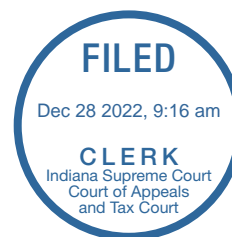


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT

Theodore E. Rokita
Attorney General of Indiana
Benjamin M. L. Jones
Assistant Section Chief, Civil Appeals
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Cassandra A. Kruse
Emswiller, Williams, Noland, &
Clarke, LLC
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Indiana Department of Child
Services,

Appellant,

v.

C.M., et al.,

Appellees.

December 28, 2022

Court of Appeals Case No.
22A-AD-1145

Appeal from the Hamilton
Superior Court

The Honorable Jonathan M.
Brown, Judge

Trial Court Cause Nos.
29D02-2011-AD-1775
29D02-2011-AD-1776

Bailey, Judge.

Case Summary

[1] C.M. (“Adoptive Father”) and K.M. (“Adoptive Mother”) (collectively, “Adoptive Parents”) petitioned to adopt J.S.M. and J.D.M. (collectively, “the Children”), who resided with other foster families. The trial court granted the adoption petitions over the objections of the Indiana Department of Child Services (“DCS”). In the adoption decrees, the trial court ordered DCS to cooperate with the release and discharge of the Children into the custody of Adoptive Parents. After Adoptive Parents took custody of the Children, DCS conducted several welfare checks on the Children, searched Adoptive Parents’ home, drug tested and interviewed Adoptive Parents and the Children, and sought to have the Children submit to forensic interviews. Based on that conduct, Adoptive Parents filed a motion for rule to show cause and alleged that DCS had violated the adoption decrees. The trial court granted Adoptive Parents’ motion, found DCS in contempt, and ordered DCS to pay \$9,000 of Adoptive Parents’ attorney’s fees. DCS now appeals and contends that the adoption decrees were ambiguous and that the court abused its discretion when it held DCS in contempt. Because we agree with DCS, we reverse.

Facts and Procedural History

[2] J.S.M. was born on January 22, 2017, and J.D.M. was born on April 7, 2018. In April 2018, DCS filed petitions in Marion County alleging the Children to be Children in Need of Services (“CHINS”) and removed them from the care of their biological parents and placed them in foster care. In the summer of 2019,

DCS placed J.S.M. and J.D.M. in relative care with Adoptive Parents, who are their maternal aunt and uncle. Then, on September 23, 2020, the CHINS court adjudicated the Children to be CHINS. At some point thereafter, DCS filed petitions to terminate the parental rights of the Children’s biological parents.

[3] On November 18, Adoptive Parents filed petitions to adopt the Children in Hamilton County (“trial court”). In March 2021, following allegations of abuse by Adoptive Parents, DCS petitioned the CHINS court to remove the Children from Adoptive Parents’ care. The CHINS court granted that motion, and DCS removed the Children from Adoptive Parents’ care on April 7. DCS placed the Children in separate foster placements. DCS then intervened in the adoption proceedings and, on July 9, informed the trial court that it did not consent to the adoptions.

[4] DCS’s concerns of abuse were ultimately unsubstantiated, but the CHINS case remained open. On December 2, the trial court granted Adoptive Parents’ petitions to adopt the Children. In the adoption decrees, the court ordered that Adoptive Parents shall have custody of the Children and ordered DCS “to cooperate with the release and immediate discharge of the Child[ren] directly to the custody of” Adoptive Parents. Appellant’s App. Vol. 2 at 64, 74.¹

¹ The trial court entered separate adoption decrees for each child, but the relevant portions of the decrees contained identical language.

[5] Adoptive Parents received notice of the adoption decrees at approximately 8:30 a.m. on December 3. After they learned that their petitions had been granted, Adoptive Parents went to J.D.M.'s placement to pick her up. Adoptive Parents then asked a relative to pick up J.S.M., but his placement would not release him to the relative. At that point, Adoptive Father went to pick J.S.M. up. Adoptive Parents had custody of the Children by "9 o'clock, 10 o'clock maybe" that morning. Tr. at 47.

[6] At around 3:30 that afternoon, DCS Family Case Manager ("FCM") Charla Davis and the Children's Guardian Ad Litem, Monique Miller, conducted a welfare check on the Children with the assistance of the local sheriff. Thereafter, FCM Leigh Anne Moore conducted several home visits. In particular, FCM Moore conducted home visits on December 6, December 10, December 21, and December 28. On December 6, FCM Moore searched the house and looked at Adoptive Parents' firearm storage. During the December 10 visit, FCM Moore drug tested Adoptive Parents and the Children. And, at the visit on December 21, FCM Moore informed Adoptive Parents that the drug tests were all negative. On January 12, 2022, FCM Moore requested forensic interviews of the Children and, on February 3, DCS filed a motion to compel the forensic interviews.

[7] On February 9, Adoptive Parents filed an amended motion for rule to show cause in the adoption action. Adoptive Parents asserted that DCS had "knowingly and intentionally interfere[d] with" the adoption decrees when it conducted the welfare checks and that DCS had attempted "to keep a prior

moot CHINS case open” in order to “improperly use it as authority to further harass, intimidate and threaten” them.² Appellant’s App. Vol. 2 at 77-78.

Adoptive Parents additionally alleged that DCS “has continued to harass and intimidate [Adoptive] Parents and threaten [Adoptive] Parents’ continued custody” of the Children through their repeated home visits, drug tests, and requests for forensic interviews. *Id.* at 89.

[8] In its response, DCS asserted that, after it had received notice of the adoption decrees, FCM Davis had contacted the Children’s placements “to let them know that [the Children] needed to be transferred to” the custody of Adoptive Parents “that same day[.]” *Id.* at 81. But DCS asserted that, before FCM Davis could contact the placements, Adoptive Parents had already gone to the Children’s foster placements to pick them up. And DCS alleged that it did not “do anything to prevent the [Adoptive Parents] from taking either [of the Children] from their placements.” *Id.* at 82. To the contrary, DCS alleged that it “immediately began attempting to make arrangements for the transfer of the [C]hildren that very day.” *Id.* at 85. DCS further alleged that it had conducted the wellness check shortly after Adoptive Parents obtained custody of the Children based on allegations that Adoptive Parents had “forcibly removed the [C]hildren from their placements.” *Id.* at 83.

² The CHINS case remained open until December 26, 2021.

- [9] The trial court held a hearing on Adoptive Parents motion for rule to show cause. During the hearing, Adoptive Mother testified that FCM Moore had been to their home “about nine times” since the trial court had granted the adoption petitions. Tr. at 78. Adoptive Mother further testified that, during one visit, FCM Moore searched her house for “a hidden paddle” but that FCM Moore did not find one. *Id.* In addition, Adoptive Mother testified that, even after everyone had tested negative for drugs, FCM Moore continued to come to their house and, on one occasion, had photographed the Children “to see if there w[ere] any bruises” on them. *Id.* at 60. And Adoptive Mother testified that some of FCM Moore’s visits were “three hours, two hours” long. *Id.* at 60.
- [10] FCM Davis testified that she had conducted the first wellness visit on the day Adoptive Parents got custody of the Children “due to the [C]hildren being moved placements.” *Id.* at 187. And she testified that the wellness check had only lasted “five to seven minutes” and that she did not attempt to remove Children from Adoptive Parents. *Id.* at 176.
- [11] FCM Moore testified that she conducted her first visit to Adoptive Parents’ house on December 6 in response to a report of “nonspecific physical abuse” by Adoptive Parents and concerns that the Children may have been “under the influence in some capacity.” *Id.* at 116. She also testified that, on that day, she “looked at” the home and talked to the Children. *Id.* at 117. FCM Moore further testified that she continued to investigate Adoptive Parents when she “received new allegations.” *Id.* at 122. And FCM Moore testified that DCS

had received “three reports” regarding Adoptive Parents since the date the adoption petitions were granted. *Id.* at 139.

[12] Following the hearing, the court entered findings of fact and conclusions thereon. Specifically, the court stated that it had “deep concerns” regarding DCS’s response to the court’s grant of the adoption petitions. Appellant’s App. Vol. 2 at 54. The court also found that, while DCS “may have received a ‘complaint,’” a term which the trial court used “very loosely,” DCS’s response was “inappropriate, overzealous, insulting, and an abuse of process.” *Id.* Accordingly, the trial court granted Adoptive Parents’ motion for rule to show cause and ordered DCS to pay \$9,000 toward Adoptive Parents’ attorney’s fees. This appeal ensued.

Discussion and Decision

[13] DCS contends that the trial court abused its discretion when it held DCS in contempt.³ Our standard of review is well settled.

“It is soundly within the discretion of the trial court to determine whether a party is in contempt, and we review the judgment under an abuse of discretion standard.” *Steele–Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198, 202 (Ind. 2012)). “We will reverse a trial court’s

³ The trial court did not use the word “contempt” in its order. However, it is clear that, by granting Adoptive Parents’ show cause motion, the court held DCS in contempt. Indeed, Adoptive Parents’ motion specifically alleged that DCS’ behavior was “in direct contradiction to” the adoption decree. Appellant’s App. Vol. 2 at 92. And, at the hearing on Adoptive Parents’ motion, Adoptive Parents further clarified that their motion was a “contempt motion[.]” Tr. at 58.

finding of contempt only if there is no evidence or inference therefrom to support the finding.” *Id.*

Reynolds v. Reynolds, 64 N.E.3d 829, 832 (Ind. 2016)

[14] Contempt of court generally involves disobedience of a court or court order that undermines the court’s authority, justice, and dignity. *Id.* There are two kinds of contempt: direct contempt and indirect contempt. *Id.* Indirect contempt, which is at issue in this case, “involves those acts committed outside the presence of the court which nevertheless tend to interrupt, obstruct, embarrass or prevent the due administration of justice.” *Id.* (quotation marks omitted).

[15] In order to be held in contempt for failing to comply with a court order, a party must have willfully disobeyed the order. *Bandini v. Bandini*, 935 N.E.2d 253, 264 (Ind. Ct. App. 2010). “The order must have been so clear and certain that there could be no question as to what the party must do, or not do, and so there could be no question regarding whether the order is violated.” *Id.* (quoting *Deel v. Deel*, 909 N.E.2d 1028, 1032 (Ind. Ct. App. 2009)). A party may not be held in contempt for failing to comply with an ambiguous or indefinite order. *Mitchell v. Mitchell*, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003).

[16] Here, the trial court held DCS in contempt for violating the adoption decrees, which provided, in relevant part, that Adoptive Parents “shall have custody of the Child[ren]” and that DCS is “ordered to cooperate with the release and immediate discharge of the Child[ren] directly to the custody of” Adoptive Parents. Appellant’s App. Vol. 2 at 64, 74. Those orders required DCS to

cooperate in the exchange of the Children from their foster placements to Adoptive Parents. And, while Adoptive Parents obtained custody of the Children themselves instead of through DCS, the trial court did not hold DCS in contempt for any action pertaining to the exchange of custody. Rather, the court held DCS in contempt for the actions it took following the exchange of custody.

[17] However, the adoption decrees did not require DCS to take any further action beyond cooperating with the exchange of custody, nor did it place any restrictions on DCS once Adoptive Parents had the Children in their care. We thus agree with DCS that, “[i]f the orders were intended to govern post-transfer conduct, they do not do so clearly and unambiguously.” Appellant’s Br. at 15. While the adoption decrees clearly required DCS to ensure that the Children were immediately placed in the custody of Adoptive Parents, the adoption decrees did not speak so clearly and certainly as to any post-transfer conduct such that DCS would have no question that it was prohibited from conducting wellness checks. *See Bandini*, 935 N.E.2d at 264. Stated differently, the order was ambiguous regarding any prohibition on DCS’s actions following the transfer of custody. Because the order was ambiguous, DCS cannot be held in contempt. *See Mitchell*, 785 N.E.2d at 1198.

[18] We note that the trial court found DCS’s actions after Adoptive Parents took custody of the Children to be “inappropriate, overzealous, insulting, and an abuse of process.” Appellant’s App. Vol. 2 at 54. But the question is not

whether DCS had acted improperly.⁴ Rather, the question is whether the order was so specific that DCS had no question as to what conduct was prohibited. And, as discussed above, the adoption decrees did not clearly and unambiguously prohibit DCS from conducting wellness checks on the Children.

Conclusion

[19] In sum, the adoption decrees were ambiguous regarding whether DCS was prohibited from conducting wellness checks on the Children. As a result, the court abused its discretion when it held DCS in contempt. We therefore reverse the court's order finding DCS in contempt.

[20] Reversed.

Riley, J., and Vaidik, J., concur.

⁴ We express no opinion as to the merits of any additional claim Adoptive Parents may have against DCS.