

## MEMORANDUM DECISION

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# IN THE Court of Appeals of Indiana

In the Matter of Ja.D., D.B., S.B., M.B., Je.D., O.B., and N.B.,  
Minor Children Alleged to be Children in Need of Services;

M.B. (Mother),  
*Appellant-Respondent*

v.

Indiana Department of Child Services,  
*Appellant-Petitioner*

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March 18, 2024

Court of Appeals Case No.  
23A-JC-2170

Appeal from the Delaware Circuit Court  
The Honorable Kimberly S. Dowling, Judge  
The Honorable Amanda L. Yonally, Magistrate

Trial Court Cause Nos.  
18C02-2306-JC-73

18C02-2306-JC-74  
18C02-2306-JC-75  
18C02-2306-JC-76  
18C02-2306-JC-77  
18C02-2306-JC-78  
18C02-2306-JC-79

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**Memorandum Decision by Judge Tavitas**  
Judges Mathias and Weissmann concur.

**Tavitas, Judge.**

**Case Summary**

- [1] M.B. (“Mother”) appeals the order of the juvenile court determining that her minor children Ja.D., D.B., S.B., M.B., Je.D., O.B., and N.B. (collectively “the Children”) are children in need of services (“CHINS”). Mother claims that the juvenile court: (1) abused its discretion by denying her an opportunity to be heard at the dispositional hearing; (2) erred by ordering that the Children be vaccinated contrary to Mother’s wishes and contrary to her right to religious freedom; and (3) violated Mother’s due process rights by addressing matters at a hearing after Mother had requested counsel. We determine that Mother’s arguments are either waived, moot, or without merit. Accordingly, we affirm.

**Issues**

- [2] Mother presents four issues, which we consolidate and restate as:

- I. Whether the juvenile court abused its discretion by denying Mother an opportunity to be heard at the dispositional hearing.
- II. Whether the juvenile court erred by ordering that the Children be vaccinated contrary to Mother's wishes and contrary to her right to religious freedom.
- III. Whether the juvenile court violated Mother's due process rights by continuing to address matters at a hearing after Mother had requested counsel.

## Facts

- [3] Mother has seven children that are the subject of the present case. Je.D. was born in December 2005; Ja.D. was born in January 2007; D.B. was born in January 2009; S.B. was born in December 2010; M.B. and O.B. were both born in November 2015; and N.B. was born in November 2016.
- [4] In June 2023, the Indiana Department of Child Services ("DCS") received a report that Mother had left home and "indicated she [wa]s done with the [C]hildren and d[id] not want to care for them at this time." Appellant's App. Vol. II p. 62. Upon investigation, Mother admitted that she left her home in Muncie and did not return for two days. Mother also admitted that the three oldest children—who were aged fourteen, sixteen, and seventeen at the time—used drugs and alcohol when left unsupervised and were sexually active.
- [5] During the investigation, DCS also learned that Mother had been violent with the Children. Specifically, on June 28, 2023, the DCS family case manager

(“FCM”) received a report that Mother told one of her older children to attack one of the younger children. When the FCM investigated this report, she observed that D.B. had scratches on her skin and that some of her hair had been pulled out. Ja.D. and D.B. also reported that they often had physical altercations with Mother. When Mother returned home on June 28, 2023, she and Ja.D got into an argument, which required the intervention of the FCM, a Muncie police officer, and the other Children. Mother then told the FCM that she no longer wished to care for any of the Children and that the three older children—Ja.D., D.B., and S.B.—were no longer welcome at Mother’s home. Mother also refused to help DCS plan for the care of these three children, so DCS took them into custody. Mother wanted her adult daughter to take S.B. and wanted to send D.B. on a bus to her father’s home. Mother stated that, after these Children were removed, she could now “live her life.” Appellant’s App. Vol. II p. 63.

[6] On June 29, 2023, the juvenile court authorized the filing of petitions alleging that Ja.D. and D.B. were CHINS and authorizing their removal from Mother’s care. The juvenile court held an initial hearing the following day, at which the court informed Mother of her right to have an attorney and to have the court appoint an attorney to represent Mother if she could not afford one. Mother expressed her desire to proceed without an attorney. The juvenile court permitted Mother to represent herself but advised Mother that she could request an attorney at any time during the proceedings. Mother admitted that Ja.D. and D.B. were CHINS.

[7] The same day that the initial hearing on Ja.D and D.B. was held, the juvenile court also authorized the filing of petitions alleging that the remaining Children—Je.D., S.B., M.B., O.B., and N.B.—were also CHINS. The juvenile court also authorized DCS to remove these Children from Mother’s custody. The juvenile court held an initial hearing on these CHINS petitions on July 3. At this hearing, the juvenile court again advised Mother of her right to an attorney, and Mother again expressed her desire to represent herself. She also admitted that Je.D., S.B., M.B., O.B., and N.B. were CHINS. These Children were placed in relative care at that time. Because neither father of the Children appeared at this hearing, the juvenile court continued the initial hearing to July 24, 2023, so that DCS could serve the fathers.

[8] At the July 24, 2023 continued initial hearing, DCS indicated that it was still unable to locate the fathers. The juvenile court, therefore, authorized DCS to serve the fathers by publication. The juvenile court, based on Mother’s admissions, found the Children to be CHINS and set a date for the dispositional hearing. The juvenile court indicated that there were no further matters before the court. Mother, however, then informed the court that she wished to have an attorney appointed to represent her. The juvenile court determined that Mother qualified to have a public defender appointed to represent her and appointed the public defender’s office to represent Mother. Mother then informed the court, “Yes, and your honor, I’m not getting the visitation that I’m supposed to be getting with [the Children] at all. Since, [the Children] have been taken from me, I’ve only been able to see my children twice.” Tr. Vol. II

p. 48. The juvenile court responded, “Okay, [counsel for DCS], can you update the Court on the status of visitation for [Mother] and [the Children]?” *Id.*

DCS’s counsel explained the issues that had occurred regarding visitation. The juvenile court asked Mother if she understood the issues, and Mother indicated that she did not. The juvenile court then stated:

[Mother], I understand that you’re angry, and I understand why you’re angry. Okay. However, I have authorized for the children to be removed at this time. The Department is going to be making supervised visitation available to you. However, with your children being split up into three separate locations, that makes it a little difficult. And so, I know DCS wants to keep the children as close to you as possible, and also as close to their siblings as possible, so we don’t have six children spread out in six different locations. And so - [Mother interrupts the juvenile court].

\* \* \* \* \*

Okay, [DCS], you all understand that I know that you have some difficulty from time to time with your service providers, and that’s not the Department’s fault, when a service provider is cancelling visits or arriving late or not holding those visits. But I do not expect you to maintain using a service provider that’s not providing the visitation for a parent that should be getting that visitation. [Mother], you’re simply gonna have to understand though, that it can be difficult to coordinate visitation for seven children who are in three different locations. DCS will continue to work towards getting a schedule in place that will be maintained, and [DCS’s counsel], if you can just file a notice with the Court of what that schedule’s gonna look like, then we can check in and see how that’s going when we come back for dispo[sition] . . . .

*Id.* at 50-51. Nothing else occurred at this hearing.

[9] DCS filed a pre-dispositional report on August 11, 2023. This report stated that, on August 7, 2023, Mother told the FCM that Mother did not want the Children to be vaccinated. Mother also refused to give permission for S.B. to receive any medications when S.B. was in the hospital. Mother claimed that medication was against her religious beliefs.

[10] The juvenile court held a dispositional hearing on August 21, 2023, at which Mother was represented by a public defender. The parties, by agreement, all appeared remotely. The FCM testified that the three youngest children had not yet received the vaccinations that were required for them to attend public school. The four older children were also not current on their required vaccinations, and S.B. would not be able to attend school after September 5, 2023, due to the missing vaccinations. DCS, therefore, requested that the juvenile court order that the Children receive the necessary vaccinations. Mother's counsel asked the FCM on cross-examination why Mother was resistant to the Children being vaccinated. The FCM testified that Mother told her the Children "could not have immunizations, and that was it." Tr. Vol. II p. 64. Mother had previously told the FCM that the Children could not have medications due to her religious beliefs. Mother, however, eventually told the FCM that the Children could not have opioids or ADHD medication, but they could have over-the-counter medications and birth control.

[11] When Mother was given an opportunity to speak to the court, she claimed that she had not yet met with her public defender and that “some things were not being said correctly.” *Id.* at 66. The juvenile court informed Mother that she could speak with her attorney after the hearing and that her attorney could file any necessary motions and request additional hearings. The juvenile court asked Mother if she understood DCS’s recommendations, which included: Mother participating in individual therapy, family therapy, a parenting assessment, and home-based case management; and obtaining stable housing and a legal source of income. Mother did not dispute any of the recommended services and noted that some of the recommendations were services that she herself had requested. She did question why the younger children were adjudicated to be CHINS. Mother, however, did not assert any objection to the Children being vaccinated, nor did she explain why she had told the FCM that she opposed vaccinations.

[12] The hearing continued, and the juvenile court gave the court-appointed special advocate (“CASA”), the parties with whom the Children were placed, and the Children who were present an opportunity to speak. Then, as the juvenile court began to issue its ruling from the bench, Mother attempted to interrupt. The juvenile court instructed Mother not to interrupt and ordered that the Children receive the vaccinations required for them to attend school. As the juvenile court was speaking, Mother again interrupted and claimed that she had “religious exempt forms.” *Id.* at 71. As the juvenile court issued its ruling, Mother continued to interrupt, again stating that she had religious vaccination



exemption forms that she had signed. Due to Mother's continued interrupting, the court muted Mother's audio in the teleconferencing software. Mother's attorney made no motion to enter any religious exemption forms into the record nor did he object to the juvenile court's ruling regarding vaccinations. The juvenile court then set the matter for a periodic review hearing.

[13] On August 22, 2023, the juvenile court entered its written dispositional order. In this order, the juvenile court authorized the Children to receive the vaccinations required for them to attend public school, writing: "The [C]hildren are ordered to receive all vaccines necessary to attend public school. The Court finds that [M]other's stated religious objection was vague and not specifically articulated." Appellant's App. Vol. II pp. 128-29. The juvenile court issued a separate order on vaccination authorizing the Children to be vaccinated so that they could attend school and participate in athletic programs.

[14] Mother filed a notice of appeal on September 15, 2023, regarding five of the Children and a separate notice of appeal for the remaining Children on September 20, 2023. On September 26, 2023, this Court consolidated the two appeals under the present cause number. DCS filed a progress report on November 21, 2023, in which it stated that the Children had received all required vaccinations.

## Discussion and Decision

### *I. Opportunity to Be Heard*

[15] Mother first argues that the juvenile court “abused its discretion” under Indiana Code Section 31-34-19-1.3(b) because “Mother was muted and not permitted to be heard.” Appellant’s Br. p. 13. The statute Mother refers to provides:

The court shall:

- (1) provide a person required to be notified under subsection (a) [which includes parents] an opportunity to be heard; and
- (2) allow a person described in subdivision (1) to make recommendations to the court;

at the dispositional hearing.

I.C. § 31-34-19-1.3(b).

[16] Mother’s entire argument on this issue consists of the following two sentences: “I.C. 31-34-19-1.3(b) provides that Mother shall be heard at the dispositional hearing. Here, the juvenile court abused its discretion under I.C. 31-34-19-1.3(b) because Mother was muted and not permitted to be heard.” Appellant’s Br. pp. 12-13.

[17] Indiana Appellate Rule 46(A)(8)(a) states that the argument in an appellant’s brief “must contain the contentions of the appellant on the issues presented, supported by cogent reasoning.” Mother’s two-sentence argument falls woefully short of this standard. Although Mother does cite to statutory authority, she wholly fails to support her argument with any cogent reasoning.

We, therefore, find Mother’s argument on this issue to be waived. *See In re C.C.*, 170 N.E.3d 669, 675 (Ind. Ct. App. 2021) (holding that Mother waived appellate arguments by failing to support them with cogent reasoning).

[18] Waiver notwithstanding, as far as we are able to ascertain, Mother’s argument is that the juvenile court was statutorily required to allow her to speak at the dispositional hearing. Yet, as noted above, the juvenile court did allow Mother to speak at the dispositional hearing. Mother simply chose to complain about her court-appointed attorney and did not bring up any issue regarding the vaccination of the Children at that time. When the juvenile court began to announce its ruling from the bench, Mother attempted to raise the issue of vaccinations and repeatedly interrupted the juvenile court. The juvenile court warned Mother not to interrupt, but she continued to do so. It was only at that point that the juvenile court placed Mother on mute using the video conferencing system. Because Mother was given the opportunity to speak, and because the juvenile court only placed Mother on mute after she continued to interrupt the court’s ruling from the bench, we cannot say that the juvenile court violated Indiana Code Section 31-34-19-1.3(b).

## ***II. Objection to Vaccination of the Children***

[19] Mother also argues that the juvenile court abused its discretion by not permitting her to present the vaccination exemption forms. Again, Mother’s argument on this issue is minimal. She claims that “the trial [c]ourt abused its discretion by not permitting Mother to present her vaccination forms, based on her religious objection that would permit [the] [C]hildren to be exempt from

vaccinations.” Appellant’s Br. p. 13. Mother then quotes Indiana Code Section 20-34-3-2(a), which provides:

Except as otherwise provided, a student may not be required to undergo any testing, examination, immunization, or treatment required under this chapter or IC 20-34-4 when the child’s parent objects on religious grounds. A religious objection does not exempt a child from any testing, examination, immunization, or treatment required under this chapter or IC 20-34-4 unless the objection is:

- (1) made in writing;
- (2) signed by the child’s parent; and
- (3) delivered to the child’s teacher or to the individual who might order a test, an exam, an immunization, or a treatment absent the objection.

[20] Mother then writes: “Here, Mother informed the [juvenile c]ourt that she had signed exemption forms based on her religious beliefs. Because the [c]ourt muted Mother, Mother was not permitted to present the signed vaccination exceptions [sic] forms.” Appellant’s Br. p. 13. Although Mother’s argument on this issue is not particularly well-developed, and we would be within our discretion to consider this argument waived, we opt to address it on the merits. *See People for Cmty., Inc. v. City of Fort Wayne Neighborhood Code Compliance*, 198 N.E.3d 19, 23 n.3 (Ind. Ct. App. 2022) (noting our preference to consider the merits of an argument when possible).

[21] At the time Mother attempted to present the vaccination exemption forms to the juvenile court, she was represented by counsel. It is well settled that, once

counsel has been appointed, the represented party speaks through counsel, and the juvenile court is not required to respond to motions or requests filed by the party on their own behalf. *Black v. State*, 7 N.E.3d 333, 338 (Ind. Ct. App. 2014) (citing *Fletcher v. State*, 959 N.E.2d 922, 929 (Ind. Ct. App. 2012)); *see also Underwood v. State*, 722 N.E.2d 828, 932 (Ind. 2000) (“[O]nce counsel was appointed, Defendant spoke to the court through counsel. The trial court was not required to respond to Defendant’s request or objection.”). To require a trial court to respond to both the party and the party’s counsel would effectively create a form of hybrid representation to which a party is not entitled. *Black*, 7 N.E.3d at 338 (citing *Fletcher*, 959 N.E.2d at 929); *accord Underwood*, 722 N.E.2d at 832. Because Mother was represented by counsel at the time she attempted to present the vaccination exemption forms to the juvenile court, the juvenile court was not required to accept or respond to requests that were not made through counsel.<sup>1</sup>

[22] Moreover, DCS notes that the Children have already received the vaccinations. DCS filed a progress report on November 21, 2023, noting that the Children were up to date on all vaccinations.<sup>2</sup> Accordingly, we are unable to grant Mother any effective relief regarding the vaccinations of the Children, and the

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<sup>1</sup> Mother makes no argument that she attempted to present these forms to her counsel, nor does she present any claim of ineffective assistance of counsel.

<sup>2</sup> We take judicial notice of the progress report filed by DCS. For over a decade now, Indiana Evidence Rule 201(b)(5) has “permit[ted] courts to take judicial notice of ‘records of a court of this state.’” *Horton v. State*, 51 N.E.3d 1154, 1160 (Ind. 2016).

issue is moot.<sup>3</sup> See *E.F. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 188 N.E.3d 464, 466 (Ind. 2022) (“A case is moot when the controversy at issue has been ended, settled, or otherwise disposed of so that the court can give the parties no effective relief.”) (citing *T.W. v. St. Vincent Hospital & Health Care Ctr., Inc.*, 121 N.E.3d 1039, 1042 (Ind. 2019)). “‘Indiana recognizes a public interest exception to the mootness doctrine, which may be invoked when the issue involves a question of great public importance which is likely to recur.’” *Id.* (quoting *In re Tina T.*, 579 N.E.2d 48, 54 (Ind. 1991)). We discern no such question here.<sup>4</sup>

### ***III. Continuing Hearing After Appointing Counsel***

[23] Lastly, Mother argues:

[M]other’s due process rights under the Fifth and Fourteenth amendment of the United States Constitution, and Article I section XII of the Indiana Constitution were violated because even though Mother requested counsel the [c]ourt continued with the hearing and evidence was presented that contributed to the [c]ourt’s findings on placement and visitation. Children were ordered to remain placed outside the home and Mother’s visitation was to be supervised. The ruling of the [juvenile c]ourt

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<sup>3</sup> In the conclusion to her brief, Mother requests relief in the form of returning the Children to her. Mother, however, does not deny that the Children are CHINS; in fact, Mother admitted that the Children were CHINS. Even if we agreed with Mother that her rights were violated, we would merely remand with instructions that the juvenile court conduct a new dispositional hearing.

<sup>4</sup> Mother’s brief also contains the following one-sentence argument: “[B]y muting Mother, the [juvenile c]ourt violated Mother’s rights to exercise religious beliefs under the Indiana State Constitution Article I, sections [sic] III, which reads, ‘No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.’” Appellant’s Br. p. 14. Again, this sentence falls well short of an argument supported by cogent reasoning, and we consider it to be waived. See *C.C.*, 170 N.E.3d at 675 (citing App. R. 46(A)(8)(a)).

also violated Mother's right to parent under the First Amendment and the Fourteenth Amendment's Due Process rights and Equal Protection Clause of the United States Constitution.

Appellant's Br. p. 14 (record citations omitted). Yet again, this argument is, at the very least, underdeveloped, and we consider it waived for lack of cogency. *See C.C.*, 170 N.E.3d at 675 (citing App. R. 46(A)(8)(a)).

[24] Moreover, as noted above, after Mother requested counsel at the initial hearing held on July 24, 2023, the juvenile court appointed the public defender's office to represent Mother. Immediately thereafter, Mother informed the juvenile court that she had not been receiving adequate visitation with the Children. The juvenile court accordingly inquired into the matter with DCS's counsel, who informed the juvenile court that the visitation issues were due to the fact that the Children were in various locations and that the visitation supervisor was having difficulty scheduling the visits. The juvenile court told Mother that it understood her frustration and instructed DCS to address the visitation issues. Contrary to Mother's claims, no evidence was presented. *See Ind. State Police v. Estate of Damore*, 194 N.E.3d 1147, 1164 (Ind. Ct. App. 2022) (noting that, other than a clear and unequivocal admission of fact by an attorney, unsworn statements of counsel are not evidence) (citing *Krampen v. Krampen*, 997 N.E.2d 73, 81 (Ind. Ct. App. 2013)); *In re K.H.*, 838 N.E.2d 477, 480 (Ind. Ct. App. 2005)), *trans. denied*. Under these facts and circumstances, we cannot say that the juvenile court, by addressing an issue Mother raised, violated Mother's due process rights.

## Conclusion

[25] Mother's arguments on appeal are waived for failure to support them with cogent reasoning. Moreover, contrary to Mother's claim, she was afforded an opportunity to speak at the dispositional hearing, and we cannot say that the juvenile court violated Mother's right to be heard at the dispositional hearing. Mother's claim that the juvenile court erred by refusing to accept or consider her vaccination exemption forms is without merit because, at the time she attempted to submit the forms, Mother was represented by counsel, and the juvenile court was not required to allow or consider filings not presented through counsel. More importantly, the Children have since received the necessary vaccinations, and the issue is moot. Lastly, the juvenile court did not violate Mother's due process rights by addressing Mother's concerns about visitation after the court appointed counsel to represent her. Accordingly, we affirm the juvenile court.

[26] Affirmed.

Mathias, J., and Weissmann, J., concur.

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