emergency custody with the paternity court,[4] learned of the paternity court's prior orders on emergency custody, and "appeared at [M]other[']s home with law enforcement" to "hav[e] the [C]hildren removed

[4] There appears to have been no ruling from the paternity court on this petition.

from the home." Tr. Vol. 2, pp. 16-17. But the law enforcement officers on the scene "found the [C]hildren to be relatively safe," and, "knowing [DCS] was already involved," the officers "left the [C]hildren" with Mother. *Id.* at 17.

[9] In early February 2022, the trial court held its initial hearing on the CHINS petition. Mother appeared at that hearing and admitted that the Children were CHINS. Father appeared at that hearing in person and by counsel, and he requested that the Children be placed in his custody in accordance with the paternity court orders and also because DCS's petition did not allege wrongdoing on his part. DCS opposed Father's request and asked the court to keep the Children's placement with Mother. The court found probable cause to believe the Children to be CHINS and awarded wardship over the Children to DCS. The court also ordered the Children's placement to remain with Mother.

[10] Over the next several months, DCS did not restrict Father's access to the Children at Mother's residence, yet he did not exercise any visitation. Father would later state that he did not think he could visit the Children due to the order for protection, but the order for protection had expired by this time, and neither did Father attempt to coordinate visitation through a third party to avoid any concerns with possibly violating the order for protection.

[11] In late May 2022, the court began the fact-finding hearing on the merits of the CHINS petition. On the first day of that hearing, FCM Phipps testified that, at all relevant times, the Children have been in Mother's care. FCM Phipps added that the Children were never "detained" as they had remained placed with

Mother. *Id.* at 44. And she further testified that, when she learned of the Children's educational neglect and reached out to Father, he admitted to being aware of the Children's nonattendance, and he declined on multiple occasions to have the Children placed with him. *Id.* at 49. On cross-examination, Father asked FCM Phipps why DCS had not placed the Children with him pursuant to the paternity court orders, and FCM Phipps stated that she did not believe DCS had the authority to remove the Children from Mother's care without a detention order from the trial court.

[12] A second family case manager, Abigail Meus, who took over for FCM Phipps during the course of the CHINS proceedings, also testified at the first day of the fact-finding hearing. FCM Meus testified that Mother was engaged in and participating cooperatively in various services. She added that DCS had offered services to Father, including domestic-violence services, and he replied that he would "be willing" to do them but he "d[id] not need them." *Id.* at 63. FCM Meus also stated that, when Father had arrived at Mother's home with law enforcement officers prior to the initial hearing, the Children did not want to leave their Mother's home. *Id.* at 70. Since then, Father had not had any interactions with the Children, which was especially problematic for Q.M., who was nonverbal.

[13] Father's cross-examination of FCM Meus focused on Father's custody orders in the paternity court and whether, by leaving the Children with Mother pursuant to the trial court's order at the initial hearing, DCS had removed the Children from Father's care. *See, e.g.*, *id.* at 71-72. Father further asked if DCS had acted

in compliance with the paternity court orders by having Father exercise visitation when the paternity court orders placed custody with Father and visitation with Mother. FCM Meus stated that DCS did not do "supervised visitation since we did not have a removal order," and Father asked, "so you're not con[sidering] the [initial] order where [DCS] request[ed] that the [Children] remain with [M]other as a removal order?" *Id.* at 75. FCM Meus stated that she did not consider the court's initial order to be a removal order. She added that DCS had in no way "restrict[ed F]ather[']s access" to the Children and Father had not sought to involve DCS or another third party as an intermediary to facilitate his access to the Children. *Id.*

[14] The court then continued the fact-finding hearing to October. In early July, DCS filed a motion to correct the court's initial-hearing order via a nunc pro tunc order. In that motion, DCS noted that the parties had argued the Children's placement at the initial hearing, that the court had rejected Father's request to have the Children placed in his care notwithstanding the paternity court orders, and that the court had ordered the Children to remain in the care of Mother. According to DCS, the initial order thus amounted to "a legal detention of the Children from [Father]." Appellant's App. Vol. 2, p. 85.

[15] In what appears to have been a responsive motion, Father sought to dismiss the CHINS petition and to have the Children placed in his custody. In particular, Father argued that no detention hearing had been held by the court in accordance with Indiana Code section 31-34-4-6 (2021), which provides in relevant part that DCS is to inform a parent of "[t]he right to have a detention

hearing held by a court within forty-eight (48) hours after the child's removal from the home and to request return of the child at the hearing." The trial court denied Father's requests, granted DCS's request, and amended the initial order by way of a nunc pro tunc entry.

[16] Thereafter, the court held the second and final day of the fact-finding hearing. By that time, DCS had made multiple referrals for services to Father, but he had not participated in any of them. The Children, meanwhile, were "doing quite well" in Mother's care, Tr. Vol. 2, p. 95, and they had "successfully completed the 2021-2022 school year," Appellant's App. Vol. 2, p. 88. Father, meanwhile, testified that the Children were only in need of services as long as they were with Mother. Tr. Vol. 2, p. 128.

[17] Following the hearing, the court adjudicated the Children to be CHINS. In doing so, the court ordered DCS to have care and placement of the Children and for Father to exercise supervised visitation. At a permanency hearing in January 2023, Father had yet to engage in domestic-violence services, and he acknowledges in his brief to this Court that "to date [he] has not had any contact with his [C]hildren." Appellant's Br. at 9. This appeal ensued.

Standard of Review

[18] A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). A CHINS adjudication under Indiana Code section 31-34-1-1 requires three basic

elements: that the parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and perhaps most critically, that those needs are unlikely to be met without State coercion. Specifically, section 31-34-1-1 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 . . . to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:
>
> (A) when the parent . . . is financially able to do so; or
>
> (B) due to the failure, refusal, or inability of the parent . . . 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.

[19] When we review a CHINS adjudication, we neither reweigh the evidence nor judge the credibility of the witnesses, and we will consider only the evidence and reasonable inferences that support the trial court's decision. *K.D.*, 962

N.E.2d at 1253. Importantly, in family law matters, we generally grant latitude and deference to trial courts in recognition of the trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied*.

[20] It is well established that the purpose of a CHINS adjudication is to protect the children, not punish the parents. *K.D.*, 962 N.E.2d at 1255. Therefore, the focus of a CHINS proceeding is on "the best interests of the child, rather than guilt or innocence as in a criminal proceeding." *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). For this reason, the acts or omissions of one parent can cause a condition that creates the need for court intervention. *Id.*

[21] Finally, courts should consider the family's condition not just when the case was filed, but also when it is heard to avoid punishing parents for past mistakes when they have already corrected them. *D.J.*, 68 N.E.3d at 580-81. This "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.'" *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (quoting *Lake Cnty. Div. of Family & Child. Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

Issue One: Sufficiency of the Evidence

[22] On appeal, Father first argues that DCS presented insufficient evidence to support the court's adjudication of the Children as CHINS. Father's essential argument here is that, if the Children are placed in his care, they "would not

need services because [he] can provide for all [of] their needs." Appellant's Br. at 15.

[23] We do not agree with Father's argument. The evidence presented to the trial court shows that Mother and the Children left Pendleton due in part to domestic violence involving Father; that, while in Anderson, Father knew of Mother's educational neglect of the Children but did not attempt to remedy it; and that, during the CHINS proceedings, Father continued to be recalcitrant in participating in services and in visiting with the Children. Father's argument is merely a request for this Court to reweigh the evidence, which we will not do.

Issue Two: Statutory Process

[24] We next address Father's argument that DCS violated his statutory process rights when, according to Father, it effectively detained the Children from his custody without a detention hearing. Father's argument on this issue relies on Indiana Code section 31-34-4-6, which, again, provides in relevant part that DCS is to inform a parent of "[t]he right to have a detention hearing held by a court within forty-eight (48) hours *after the child's removal from the home* and to request return of the child at the hearing." (Emphasis added.)

[25] We agree with DCS that section 31-34-4-6 was not applicable here. At no point did DCS remove the Children from their home with Mother. Indeed, Father's argument is premised on the paternity court's custody orders. For unknown reasons, neither Mother nor Father learned of those orders; Father asserts that he followed up with the paternity court on numerous occasions but still was not

informed. In any event, for several years before DCS's involvement and during the entirety of the CHINS proceedings, the Children were in fact living in Mother's home. Further, the evidence shows that, since Mother and Father last separated in 2020, Father made no attempts to reach out to the Children. Likewise, during the CHINS proceedings, he did not visit the Children. By all appearances, while Father may have had a legal right to custody at some point, he never seemed interested in exercising it. Neither DCS nor the trial court violated Indiana Code section 31-34-4-6 when they took the facts as they were and concluded that the Children were in fact living in Mother's home, where the Children then stayed. We reject Father's argument on this issue.

Issue Three: Constitutional Process

[26] Last, Father asserts numerous alleged violations of his constitutional due process rights. But, aside from the issues discussed above, at no point in the proceedings below did Father raise any objections to any procedures employed by DCS or the trial court as a violation of his constitutional rights.[5] *See Plank v. Cmty. Hosps. of Indiana, Inc.*, 981 N.E.2d 49, 53 (Ind. 2013). We therefore

[5] Among his alleged constitutional due-process errors, Father states that the trial court's dispositional decree is contrary to law because it "did not address the specific reasons for the CHINS findings" and because it did not explain the court's reason for "placing the [C]hild[ren] with the [M]other rather than the [F]ather." Appellant's Br. at 20. Father adds that the trial court violated his rights by ordering him to participate in irrelevant services. We conclude that these arguments are not supported by citations to the record, citations to relevant precedent, or cogent reasoning, and, as such, we decline to consider them. *See* Ind. Appellate Rule 46(A)(8)(a).

conclude that none of these alleged errors have been preserved for appellate review, and we do not consider them. *See id.* at 55.

Conclusion

[27] For all of the above-stated reasons, we affirm the trial court's adjudication of the Children as CHINS.

[28] Affirmed.

May, J., and Bradford, J., concur.