

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

E.M. and R.M. (Minor
Children),

Children in Need of Services,

and

L.M. (Grandfather)

Appellant-Intervenor,

v.

November 17, 2023

Court of Appeals Case No.
23A-JC-1121

Appeal from the Hendricks
Superior Court

The Honorable Ryan W. Tanselle,
Judge

Trial Court Cause Nos.
32D03-2204-JC-15, 32D03-2204-
JC-16

Indiana Department of Child
Services,
Appellee-Petitioner

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

- [1] L.M. (Grandfather), pro se, appeals the trial court’s denial of his request to participate in the child in need of services (CHINS) proceedings involving his adult son’s minor children, E.M. and R.M.
- [2] We affirm.

Facts & Procedural History

- [3] D.T. (Mother) and B.M. (Father) were married in 2008 and had two children, E.M., born in 2011, and R.M., born in 2014 (collectively, the Children). Their marriage was dissolved in August 2019. The dissolution involved a lengthy custody dispute, appointment of a guardian ad litem (GAL), and court-ordered counseling and therapy for the Children. The dissolution court entered

conditional custody orders dependent upon, among other things, each parent's compliance with court orders and performance as a primary custodian.

[4] During and after the dissolution, one or both of the Children exhibited significant emotional and behavioral issues at school. In May 2020, a report was made to the Indiana Department of Child Services (DCS) alleging that Mother's husband (Stepfather) had choked and slapped Mother in front of the Children, during parenting time with Mother. The report was found unsubstantiated but, in September 2020, Mother agreed to obtain a domestic violence assessment and follow all recommendations.

[5] One or both of the Children continued to experience behavioral problems into 2021. In March 2021, Grandfather submitted a "hotline report to DCS regarding prohibited video content" that the Children were allegedly watching. *Appellee's Appendix* at 50. In May 2021, Grandfather located a person who reported to having seen the May 2020 domestic violence incident involving Stepfather and Mother, and Grandfather reported this eyewitness information to DCS. Also, according to Grandfather, two reports were made to DCS "from the public of [Stepfather] physically and sexually abusing" R.M. *Appellant's Appendix* at 8. In June 2021, DCS found the reports to be unsubstantiated. In May 2021, Grandfather "ended his career . . . to work full time on behalf of [the Children]." *Appellee's Appendix* at 49.

- [6] On April 13, 2022, DCS took custody of the Children and, the next day, filed CHINS petitions.¹ Pursuant to Mother and Father’s subsequent admissions, the trial court adjudicated the Children as CHINS in October 2022.² Following a hearing, the court issued its dispositional decree and a parental participation order in November 2022.
- [7] In December 2022, Grandfather contacted DCS family case manager (FCM) Samantha King to address an October 2022 DCS pre-dispositional report filed in the CHINS proceedings. Grandfather expressed his concern that DCS had ignored the May 2020 domestic violence issues between Stepfather and Mother and inquired why Stepfather had not been ordered to complete domestic violence services. FCM King replied to Grandfather that, because he was not a party to the CHINS proceedings, she was unable to discuss anything related to the case with him.
- [8] On February 6, 2023, Grandfather filed, pro se, a “Written Statement and Recommendations of Paternal Grandfather” (Request to Participate) pursuant

¹ The record is not clear where the Children were residing at the time of removal. The CCS indicates that Father was in jail on the date the petitions were filed.

² The record indicates that Grandfather assisted Father with filing, in October 2022, a complaint with the DCS Ombudsman Bureau (the Bureau), alleging that DCS failed to interview a report source and failed to properly assess the May 2020 allegation of domestic violence in that DCS did not contact law enforcement. In November 2022, the Bureau responded by letter stating that it had completed review of his complaint, found merit to his allegations, and had recommended that the local DCS office review DCS policies regarding interviews and assessments to ensure that such are understood and implemented. The Bureau advised it would be taking no further action and was closing the file.

to Ind. Code § 31-34-21-4(d).³ *Appellee's Appendix* at 2. The Request to Participate, over forty pages in length, identified and discussed eight issues, including “No Services Ordered of [Stepfather],” “False information Presented to CHINS Court,” “Long History of Court-Ordered Services Ignored/Ineffective,” “Long History of Lying/Misleading,” and “DCS Falsely Claims a Diligent Search.” *Appellant's Appendix* at 7; *Appellee's Appendix* at 11, 21, 33, 39. At a February 8 hearing on several pending matters, the trial court declined to review Grandfather’s filing, since Grandfather was not a party, and continued the matter to allow the parties time to evaluate whether Grandfather met the statutory requirements to allow him to participate.⁴

[9] On February 14, Grandfather filed a motion to intervene pursuant to Ind. Trial Rule 24, alleging that “Indiana Code 31-34-21-4 grants him an unconditional or conditional right to intervene.” *Id.* at 45. That same day, he filed a “Prehearing Brief Regarding Interpretation of IC 31-34-21-4” and, separately, “Proof of Significant Relationship to the CHINS.” *Id.* at 47, 91. He subsequently filed several additional statements and/or briefs in support of his intervention and participation. On March 17, DCS filed a brief objecting to Grandfather intervening or otherwise participating in the CHINS proceedings.

³ As discussed more fully *infra*, I.C. § 31-34-21-4 provides that DCS must provide notice of a periodic case review, including a permanency hearing, to “any suitable relative or person whom the department knows has had a significant or caretaking relationship to the child” and that the trial court shall allow that party an opportunity to be heard and make recommendations to the court.

⁴ Following this hearing, on February 10, Stepfather was added as a party to the CHINS proceedings.

- [10] The trial court held a hearing on April 28 on Grandfather's motion to intervene and Request to Participate. Present at the hearing were: Grandfather, Mother in person and by counsel, Father in person and by counsel, Stepfather in person and by counsel, the current FCM, the DCS attorney, and the CASA.
- [11] Grandfather testified as to his concerns about the Children, his knowledge of their ongoing emotional and behavioral issues, and his involvement with informing the therapists and providers of background/historical information about the Children. He testified that he left his career to attend to the Children's needs such as with issues at school, locating and contacting appropriate providers, and taking them to appointments. As to his caregiving and relationship with the Children, Grandfather acknowledged that, prior to the divorce, he was never asked to babysit or care for the Children, which he attributed to Mother's animosity toward him. After the divorce, Grandfather stated that he spent time with the Children at parks and doing other activities, as well as helping to take them to some appointments, estimating that he was involved with them "at least weekly." *Transcript* at 44.
- [12] On cross-examination by DCS, Grandfather agreed that the Children had been moved a number of times between mental health providers, including Aspire, Cummins, Hamilton Center, and Kids Count. When Grandfather was asked if he knew the reason for the changing of providers, he replied that Cummins would not accept his input about information he had obtained from Riley Hospital and that Aspire was hostile and belligerent when he tried to give them history about the Children. He said that Aspire gave a "one-sided list of

allegations against [Father]” and that Aspire had a long-term relationship with Mother’s family. *Id.* at 48. He testified that he believed that the services offered by Aspire and Hamilton Center fell short of that needed.

[13] CASA Lee Anne Owens, on cross-examination, asked Grandfather why he, and not Father, needed to provide the historical information about the Children to the providers. Grandfather explained that Father was not doing the necessary research into the Children’s diagnoses or locating providers who treat such conditions and, further, that he (Grandfather) was experienced and qualified to assemble the documentation. CASA Owens then inquired why Grandfather could not have given all the assembled information to Father to take to the providers; Grandfather replied, “I think I was the [] best person to do that job.” *Id.* at 52.

[14] DCS called Mother to testify as to Grandfather’s claimed status as a caretaker and to having a significant relationship with the Children. Mother was asked if, during her marriage to Father, there were occasions when Grandfather would provide care for the Children. Mother replied, “No. He actually wouldn’t even allow the kids in [his] house” because he had a very clean house and did not want the Children touching anything.” *Id.* at 60. When asked how often Grandfather saw them, Mother estimated “once in a while,” recalling he attended three birthday parties. *Id.* Mother reported that Grandfather did not take the Children to any appointments during the time of the marriage.

- [15] She described that Grandfather would come to their home to fix their car but would not enter her home. She explained that she had been raised in the Mormon religion and Grandfather told her that she “was the devil” and that her family members were “disgusting.” *Id.* at 61.
- [16] As to Grandfather’s involvement with the Children after the marriage ended, Mother agreed that she did not have a lot of personal knowledge but described an occasion when he went to Aspire and “was hostile” and another similar occurrence with a session at Hamilton Center. *Id.* at 62-63. Mother testified that, overall, Grandfather had been disruptive to the Children’s progress, and she asked the court to deny Grandfather’s requests to participate in the CHINS proceedings.
- [17] Grandfather conducted cross-examination of Mother, during which she testified, in part, that Grandfather and Father had submitted “fake paperwork” and “lies” to one or more providers and that they “manipulate everything.” *Id.* at 65. Mother suggested that Grandfather was covering up for and/or defending Father’s actions with the Children and stated that Grandfather “had nothing to do with [the Children] until the divorce,” asking the court, “Please don’t let him be a party in the case.” *Id.* at 66.
- [18] During closing remarks, Grandfather reiterated his concerns with what he perceived to be DCS’s failures. Specifically, he noted DCS’s inattention or improper investigation of allegations of domestic violence and sexual abuse and

failures to provide the treating providers with what the Children had been exposed to and experienced.

[19] DCS remarked that it had never denied that there are issues with the family, which is precisely why DCS is involved, but that “the parents are the only parties that should be involved in this case.” *Id.* at 79. DCS urged that there was no evidence presented of a significant relationship or evidence that he provided care for the Children. Rather, DCS maintained that “manipulation by the grandparents has been a threat to the progress being made by the Children and by the parents in this case.” *Id.* at 79. Mother and Stepfather each agreed with DCS that Grandfather had not met the statutory requirement of being a caretaker or significant relationship as was necessary for him to participate in the CHINS case. Father, on the other hand, argued that it was “apparent” that Grandfather has had a significant role with the Children after the dissolution and suggested that Grandfather’s participation was a guiding hand to help the parents. *Id.* at 81.

[20] CASA Owens told the court that, in her “many hours” spent with the Children, they had never mentioned Grandfather. *Id.* at 83. Her “firm belief” was that both sets of grandparents “have been barriers” to reunification and “feed into discord” between Mother and Father. *Id.*

[21] From the bench, the trial court denied both Grandfather’s T.R. 24 motion to intervene and his Request to Participate pursuant to I.C. § 31-34-21-4. As to the latter, the court found that while the evidence showed that Grandfather “has a

deep knowledge of the [Children],” “that knowledge has not given rise to him showing that he has had a significant relationship to the [C]hildren,” as required by I.C. § 31-34-21-4. *Id.* at 86. Finding “no evidence” that the statutory factors had been satisfied, the court denied Grandfather’s Request to Participate. *Id.* That same day, the court issued a written order denying Grandfather’s motions.

[22] Grandfather now appeals the denial of his Request to Participate under I.C. § 31-34-21-4.⁵ Additional facts will be provided as necessary.

Discussion & Decision

[23] Grandfather sought to participate in the CHINS proceedings pursuant to I.C. § 31-34-21-4, which provides in relevant part:

(a) [A]t least seven (7) days before the periodic case review, including a case review that is a permanency hearing under section 7 of this chapter, the department shall provide notice of the review to each of the following:

* * *

(6) Any other suitable relative or person *whom the department knows has had a significant or caretaking relationship to the child.*

⁵ Grandfather does not appeal the denial of his motion to intervene.

* * *

(d) *The court shall provide to a person described in subsection (a) an opportunity to be heard and to make any recommendations to the court in a periodic case review, including a permanency hearing under section 7 of this chapter. The right to be heard and to make recommendations under this subsection includes:*

(1) *the right of a person described in subsection (a) to submit a written statement to the court that, if served upon all parties to the child in need of services proceeding and the persons described in subsection (a), may be made a part of the court record; and*

(2) *the right to present oral testimony to the court and cross examine any of the witnesses at the hearing.*

(Emphases added).

[24] We review the grant or denial of a motion to intervene in a CHINS proceedings for an abuse of discretion. *Matter of K.V.*, 201 N.E.3d 700, 707 (Ind. Ct. App. 2023), *trans. denied*. Although we are not reviewing the denial of Grandfather's motion to intervene, we observe that his separately-filed Request to Participate was made under a different section of the same statute and requests similar relief, i.e., the ability to be heard and make recommendations in the proceedings. We thus find it appropriate to review the trial court's decision denying his Request to Participate for an abuse of discretion. An abuse of discretion occurs when the decision is clearly against the logic and effects of the circumstances before it. *Id.* To the extent that the trial court's decision required

it to interpret the statute, we review that de novo. *See id.* (where motion raises questions of law such as interpretation of a statute, review is de novo).

- [25] Grandfather asserts that he qualifies as a person to participate and provide recommendations under I.C. § 31-34-21-4(d) because, among other things, he “became the Children’s de facto guardian ad litem” after December 2020 and “the [Children’s] best interest would [] be served by including someone trying to inform the court of vital decision-basing information.” *Appellant’s Brief* at 9, 12.
- [26] Grandfather’s focus on best interests is misguided. The relevant inquiry under I.C. § 31-31-21-4 is whether Grandfather was a person who DCS knew had either a significant or caretaking relationship with the Children. We conclude that he has not shown that he was such a person.
- [27] The CHINS statutes do not define “significant or caretaking relationship.” However, when interpreting a statute, our goal is to determine and give effect to the intent of the legislature in promulgating it. *In re K.B.*, 894 N.E.2d 1013, 1015 (Ind. Ct. App. 2008). We give words and phrases their plain and ordinary meaning. *Matter of N.C.*, 83 N.E.3d 1265, 1267 (Ind. Ct. App. 2017).
- [28] Grandfather testified that he sometimes takes the Children to appointments and spends time with them at a park or having them help him to repair things, seeing them “at least weekly.” *Transcript* at 44. We agree with the trial court that – although Grandfather testified about his involvement in seeking and vetting potential providers for the Children, providing information to DCS and to providers, and meeting with various people/providers/teachers – such

activity on the Children's behalf does not equate to a significant or caretaking relationship with them.

[29] Moreover, Mother's testimony reflected a minimal relationship between Grandfather and the Children. She explained that, during her marriage to Father, Grandfather would not permit the Children into his home. And, with regard to after the dissolution, she testified that his involvement with the providers had been a hindrance to their care rather than a help. This was DCS's position as well. The CASA in closing remarks stated that, in her "many hours" spent with the Children, they had never once mentioned Grandfather, although they had mentioned their grandmothers. *Id.* at 83.

[30] On this record, Grandfather has failed to show that he was a person who DCS knew had a significant relationship or caretaking relationship with the Children such that the trial court was required to allow him an opportunity to be heard and make recommendations at review hearing(s). Accordingly, the trial court did not abuse its discretion when it denied Grandfather's Request to Participate under I.C. § 31-34-21-4.

[31] Judgment affirmed.

May, J. and Foley, J., concur.