

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Matter of:
J.W. (Minor Child),
Child in Need of Services,

And

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

April 25, 2022

Court of Appeals Case No.
21A-JC-2237

Appeal from the Marion Superior
Court Juvenile Division

The Honorable Marshelle
Broadwell, Judge

The Honorable Danielle Gaughan,
Magistrate

v.

Indiana Department of Child
Services,

Appellee-Petitioner,

And

Kids' Voices of Indiana.

Appellee-Guardian ad Litem.

Trial Court Cause No.
49D16-2012-JC-2696

Altice, Judge.

Case Summary

[1] J.T. (Father), the father of J.W. (Child), appeals the Child in Need of Services (CHINS) adjudication of Child, claiming that the trial court abused its discretion in continuing the factfinding hearing. As a result, Father claims that the continuance violated his right to due process. Father also maintains that the adjudication of Child as a CHINS was clearly erroneous and not supported by sufficient evidence.

[2] We affirm.

Facts and Procedural History

- [3] Child was born on December 15, 2020. Shortly before giving birth, K.W. (Mother) became upset about the various conditions in the hospital and the treatment she was receiving. Mother claimed that the hospital staff was “drugging her” and “trying to kill” Child. *Appellant’s Appendix Vol. II* at 25. Father also complained about the hospital personnel and had to be escorted from the building because of his “erratic and aggressive behavior.” *Id.*
- [4] When Child was born, Mother’s older children (Siblings) were subjects of an ongoing CHINS proceeding. On December 18, 2020, the Indiana Department of Child Services (DCS) filed a CHINS petition alleging, among other things, that Mother and Father (collectively, Parents) failed to provide Child with “a safe, stable, and appropriate living environment free from substance abuse.” *Id.* at 24. Child was taken into custody and placed in foster care.
- [5] Parents did not appear at the December 18 detention hearing, and the juvenile court observed that Father, who had an active arrest warrant, refused to meet with DCS’s family case manager (FCM) to accept reunification services. The juvenile court then continued the initial hearing to January 5, 2021. Parents failed to appear at that hearing, and Child remained in foster care. The juvenile court again continued the initial hearing to February 2, 2021.
- [6] Father did not appear at the February 2 hearing but was represented by counsel. At that time, Father’s counsel waived the sixty-day statutory timeframe set forth in Ind. Code § 31-34-11-1(a) that requires a factfinding hearing to be completed not later than sixty days after the CHINS petition is filed. Father’s counsel

requested that the juvenile court set the matter for mediation and factfinding hearing within 120 days of the filing of the CHINS petition.¹ The juvenile court noted that, “Counsel agree the 120th day is 4/17/21.” *Appellant’s Appendix Vol. II* at 79. The juvenile court set the matter for mediation on March 15 and the factfinding hearing on April 6, 2021. The mediation was unsuccessful.

[7] On April 6, over Father’s objection, the juvenile court continued the factfinding hearing to August 24, 2021. The juvenile court stated that “there was good cause under Child’s case to set this beyond the 120-day statutory trial deadline, given that there are three older children that the Court’s already removed [from the] remote schedule. Just can’t accommodate a trial within 120 days.” *Transcript Vol. II* at 11. The juvenile court further noted that the hearing on all of the CHINS cases “is going to take a whole morning.” *Id.* at 13.

[8] The juvenile court had already set an August 24 permanency hearing with regard to Siblings, so it selected the same day for Child’s factfinding hearing. The juvenile court entered an order on April 6, 2021, providing in part that: “The court now finds good cause to set [the matter] beyond the 120-day statutory deadline because of the congested remote dockets being unable to accommodate the lengthy hearings.” *Appellant’s Appendix Vol. II* at 99.

¹ I.C. § 31-34-11-1 (b) allows for an additional sixty-day extension if agreed upon by the parties.

[9] On June 16, Father filed a motion to dismiss, alleging that

5. Due to the COVID-19 pandemic and congestion of the court's calendar, . . . the Court on its own motion found good cause to go beyond the 120-day statutory time limit and continued the fact finding for a later date, specifically, August 24, 2021.

6. Counsel for Father objected to the finding of 'good cause' on April 6, 2021 and the setting of a new Fact-Finding date after the 120-day deadline.

. . .

12. Under Indiana Code 31-34-11-1(d) a trial court must dismiss a CHINS petition if the court does not conclude a fact-finding hearing within 120 days of the State's filing of the petition.

13. The Indiana Supreme Court has held that the 120-day time limit may only be extended for 'good cause.' *A.C. v. Ind. Dep't of Child Servs. (In re MS.)*, 140 N.E.3d 279, 280-81 (Ind. 2020). . . . Trial Rule 53.5 gives trial courts the necessary flexibility to ensure fairness in these types of proceedings and effectuate legislative intent. *Id.* at 285.

14. The 120-day statutory maximum time limit in this case expired on April 15, [sic] 2021.[²]

² The juvenile court previously noted in its order of February 2, 2021, that Father's counsel agreed that the 120th day was April 17, 2021.

15. The August 24, 2021 Fact Finding is scheduled for 251 days beyond the date the petition was filed, 131 days beyond the expiration of the 120-day statutory time period.

16. While ‘good cause’ was found by this court on April 6, 2021 to go beyond the 120-day time period, such a finding should not justify delays that go more than two times beyond the statutory time limit.

...

20. Here Respondent-Mother and Respondent-Father have not waived the 120-day time period and parties were ready to proceed prior to the passing of the 120-day deadline.

21. The continuance in this case was issued by the Court and never requested by any party.

22. Furthermore, the finding of ‘good cause’ in this case was not predicated on the necessity to ensure fairness in the proceeding, but rather on ‘congested remote dockets being unable to accommodate lengthy hearings.’

23. [The] extent to which the fact finding in this matter has been delayed is excessive and violates Father’s due process rights.

Appellant’s Appendix Vol. II at 107-08. The juvenile court denied Father’s motion that same day.

[10] On August 24, 2021, the juvenile court conducted the factfinding hearing.³ Although Father received notice of the hearing, he failed to appear. Father's counsel informed the juvenile court that he had been unable to contact Father. DCS confirmed that it had not had any recent contact with Father.

[11] The evidence showed that when DCS initially became involved with Child, case manager Sunnie Trunk texted Father and left a voicemail on his phone. Father returned the call at some point, stating that "he would not meet with [Trunk] because he had a warrant for his arrest." *Transcript Vol. II* at 56, 61. Trunk testified that DCS could not place Child in Father's care because he would not meet with her. And Mother did not want Child placed with anyone in Mother's family.

[12] Trunk also testified that DCS history "plays a significant role" in DCS's ultimate recommendation, and Trunk confirmed that there were open CHINS cases regarding Siblings that were filed on August 24, 2020. *Id.* at 57. Another DCS caseworker, Haley Hawver, who was managing Siblings' CHINS cases, explained that DCS's involvement with Siblings commenced when they were found in a car with Parents, who both "were believed to be under the influence of illegal substances." *Id.* at 67. Hawver testified that Siblings "were dirty" and "not properly clothed." *Id.* at 64.

³ Mother, who was homeless, admitted that Child was a CHINS because she required "the assistance of DCS to ensure that Child [would have] a safe and stable home free from substance abuse." *Transcript Vol. II* at 29-30. The juvenile court accepted Mother's admission.

[13] Trunk summarized the safety concerns for Child based on her assessment:

So when I went to the hospital and I talked with the social worker, Ms. Lynch, she had told me that they were going to place mom on a psychiatric hold so she would not have a caregiver because Dad was escorted out of the hospital and told not to return due to having an active warrant out for his arrest. So nobody was able to pick the baby up from the hospital. So therefore [Child] had no caregivers at the time.

Id. at 60.

[14] The evidence also showed that while Hawver referred Father for supervised visits with Child in early April 2021, Father visited Child only once during that month. Thereafter, Father either canceled the visits or failed to show up for them. At some point, Father told Hawver that he “did not need any services.” *Id.* at 68-70. The evidence showed that Father was unemployed and refused to submit to drug screens.

[15] Although a plan for Father to engage in DCS services was in place, he failed to participate. Father met only once with the manager of one of the parental programs. Father failed to attend the next scheduled meeting and he texted the case manager that “he had gotten tied up or that he had gotten busy.” *Id.* at 47-48. Father was ultimately discharged from the program because of his non-participation.

[16] According to Hawver, Father went “MIA” near the end of April 2021. *Id.* at 69. Her last contact with Father was sometime during that month, despite her

continued efforts to reach Father and enroll him in services. Hawver agreed that there were concerns about Father's drug use and his inability to parent Child. Thus, Hawver recommended that Father participate in a substance abuse assessment and submit to drug screens. Hawver also suggested that Father engage in parenting services that DCS offered.

[17] The juvenile court adjudicated Child a CHINS at the conclusion of the factfinding hearing and subsequently issued findings of fact and conclusions of law in support of its decision. Thereafter, the juvenile court held a dispositional hearing on September 21, 2021. Father failed to appear and was incarcerated following his conviction on a handgun charge and resisting arrest. DCS's counsel noted that there was an active arrest warrant for Father from another county on drug-related charges.

[18] At the conclusion of the hearing, the juvenile court ordered Father into reunification services that included substance abuse assessment and any recommendations, random drug screens, father engagement services, and all recommendations made by service providers.

[19] Father now appeals. Additional information will be provided below as needed.

Discussion and Decision

A. Continuance of the Factfinding Hearing

[20] Father claims that the juvenile court abused its discretion in denying his motion to dismiss. Specifically, he argues that continuing the factfinding hearing well past the 120-day timeframe set forth in I.C. § 31-34-11-1(b) violated his right to due process.

[21] I.C. § 31-34-11-1 provides that

(a) Except as provided in subsection (b), unless the allegations of a petition have been admitted, the juvenile court shall complete a factfinding hearing not more than sixty (60) days after a petition alleging that a child is a child in need of services is filed in accordance with IC 31-34-9.

(b) The juvenile court may extend the time to complete a factfinding hearing, as described in subsection (a), for an additional sixty (60) days if all parties in the action consent to the additional time.

...

(d) If the factfinding hearing is not held within the time set forth in subsection (a) or (b), upon a motion with the court, the court shall dismiss the case without prejudice.

[22] We initially observe that trial courts have the inherent authority to control the conduct of trials. *Noble County v. Rogers*, 745 N.E.2d 194, 199 (Ind. 2001). And our Supreme Court has determined that “despite the deadlines in the CHINS statute, Indiana Trial Rule 53.5 allows a court, for good cause shown to continue a hearing *beyond* those deadlines.” *Matter of J.C.*, 142 N.E.3d 427, 431 (Ind. 2020) (emphasis in original).

- [23] On appeal, a trial court's determination of a continuance for good cause is reviewed for an abuse of discretion. *In re K. W.*, 12 N.E.3d 241, 243-44 (Ind. 2014). A trial court abuses its discretion when it reaches a conclusion that is clearly against the logic and effect of the facts or the reasonable and probable deductions which may be drawn therefrom. *Matter of K. W.*, 178 N.E.3d 1199, 1206 (Ind. Ct. App. 2021).
- [24] In this case, the parties agree that the sixty-day timeframe to hold the factfinding hearing pursuant to I.C. § 31-34-11-1(a) was "February 16, 2021." *Appellant's Appendix Vol. II* at 24. And the record reflects that Father's counsel waived that timeframe and consented to expand the factfinding hearing to 120 days pursuant to I.C. § 31-34-11-1(b). *See Matter of J.C.*, 142 N.E.3d at 431-32. The juvenile court's order shows that Father's counsel agreed that "the 120th day is" April 17, 2021. *Id.* at 79.
- [25] The juvenile court commenced the factfinding hearing on April 6, 2021, which was prior to the expiration of the 120-day timeframe. Prior to receiving evidence, however, the juvenile court noted that it had already found good cause to continue Siblings' cases beyond the 120-day timeframe. Counsel for DCS requested the juvenile court to find good cause for scheduling Child's factfinding hearing beyond the 120-day timeframe so that Child's and Siblings' cases could be heard on the same day. The juvenile court also indicated its desire to hold the hearings for Child and Siblings together.
- [26] Thus, the juvenile court entered the following order:

The Court sets this matter for an off-docket fact finding. The Court notes that good cause has already been found to set this matter beyond the statutory deadline for [Siblings]. *The Court now finds good cause to set [Child] beyond the 120-day statutory deadline because of the congested remote dockets being unable to accommodate the lengthy hearings.*

Id. at 99 (emphasis added).

[27] In sum, the juvenile court cited its heavy caseload and congested calendar in concluding that the lengthy hearings could not be conducted within the 120-day timeframe. In light of these circumstances, we cannot say that the juvenile court's decision to continue Child's case beyond the 120-day timeframe under I.C. § 31-34-11-1 was clearly against the logic and effect of the facts and circumstances before it. Thus, the juvenile court did not abuse its discretion in denying Father's motion to dismiss.

[28] Similarly, we reject Father's claim that the trial court's decision to continue the matter violated his right to due process. 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." *Matter of E. T.*, 152 N.E.3d 634, 640 (Ind. Ct. App. 2020), *trans. denied*. Due process "requires the opportunity to be heard at a meaningful time and in a meaningful manner." *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Although due process "is not dependent on the underlying facts of a particular case, it is nevertheless flexible and calls for such procedural protections as the particular situation demands." *Matter of E. T.*, 152 N.E.3d at 640.

[29] At the August 24, 2021 hearing, Father's counsel objected to the admission of evidence and vigorously advocated for his client. Counsel also insisted on making a closing argument on Father's behalf. Father has not shown how the factfinding hearing, although delayed, was unfair or how he was denied the opportunity to be heard at a meaningful time. Therefore, Father has failed to demonstrate how his due process rights were violated.

B. CHINS Adjudication

[30] Father argues that the evidence was insufficient to support the CHINS determination. In support of that contention, Father points to various allegations that DCS advanced in the CHINS petition regarding Father's unemployment status, his failure to appear for court hearings, and his failure to comply with various services that DCS recommended.

[31] When reviewing the sufficiency of evidence claims, we give due regard to the juvenile court's ability to assess the credibility of witnesses. *In re Des.B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). We neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the juvenile court's decision. *Id.*

[32] When, as here, the juvenile court issues findings of fact and conclusions thereon, we apply a two-tiered standard of review. *In re R.P.*, 949 N.E.2d 395, 400 (Ind. Ct. App. 2011). We consider first whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will set aside the trial court's findings and conclusions only if they are clearly erroneous

and a review of the record leaves us firmly convinced that a mistake has been made. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *K.B. v. Ind. Dep’t of Child Servs.*, 24 N.E.3d 997, 1001-02 (Ind. Ct. App. 2015). “A judgment is clearly erroneous if it relies on an incorrect legal standard.” *Id.* at 1002.

[33] In a CHINS proceeding, DCS bears the burden of proving by a preponderance of the evidence that a child meets the statutory definition of a CHINS. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). DCS is required to establish that

(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: . . . 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.

[34] Our Supreme Court has interpreted I.C. § 31-34-1-1 to require “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.” *In re S.D.*, 2 N.E.3d 1283,

1287 (Ind. 2014). The statute does not require a court to wait until a tragedy occurs to intervene. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009).

Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is not to punish the parents, but to protect children. *Id.*

[35] In this case, Father generally points to some of DCS’s allegations in the CHINS petition and concludes that the evidence was insufficient to support the adjudication. He does not explain, however, how those allegations rendered the judgment clearly erroneous. Thus, Father has waived this issue. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant’s brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal); *see also Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (recognizing that the failure to present cogent argument waives the issue for appellate review), *trans. denied.*

[36] Waiver notwithstanding, we note that because Father has not specifically challenged any of the juvenile court’s findings, the findings “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992). The juvenile court’s findings in this case include the following:

5. Father spoke with the DCS assessment worker on the phone and stated that he would not meet with her because he had a warrant for his arrest.

6. A CHINS petition was filed regarding Child on December 18, 2020.

7. Father was arrested on the warrant and held in the custody of the Marion County Jail. Father was later released and DCS offered him services to assist him in finding employment.

8. Father's Engagement was put in place but Father did not participate.

9. Supervised parenting time was put in place for Father. Father participated in one visit and thereafter he either cancelled or did not show.

10. Father has received notice of these proceedings and of this fact finding today and he fails to appear today.

11. Father has not maintained contact with DCS, has not participated in services, has not appeared in Court and has not been participating in parenting time with Child. Father has not seen Child since April.

12. Father has not demonstrated an ability or willingness to parent Child or even made himself available to parent Child.

13. Child is currently placed in foster care and has been in foster care since December of 2020 where she is doing well.

Appellant's Appendix Vol. II at 146-47.

[37] The evidence presented at the factfinding hearing established that Father refused to meet with the caseworker because he feared being arrested on an outstanding warrant. The case manager explained that DCS could not place Child with Father because he refused to meet with her. Even after Father was

released from jail, he visited Child only once. Thereafter, Father either canceled or “no-showed” for visits. *Transcript Vol. II* at 68-70.

[38] In sum, DCS established that Father was in no position to provide care or shelter for Child because he failed to maintain contact with DCS, did not participate in hearings, and failed to visit Child or participate in offered DCS services. Father’s conduct endangered Child, and DCS’s intervention was necessary to safeguard Child. *See, e.g., In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2020) (observing that the same evidence determining that a parent’s acts or omissions endangered a child may also support the determination that coercive intervention is necessary to safeguard the child).

[39] For all these reasons, the juvenile court’s decision to adjudicate Child a CHINS is not clearly erroneous.

[40] Judgment affirmed.

Bailey, J. and Mathias, J., concur.