

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of J.S.1., J.S.2.,
and B.M., (Minor Children),
and

J.S. (Father),
Appellant-Respondent,

v.

The Indiana Department of
Child Services,
Appellee-Petitioner.

February 23, 2021

Court of Appeals Case No.
20A-JM-1389

Appeal from the Hendricks
Superior Court

The Honorable Mark A. Smith,
Judge

The Honorable Mark Loyd, Judge

Trial Court Cause No.
32D04-2006-JM-66
32D04-2006-JM-67
32D04-2006-JM-68

Tavitas, Judge.

Case Summary

- [1] J.S. (“Father”) appeals the trial court’s grant of motions to compel filed by the Hendricks County Department of Child Services (“DCS”). Finding that Father’s appeal is moot because the forensic interviews of the children have been completed and because DCS found the allegations to be unsubstantiated, we dismiss this appeal.

Issue

- [2] Father raises one issue, which we restate as whether the trial court properly granted DCS’s motions to compel.

Facts

- [3] Father is the biological father of J.S.1, born in May 2004, and J.S.2, born in June 2006, and the stepfather of B.M., born in August 2007.¹ On June 1, 2020, DCS received a report of inappropriate sexual behavior by J.S.1 directed at J.S.2 and B.M. The report alleged that J.S.1 videotaped B.M. while she was in the shower and sold the video to his friends and that J.S.1 fondled J.S.2’s breast in the middle of the night. Father, however, refused to cooperate with DCS. Father refused to allow DCS access into the residence or access to the children.

¹ R.M. is the mother of J.S.1; J.H. is the mother of J.S.2; Father’s wife, K.S. is the mother of B.M, and K.M. is the father of B.M. The other parents are not parties to this appeal.

[4] On June 11, 2020, DCS filed motions to compel Father and the other parents to make the children available for interviews and cooperate with the DCS investigation pursuant to Indiana Code Section 31-33-8-7.² On June 14, 2020, Father filed a motion for change of judge. After the June 17, 2020 hearing, the trial court entered an order: (1) granting the motion for change of judge; (2) adopting the “parties[’] agreement in a companion case out of Marion County”; (3) ordering that J.S.1 shall not reside with J.S.2 or B.M. “pending further court order”; (4) ordering the parents to “not allow any direct or indirect contact between” the children “pending further court order”; and (5) ordering that “[a]ll issues of the merits shall be addressed by the new judge.” Appellant’s App. Vol. II p. 43.

[5] The case was then reassigned to a new judge. On July 14, 2020, the trial court held a hearing on DCS’s motions to compel. After the hearing, the trial court granted DCS’s motions to compel. The trial court found “good cause” to grant the motions and ordered the parents to allow DCS access to the children for forensic interviews by July 16, 2020. *Id.* at 47.

[6] Father and K.S. filed a motion to stay the order pending appeal, which the trial court denied. Father then filed a notice of appeal. During the appeal, DCS filed a motion to supplement the record with evidence that the forensic

² A separate motion to compel was filed in each cause.

interviews of the children were completed and that, in August 2020, DCS found the allegations to be unsubstantiated.

Analysis

[7] Father argues that the trial court erred by granting the motions to compel pursuant to Indiana Code Section 31-33-8-7.³ Father argues that the trial court's grant of the motions to compel was clearly erroneous because DCS failed to provide independent evidence of the allegations outside of an anonymous report; DCS only presented hearsay evidence at the hearing, which according to Father violated the Indiana Rules of Evidence; the trial court erred by denying the motion to stay; and the trial court's June 2020 order, which occurred after the motion for change of judge was filed, was improper. DCS, however, responds that Father's appeal is moot based upon DCS's motion to supplement the record.

[8] We first address DCS's motion to supplement the record, which we grant by way of a separate order. "Although it is generally true that we may not consider matters outside the record on appeal, we have also noted that the parties should inform the appellate court of a post-judgment change in

³ Indiana Code Section 31-33-8-7(d) provides:

If a custodial parent, a guardian, or a custodian of a child refuses to allow the department to interview the child after the caseworker has attempted to obtain the consent of the custodial parent, guardian, or custodian to interview the child, the department may petition a court to order the custodial parent, guardian, or custodian to make the child available to be interviewed by the caseworker.

circumstances which might render a pending appeal moot.” *In re F.S.*, 53 N.E.3d 582, 590-91 (Ind. Ct. App. 2016) (internal citations and quotations omitted). DCS’s motion notified this Court that the forensic interviews of the children were completed and that, in August 2020, DCS found the allegations to be unsubstantiated. These are post-judgment changes that might render the pending appeal moot. Accordingly, in a separate order, we grant DCS’s motion to supplement the record.

[9] An appeal or issue is deemed moot when no effective relief can be rendered to the parties before the court. *Id.* at 590. “When the controversy at issue has been disposed of in a manner that renders it unnecessary to decide the question presented, the case will usually be dismissed.” *Id.* Our courts, however, “have long recognized that a moot case may nevertheless be decided on its merits under an exception to the general rule when the case involves questions of ‘great public interest.’” *Id.* (quoting *C.L.Y. v. State*, 816 N.E.2d 894, 900 (Ind. Ct. App. 2004), *trans. denied*). “Cases falling within the public interest exception typically contain issues likely to recur.” *Id.* In addition, an appeal, which might otherwise be dismissed as moot, may be heard “where leaving the judgment undisturbed might lead to negative collateral consequences.” *Id.*

[10] In *F.S.*, the trial court granted DCS’s motion to compel interviews of the children during an investigation of drug use by the mother despite the fact that “[m]ultiple reports and multiple visits led to the same result: no evidence supporting an allegation of abuse or neglect.” *F.S.*, 53 N.E.3d at 598. This Court held that the mother’s appeal of the grant of the motion to compel was

not moot even though the mother was later arrested, consented for DCS to interview the children, and the children were adjudicated CHINS. There, we agreed that the “case involve[d] a matter of constitutional proportions and [was] of great public interest.” *Id.* at 591.

[11] Here, Father also argues that this case involves an issue of great public interest:

This case involves questions of great public interest. Do the rules of evidence apply in a Motion to Compel hearing? What is the proper application of *In re F.S.*? Can an emergency exist in a Motion to Compel hearing that would allow a judge to have the hearing after a timely motion for change of judge has been filed? For these reasons, this appeal on these matters is not moot.

Appellant’s Br. p. 14.

[12] DCS responds that the allegations were ultimately found to be unsubstantiated; the grant of the motions to compel did not have negative collateral consequences, such as those found in a CHINS adjudication; this appeal cannot grant relief to Father, as the DCS investigation has been concluded; and there is no pressing issue of great public interest here. DCS notes that such motions to compel have been thoroughly considered, discussed, and resolved in several other cases. *See, e.g., F.S.*, 53 N.E.3d 582; *In re A.H.*, 992 N.E.2d 960 (Ind. Ct. App. 2013), *trans. denied*; *In re G.W.*, 977 N.E.2d 381 (Ind. Ct. App. 2012), *trans. denied*.

[13] We agree with DCS here and find *F.S.* distinguishable. Because the forensic interviews have already been performed and DCS found the allegations

unsubstantiated, there is no relief that we can grant to Father here.

Accordingly, the issue is moot. Further, we decline to apply an exception to address Father's arguments. Father has not demonstrated that the issues he presents are likely to recur, involve questions of great public interest, or subject him to negative collateral consequences. Accordingly, we dismiss Father's appeal.

Conclusion

[14] As the forensic interviews at issue in the motions to compel have already occurred and DCS found the allegations unsubstantiated, we conclude that Father's arguments are moot. Accordingly, we dismiss Father's appeal.

[15] Dismissed.

Bailey, J., and Robb, J., concur.