

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

P.R.,
Appellant-Petitioner

v.

Indiana Department of Child Services,
Appellee-Respondent

May 3, 2024

Court of Appeals Case No.
23A-XP-2384

Appeal from the St. Joseph Probate Court
The Honorable Jason A. Cichowicz, Judge
The Honorable Ashley Mills Colborn, Magistrate
Trial Court Cause No.
71J01-2304-XP-7

Memorandum Decision by Chief Judge Altice

Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

- [1] P.R. (Father) was the subject of an Indiana Department of Child Services (DCS) substantiated report of abuse or neglect of his son, R.R. (Child). Father later filed a verified petition for expungement of DCS's report and records, which the trial court denied. Father contends that the denial was an abuse of discretion.
- [2] We affirm.

Facts & Procedural History

- [3] In October 2019, DCS filed a Child in Need of Services (CHINS) petition alleging that Child was a CHINS based on a substantiated report of abuse or neglect involving Father. DCS later dismissed the petition, and, in December 2019, the parties participated in an informal adjustment (IA). Father was compliant with all services, and, in June 2020, the trial court entered an order closing the IA. In April 2023, Father filed a petition for expungement, pursuant to Ind. Code § 31-33-27-5, asking the trial court to order DCS to expunge its report and related records.
- [4] An evidentiary hearing was held in July 2023. Father testified that Child was currently involved in a delinquency proceeding and residing at a residential

treatment facility with no certain end date. Child had been there eighteen months and was attending school on the placement's campus. Father explained that Child struggled with taking direction and corrective instruction, overreacting even in minor situations and acting out with aggressiveness, which behaviors he was continuing to exhibit during residential treatment. While there, Child was evaluated and diagnosed with ADHD, PTSD, and conduct disorder.

[5] Father also testified that, upon Child's release, he planned to enroll Child at the local high school, where he hoped that Child could join the school's band, a productive and positive extracurricular activity that Child enjoyed in the past. Father explained that he was seeking expungement of the DCS report and records so that he could be a parent chaperone at the high school, which he understood required him to pass a background check. Father testified that he believed his presence as a chaperone was necessary because teachers and other chaperones simply would not have the time to give Child the supervision he would require and, further, Father had been taught proper de-escalation measures to use with Child. Father stated that his last involvement with DCS was in June 2020, when the IA was successfully closed.

[6] DCS called Permanency Family Case Manager Supervisor Bridget Murray (FCM Murray) to testify. FCM Murray testified that, in her ten years of experience at DCS, she "relied heavily" on case history to learn about not only the child, but also the family "[s]o that we can grasp things that have happened throughout the life of the child." *Transcript* at 19. She characterized Child's

“situation” as being “somewhat complicated” as it involved adoption, an IA, and the pending delinquency proceedings. She testified that, “should [DCS] get involved again . . . I’d want to be able to review what transpired through that IA.” *Id.* at 20. She stated that the records Father sought to expunge “[a]bsolutely” would aid DCS in identifying both less and more restrictive options. *Id.* FCM Murray also noted that a dual-status¹ conference about Child had occurred and “could potentially be convened again depending on the residential outcome.” *Id.*

[7] After taking the matter under advisement, the trial court issued an order on September 8, 2023, denying Father’s petition for expungement. The trial court determined that Father failed to show by clear and convincing evidence that the records had insufficient probative value to justify DCS’s retention of them for future reference “especially since [Father]’s reason for requesting expungement is to ensure that he can chaperone field trips for [the] High School.” *Appendix* at 7. The court also observed that, given Child’s current delinquency adjudication, the records concerning Child’s involvement with DCS, “including [Father]’s substantiation” were “critical in ensuring that [Child] remains identified as a Dual Status child and receives appropriate services as a result of being a Dual Status child.” *Id.* Father now appeals.

¹ As is relevant here, a “dual status child” means a child who “has been previously adjudicated to be a [CHINS]” or “was a participant in a program of informal adjustment” and “who was under a wardship that had been terminated or was in a program of informal adjustment that had concluded before the current delinquency petition[.]” I.C. § 31-41-1-2(4).

Discussion & Decision

- [8] We review cases concerning the expungement of substantiated records of neglect or abuse pursuant to I.C. § 31-33-27-5 (the Statute) for an abuse of discretion. *R.M. v. Ind. Dep’t of Child Servs.*, 203 N.E.3d 559, 563 (Ind. Ct. App. 2023). A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it or when the trial court misinterprets the law. *Id.*
- [9] The Statute allows a person identified as a perpetrator of abuse or neglect in a substantiated report to file a petition with the trial court requesting that it order DCS to expunge the report and related information. I.C. § 31-33-27-5(b). Pursuant to the Statute, the court “may grant” the petition:
- if the court finds, by clear and convincing evidence, that:
- (1) there is little likelihood that the petitioner will be a future perpetrator of child abuse or neglect; and
- (2) the information has insufficient current probative value to justify its retention in records of the department for future reference
- I.C. § 31-33-27-5(f). Thus, the petitioner must prove that he meets both requirements. *See R.M.*, 203 N.E.3d at 563. “[W]e consider only the probative evidence and reasonable inferences supporting the trial court’s decision to determine whether clear and convincing evidence was presented.” *G.E. v. Ind. Dep’t. of Child Servs.*, 29 N.E.3d 769, 772 (Ind. Ct. App. 2015).

[10] Here, the trial court's denial was based on the failure to prove the second of the Statute's two necessary showings, which required Father to prove that the records had insufficient current probative value to justify their retention for future reference. I.C. § 31-33-27-5(f)(2). In reaching its decision, the trial court observed that retention of the DCS records was warranted because Father was desiring to chaperone high schoolers. In support of that proposition, the court cited two cases that found denial of expungement was not an abuse of discretion: (1) *G.E.*, where this court observed that "the fact that G.E. chose to work at a child care center makes her history of child neglect [] relevant," 29 N.E.3d at 772; and (2) *R.M.*, where we observed that R.M. had a child living with her and she volunteered with a charity that assists foster children. We are unpersuaded by Father's arguments that *G.E.* and *R.M.* are distinguishable and inapplicable because a high school "is NOT defined as a child care provider" and, further, because those cases involve situations where a parent's parental rights had been terminated. *Appellant's Brief* at 6.

[11] Supervision of children aside, the trial court also based its denial of Father's petition on the fact that DCS's records, including the substantiated report involving Father, were "critical" to ensuring that Child would receive appropriate services as a dual status child. *Appendix* at 7. This determination was consistent with FCM Murray's testimony regarding the importance of maintaining the substantiated records in this case. She characterized Child's case history as being "somewhat complicated" and testified that DCS, should it be involved again, "absolutely" would benefit from access to the records in the

IA matter, including the substantiated report involving Father, as those records would allow for informed decisions to be made as to the best and least restrictive options available for Child's care and treatment. *Transcript* at 20. She explained that being able to know what transpired throughout the IA with Father would be helpful to know whether another IA would be appropriate.

- [12] On appeal, Father does not contest Child's dual status. He simply "does not agree that [Child] won't receive appropriate services if the record or substantiation is expunged." *Appellant's Brief* at 6. This is effectively a challenge to FCM Murray's credibility and a request to reweigh the evidence, which we cannot do on appeal. *See R.M.*, 203 N.E.3d at 564.
- [13] We appreciate Father's desire to have the ability to chaperone Child in band or another school activity, if and when that opportunity presents itself, to provide Child with what Father expects will be the necessary individualized attention for Child to succeed. However, the evidence sufficiently supports the trial court's determination that Father did not prove by clear and convincing evidence that DCS's report and records had insufficient current probative value to justify their retention. Accordingly, the trial court's decision to deny expungement at this time was not an abuse of discretion.
- [14] Judgment affirmed.

Bradford, J. and Felix, J., concur.

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