MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of: Dam.G., Dar.G., A.R., Children Alleged to be in Need of Services, and L.G. (Mother)

L.G., (Mother)

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner

May 30, 2023

Court of Appeals Case No.
22A-JC-2143

Appeal from the
Allen Superior Court

The Honorable
Beth A. Webber, Magistrate

Trial Court Cause Nos.
02D08-2203-JC-126
02D08-2203-JC-127
02D08-2203-JC-128

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

[1] L.G. ("Mother") brings this interlocutory appeal of a trial court's order in a CHINS case. But because Mother doesn't actually challenge the order she purports to be appealing—in fact, she agrees with it—we dismiss the appeal.

Facts and Procedural History

[2] Mother is the biological mother of Dam.G., Dar.G., and Dav.G. M.B. ("Father") is the biological father of these three children plus A.R. (A.R.'s biological mother passed away). Mother and Father were not married and "rotated [the four children] back and forth between their two homes because of their work schedules." Tr. p. 11.

[3] In March 2022, the Indiana Department of Child Services (DCS) filed a petition alleging that three of the four children—Dam.G., Dar.G., and A.R.—were CHINS due to educational neglect. The fourth child, Dav.G., was in kindergarten and doing well. The children remained in Mother's and Father's care.

[4] On May 31, a family case manager visited Mother's home and heard screaming. When she went inside, Dam.G. said that Mother had hit him in the

face. The family case manager contacted her supervisor and then Father. Father arrived, took all the children out of Mother's home with her permission, and placed them with relatives. Appellant's App. Vol. II p. 36.

[5] A few days later, the trial court held a detention hearing and ordered DCS to file a CHINS petition as to Dav.G. and an amended CHINS petition as to Dam.G., Dar.G., and A.R. because the alleged battery on May 31 was "completely different" than educational neglect. Tr. p. 20. The court reasoned that although Mother and Father agreed to place the children with relatives on May 31, the removal was "effectively" caused by DCS because it was "standing in [Mother's] living room." *Id.* at 18. DCS objected, noting it was still investigating the May 31 incident and had no verifiable basis to file new or amended CHINS petitions.

[6] On June 21, the trial court issued a written order again directing DCS to file a CHINS petition as to Dav.G. and an amended CHINS petition as to Dam.G., Dar.G., and A.R. for the alleged battery on May 31. DCS did not do so.

[7] Nevertheless, a fact-finding hearing was held regarding the initial educational-neglect allegations. No findings were made as to Dav.G. since no petition had been filed for him. The court did find the other children to be CHINS.

[8] Although Mother did not appeal the CHINS determination, she moved to certify for interlocutory appeal the trial court's June 21 order that directed DCS to file a CHINS petition as to Dav.G. and an amended petition as to the other

children for the allegations that Mother had hit Dam.G. The trial court granted the motion, and this Court accepted jurisdiction.

Discussion and Decision

[9] Mother argues that her due-process rights were violated because DCS caused a "defacto removal" of the children without filing new or amended CHINS petitions containing the May 31 battery allegations. Appellant's Br. p. 6. DCS asks us to dismiss the appeal, arguing that (1) the appeal is moot and (2) Mother lacks standing to bring the appeal. We agree that dismissal is appropriate, but for a more fundamental reason: Mother doesn't actually challenge the order she purports to be appealing. She asks us to hold that DCS must file new CHINS petitions addressing the May 31 battery allegations. But that is exactly what the trial court directed DCS to do in its June 21 order. In other words, Mother **agrees** with the June 21 order.

[10] What Mother really takes issue with is DCS's refusal to comply with the June 21 order. But appeal isn't a means by which to challenge an opposing party's conduct in the first instance. The way to challenge an opposing party's non-compliance with a court order is to file a motion asking the trial court to force that party to comply (such as a motion for rule to show cause). Then, if the trial court denies that motion, the moving party has an adverse order that could be the subject of an appeal. Because Mother isn't challenging the June 21 order, and in fact agrees with it, this isn't really an "appeal" at all, and the proceeding must be dismissed. *See Sinn v. State*, 693 N.E.2d 78, 81 (Ind. Ct. App. 1998) ("If

Sinn is aggrieved, it is not because of the trial court's order, but because the order has not been followed. Sinn's remedy is not to appeal the trial court's order, but to seek enforcement of the order. Sinn may file a motion for rule to show cause, and the trial court should hold a hearing if necessary to enforce its order.").

[11] Dismissed.

Mathias, J., and Pyle, J., concur.