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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of A.C. (Minor Child), Child in Need of Services,

and

M.C. (Mother) and J.C. (Father),

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner

October 21, 2022

Court of Appeals Case No. 22A-JC-49

Appeal from the Madison Circuit Court

The Honorable Stephen Koester, Judge

Trial Court Cause No. 48C02-2105-JC-143

Crone, Judge.

Case Summary

[1] M.C. (Mother) and J.C. (Father) (collectively the Parents) appeal the trial court's dispositional order (the Dispositional Order) following their child A.C.'s (Child) admission that Child is a child in need of services (CHINS) pursuant to Indiana Code Section 31-34-1-6 (CHINS-6) because Child was substantially endangering Child's own health. The Parents argue that the Dispositional Order and the trial court's prior order on the combined initial and detention hearing (the Initial/Detention Order) are clearly erroneous. They also argue that both orders violate their constitutional rights to the care, custody, and control of Child, the free exercise of religion, and freedom of speech.

[2] We conclude that the Parents' appeal of the Initial/Detention Order is moot and decline to address it. As for the Dispositional Order, we conclude that it is not clearly erroneous and that it does not violate the Parents' constitutional rights. Accordingly, we affirm.

Facts and Procedural History

[3] The evidence in support of the Dispositional Order shows that on May 11, 2021, DCS received a report alleging that Mother was verbally and emotionally abusing then-sixteen-year-old Child by using rude and demeaning language toward Child regarding Child's transgender identity, and as a result, Child had thoughts of self-harm. Appellants' App. Vol. 2 at 13-14. On May 21, 2021, DCS received a second report alleging that the Parents were verbally and emotionally abusing Child because they do not accept Child's transgender identity, the

abuse was getting worse, and the Parents were being mean to Child due to Child's transgender identity. A DCS family case manager (FCM) investigated these reports, met with the Parents, Child, and Child's siblings, and spoke by phone to a representative from Child's residential school.

[4] The FCM prepared a preliminary inquiry report (PIR), which indicated the following: Mother and Child both stated that Child had been suffering from an eating disorder for the past year but had yet to be evaluated by a medical professional; the Parents had withdrawn Child from school, and DCS was unaware of the family's intent to enroll Child in a new school for the upcoming school year; Child had been in therapy, but the Parents had discontinued it; Child did not feel mentally and/or emotionally safe in the home; Mother said things such as "[Child's preferred name] is the bitch that killed my son"; and Child "would be more likely to have thoughts of self-harm and suicide if [Child] were to return to the family home due to mental and emotional abuse." *Id*. at 14-15. The PIR also indicated that Mother stated that the family was planning to work with a doctor at a clinic for eating disorders, but Mother refused to sign any consents so that DCS could verify any medical concerns or past therapy services. *Id*. at 14.

[5] On May 28, 2021, DCS filed a proposed CHINS petition in the trial court, alleging that Child was a CHINS on two bases: Child's physical or mental condition was seriously impaired or seriously endangered due to the Parents' neglect pursuant to Indiana Code Section 31-34-1-1 (CHINS-1) and/or Child's

physical or mental health was seriously endangered due to injury by the Parents' acts or omissions pursuant to Section 31-34-1-2 (CHINS-2). *Id*. at 23.

[6] On June 2, 2021, the trial court held a combined initial and detention hearing, at which it found that there was probable cause to believe that Child was a CHINS and that Child's detainment was necessary to safeguard Child's health. At the close of the hearing, the trial court cautioned the Parents to avoid discussing Child's transgender identity during visitation. Following the hearing, the court issued the Initial/Detention Order finding that it was in Child's best interest to be removed from the home due to the Parents' "inability, refusal or neglect to provide shelter, care, and/or supervision at the present time." *Id*. at 29. The Initial/Detention Order also ordered that Child keep the current appointments to address Child's eating disorder and for a psychological evaluation and that the Parents "have unsupervised visitation so long as certain topics are not addressed." *Id*.

[7] On October 26, 2021, DCS filed a motion for leave to amend the CHINS petition to add an allegation that Child was substantially endangering Child's own health and that Child was a CHINS pursuant to the CHINS-6 statute. The motion indicates that the amendment was appropriate because Child's eating disorder was worsening, Child had lost "a significant amount of weight," Child was throwing away and hiding food and neglecting to eat full meals, and Child did not believe that Child had an eating disorder, had lost weight, or needed treatment. *Id*. at 40. The Parents did not object to the amendment. The trial court granted the motion.

[8] On November 15, 2021, the trial court held a hearing, at which the parties informed the court that they had reached an agreement that DCS would dismiss the CHINS-1 and CHINS-2 allegations, unsubstantiate and expunge the record of any reports related to the Parents, and proceed under the CHINS-6 statute. Child then admitted to being a CHINS-6, and the Parents verified that they had no objection to Child's admission. Tr. at 58. The court found a factual basis for the admission, accepted the admission, and adjudicated Child a CHINS. *Id*. at 59.

[9] Following the hearing, the court issued an order on the amended CHINS petition, finding that Child was a CHINS-6 because Child admitted that Child had an eating disorder that jeopardized Child's health and the eating disorder was "fueled partly because of [Child's] self-isolation from [the Parents] which is a behavior which is likely to reoccur" if Child is placed back in the Parents' home. Appellants' App. Vol. 2 at 67. The court also found that remaining in the Parents' care would be contrary to Child's welfare based on the allegations that Child admitted to and ordered that Child should continue to be removed from the Parents' home. *Id*. at 68.

[10] On December 8, 2021, a dispositional hearing was held. At the close of the hearing, the court informed the parties that it would leave in place its earlier order prohibiting the Parents from discussing Child's transgender identity during visitation but confirmed that it could be discussed at family therapy and that the court would reconsider the order when it could be safely discussed outside of therapy. On December 9, the trial court entered its Dispositional

Order, in which it found that Child needed "services to treat anorexia as well as individual and family therapy to ensure emotional, mental, and psychological safety and well-being[,]" that the Parents' participation was necessary to "ensure that the child receives adequate treatment for anorexia and that they support and protect the child's emotional, mental, and psychological safety and well-being[,]" and that "child shall remain in the current home or placement, with supervision by DCS." Appealed Order at 3. The court also ordered the Parents to participate in family therapy. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

Section 1 – The Parents' appeal of the Initial/Detention Order is moot.

[11] The Parents first challenge the Initial/Detention Order, arguing that the trial court erred by finding that there was probable cause to believe that Child was a CHINS and that removal was necessary to protect Child's health.[1] However, DCS asserts, and we agree, that the trial court's subsequent adjudication that Child is a CHINS-6 based on Child's admission, an admission the Parents did not object to, renders their appeal of the Initial/Detention Order moot.

[1] We observe that in their appellants' brief, the Parents frequently conflate the burden of proof required to support a CHINS probable cause determination and a CHINS adjudication, the latter of which requires a preponderance of the evidence. Ind. Code § 31-34-12-3. Because they conflate these burdens of proof, their argument lacks a proper foundation. They also repeatedly emphasize that DCS failed to present additional evidence beyond the PIR and the FCM's testimony to support the CHINS probable cause determination, but we observe that the trial court properly based its probable cause determination on the PIR as required under Indiana Code Section 31-34-9-2(1).

[12] An issue is moot when no effective relief can be rendered to the parties before the court. *In re F.S.*, 53 N.E.3d 582, 590 (Ind. Ct. App. 2016). Here, no relief is available to the Parents due to any alleged error in the court's initial CHINS probable cause determination because the CHINS-1 and CHINS-2 allegations have been dismissed. Notably, the Parents are not challenging the CHINS-6 adjudication. In addition, no relief is available to the Parents due to any alleged error in the court's probable cause determination on Child's detention because Child's detention is no longer based on the Initial/Detention Order but on the Dispositional Order. Effective relief regarding Child's removal from the home, if warranted, may be granted based on the Parents' appeal of the Dispositional Order. Accordingly, the Parents' challenge to the Initial/Detention Order is moot.

[13] However, a moot case may be decided on its merits when the case involves questions of great public interest or when leaving the judgment undisturbed might lead to negative collateral consequences. *Id.* "Cases falling within the public interest exception [to the mootness doctrine] typically contain issues likely to recur." *Id.* We observe that Indiana courts have repeatedly chosen to address CHINS *adjudications* even when the CHINS case was closed and no effective relief could be granted because a CHINS adjudication can have serious consequences for families. *See, e.g.*, *In re S.D.*, 2 N.E.3d 1283, 1290 (Ind. 2014) (opting to address CHINS adjudication because parental rights may be terminated based on two prior CHINS adjudications and a prior CHINS adjudication may have adverse job consequences or preclude parent from

becoming licensed foster parent); *In re N.C.*, 72 N.E.3d 519, 524 (Ind. Ct. App. 2017) (concluding that an erroneous CHINS adjudication must be corrected because two separate CHINS adjudications can serve as basis for termination of parental rights).

[14] While our courts have addressed moot CHINS adjudications, the Parents are not challenging the CHINS-6 adjudication. And we note that the harmful collateral consequences that a CHINS adjudication carries do not apply to an initial CHINS probable cause determination. Nevertheless, the Parents contend that we should review the Initial/Detention Order because it "involves a question of great public interest and issues that are likely to reoccur." Reply Br. at 6. The policy issues presented by Parents will be addressed in the context of their challenge to the Dispositional Order. Thus, we are unpersuaded that the Initial/Detention Order falls within the public interest exception to the mootness doctrine.

Section 2 – The trial court's decision to continue Child's placement outside the Parents' home is not clearly erroneous.

[15] We now address the Parents' challenge to the Dispositional Order. As we review the trial court's decision, we are mindful that appellate courts generally grant latitude and deference to trial courts in family law matters. *In re E.K.*, 83 N.E.3d 1256, 1260 (Ind. Ct. App. 2017), *trans. denied* (2018). This deference recognizes the trial court's "unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court's only being able to review a cold transcript of the record." *Id*. Thus, when reviewing the

sufficiency of evidence supporting a CHINS determination, or a CHINS disposition as in this case, we give due regard to the trial court's ability to assess the credibility of witnesses. *In re K.P.G.*, 99 N.E.3d 677, 681 (Ind. Ct. App. 2018), *trans. denied*. "We neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the trial court's decision." *In re A.M.*, 121 N.E.3d 556, 561 (Ind. Ct. App. 2019), *trans. denied*. Here, the Parents' sole claim of error involves the trial court's finding that Child should continue to be removed from their home. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *K.B. v. Ind. Dep't of Child Servs.*, 24 N.E.3d 997, 1001-02 (Ind. Ct. App. 2015) (citation omitted). Unchallenged findings are accepted as true. *In re S.S.*, 120 N.E.3d 605, 608 n.2 (Ind. Ct. App. 2019).

[16] We begin with the underlying basis for Child's CHINS adjudication. Child admitted to being a CHINS-6 pursuant to Indiana Code Section 31-34-1-6, which provides,

> A child is a child in need of services if before the child becomes eighteen (18) years of age:
>
> > (1) *the child substantially endangers the child's own health* or the health of another individual; and
> >
> > (2) the child needs care, treatment, or rehabilitation that:
> >
> > > (A) the child is not receiving; and

> (B) is unlikely to be provided or accepted without the coercive intervention of the court.

(Emphasis added.) A CHINS-6 adjudication is made "through no wrongdoing on the part of either parent." *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). Once a child has been adjudicated a CHINS, the trial court must issue a dispositional decree "consistent with … the best interest of the child … in the least restrictive (most family like) and most appropriate setting available." Ind. Code § 31-34-19-6(1)(A). The trial court may "remove the child from the child's home and authorize [DCS] to place the child in another home." Ind. Code § 31-34-20-1(a)(3).

[17] The Parents did not object to Child's admission or to the factual basis for that admission and do not argue on appeal that Child is not a CHINS-6. They do not challenge the trial court's findings that Child needs services to treat anorexia and individual and family therapy to ensure Child's emotional, mental, and psychological well-being; that the Parents' participation is necessary to ensure that Child receives adequate treatment for anorexia and that they support and protect Child's emotional, mental, and psychological safety and well-being; and that the Parents participate in family therapy. Nevertheless, they contend that Child's continued removal from the home is clearly erroneous because it (1) contravenes the CHINS-6 statute and (2) is unsupported by sufficient evidence that it is in Child's best interest. We address each contention in turn.

[18] The Parents' claim that Child's continued removal from the home is in contravention of the CHINS-6 statute appears to be built on the following chain of contentions: (1) the focus of the CHINS-6 statute is on the child, not on any wrongdoing on the parents' part; (2) Child's CHINS-6 adjudication is based on Child's eating disorder and self-isolation from the Parents; (3) the trial court found a nexus between Child's mental health issues and Child and the Parents' disagreement regarding transgender identity; (4) the disagreement involves an act or omission of the Parents; (5) parental acts or omissions are the focus of CHINS-1 and CHINS-2, but those allegations have been dismissed; and (6) therefore, the court's decision "focuse[s] on the [the Parents'] disagreement [with Child's transgender identity] rather than [Child's] admitted endangerment of [Child's] own health." Appellants' Br. at 31.

[19] Our review of the record shows that the trial court explained its understanding of this case as follows:

> The ultimate goal is for family reunification […] the reality is this is an extreme example of a child having a certain lifestyle that the parent[s] don't agree with. That has been going on for all time. There ha[ve] always been issues where children do things that the parent[s] don't agree with be it religiously or morally or whatever. That happens and *that is not a reason to remove a child from the home*, but when it *as in this case there is a clear nexus between that issue and the medical and psychological issues that the child is having* that is when we get issues that we have here today that the State is now involved in and because of those issues the child is a ward of DCS and those decisions are going to have to be made through the Court so I certainly understand the objections and the parent[s'] views and I am not discounting the parent[s'] views

> at all[.] I am not taking any issue with the child's views or the parent[s'] views. They are differing views and that happens in life. [B]ut to the extent that *we now have these medical issues that again, there is a [nexus] between this discord about the lifestyle and the medical issues*. That has to get resolved and this [is] going to take some therapy and that is going to take some cooperation from all involved.

Tr. at 95-96 (emphases added) (verbal hesitations omitted).

[20] It is evident from the trial court's statements that its decisions in this case, including Child's continued removal from the home, have been focused on the ultimate goal of reuniting the Parents and Child by ensuring that Child receives services to return Child to physical and psychological health and providing the family with the structure and support they need to enable them to learn to deal constructively with their disagreement regarding Child's transgender identity. The court specifically stated that a disagreement between parents and a child is *not* a reason to remove a child from the home. While the court recognized a connection between Child's medical and psychological issues and Child's disagreement with the Parents, the mere existence of that connection does not mean Child's disposition runs contrary to the CHINS-6 statute. As the court emphasized, this is an extreme case where Child has reacted to a disagreement with the Parents by developing an eating disorder and self-isolating, which seriously endangers Child's physical, emotional, and mental well-being. The court's decision to continue Child's removal was not a response to the Parents' acts or omissions relating to their beliefs regarding transgender individuals, and the court was not treating the case as if it were based on a CHINS-1 or a

CHINS-2 adjudication. Rather, the trial court's focus was clearly on Child's medical and psychological health needs, and the court's decision to continue Child's placement outside the home is consistent with the CHINS-6 statute. We find no error here.[2]

[21] We now turn to the Parents' claim that the evidence is insufficient to establish that Child's continued removal from the home is in Child's best interest. As a threshold matter, we address the Parents' argument regarding the standard of proof required to establish Child's best interest. The Parents argue that because this case involves transgender identity, the cases most similar to it are the recent cases involving parental requests to have their child's birth certificate gender marker changed, and DCS should be required to present evidence to establish best interest "at least equal [to] if not stronger" than that presented by the parents in these cases. Appellants' Br. at 35-36 (citing *Matter of A.B.*, 164 N.E.3d 167 (Ind. Ct. App. 2021), *In re H.S.*, 175 N.E.3d 1184 (Ind. Ct. App. 2021), *trans. denied*, and *In re O.J.G.S.*, 187 N.E.3d 324 (Ind. Ct. App. 2022), *trans. pending*). Based on these cases, the Parents assert that DCS failed to present

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[2] The Parents also baldly assert that the Dispositional Order is contrary to Indiana Code Section 31-34-1-14 because it "ignored the presumption in favor of parents acting on religious beliefs" and is contrary to Section 31-34-1-15 because it "limited the lawful practice or teaching of religious beliefs." Appellants' Br. at 31. In addition, the Parents baldly assert that DCS failed to provide them with proper notice of the purpose of the dispositional hearing in violation of Indiana Code Section 31-34-19-1.3. *Id.* at 33. However, the Parents do not support these assertions with cogent reasoning and citations to authorities, and therefore these claims are waived. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal relied on); *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 373 n.2 (Ind. Ct. App. 2006) (failure to present cogent argument to support claim that trial court erred in finding that there was a satisfactory plan for the care and treatment of child waives issue for appellate review), *trans. denied*.

"conclusive or uncontroverted evidence" that their rejection of Child's transgender identity "has led to mental harm and merits [Child's] continued removal from the home." *Id.* at 36.

[22] The birth certificate cases dealt with the interpretation of a specific statute dealing with amendment of birth certificates. They are not CHINS cases, and we do not find them applicable. While the circumstances in this case may be unique, every family has unique characteristics, and the law in CHINS cases is well established. Indiana Code Section 31-34-19-10 requires that the trial court's dispositional decree be accompanied with written findings and conclusions upon the record concerning, among other things, the child's needs for care, treatment, rehabilitation, or placement, and the court's reasons for the disposition. Indiana Code Section 31-34-12-3 requires that findings be based upon a preponderance of the evidence. *See also N.E.*, 919 N.E.2d at 105 ("Because a CHINS proceeding is a civil action, the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code."). A preponderance of the evidence is "the greater weight of the evidence." *Matter of K.Y.*, 145 N.E.3d 854, 859 (Ind. Ct. App. 2020) (quoting *Kishpaugh v. Odegard*, 17 N.E.3d 363, 373 (Ind. Ct. App. 2014)), *trans. denied*. Therefore, we reject the Parents' assertion that DCS was required to produce conclusive or uncontroverted evidence that Child's continued removal from the home is in Child's best interest. Pursuant to Section 31-34-12-3, DCS was required to prove by only a preponderance of the evidence that Child's continued removal is in Child's best interest.

[23] As for the merits of the Parents' insufficient evidence claim, we begin by noting that Child's CHINS-6 admission and adjudication establish that Child was endangering Child's health and needed care, treatment, and rehabilitation that Child was not receiving and would likely not receive without the court's coercive intervention.[3] Thus, we accept these facts as true. It bears repeating that the Parents had no objection to Child's CHINS admission or the factual basis for it, which included that Child had an eating disorder fueled in part by Child's self-isolation from the Parents and that behavior was likely to reoccur if Child was placed back in the home with the Parents. Tr. at 56, 58.

[24] The record contains additional evidence supporting Child's placement outside the home. At the dispositional hearing, the FCM testified that at the most recent family team meeting, the Parents had "state[d] that they recognize that there were issues at this time where it would be in the best interest of the child to remain out of home." *Id*. at 65. The FCM also testified that DCS believed that "maintaining the child out of home placement is […] essential for the child's safety at this point." *Id*. at 78. The FCM explained that DCS has "focused this case on the child's self-isolation and the eating disorder[,]" and that DCS's top concern was to successfully treat Child's anorexia. *Id*. at 70, 76. The FCM clarified that there were other barriers to returning Child home that needed to be addressed with family therapy, individual therapy, and other

[3] As for the necessity of court intervention, Child had missed appointments to address Child's eating disorder and refused to participate in family therapy sessions, and the trial court had to specifically admonish Child that family therapy was not a suggestion, it was mandatory, and Child was required to attend. Tr. at 95.

services based on Child's statements "on numerous occasions" that Child does not feel "safe" with the Parents. *Id*. at 70. The FCM testified that there was a correlation between Child's anorexia and Child's self-isolation and feelings of stress and anxiety when in the Parents' home. *Id*. at 71-72. The FCM stated that DCS was concerned that the Parents' involvement with Child impeded successful treatment of Child's anorexia. *Id*. 75-76. The FCM confirmed that it is "DCS's hope that family therapy will help to rectify any conflict between parents and child so that the child can safely return home."[4] *Id*. at 78. We note that Mother testified that the case is "very complicated" because Child has "multiple diagnos[e]s that may or may not be interacting to […] create oppositional behaviors[,]" and that "there needs to be some type of multipronged approach to [Child's] mental health support and medical care." *Id*. at 86-87.

[25] In addition, Child's mental health evaluations both indicated that Child suffers from significant psychological disorders and conditions that would benefit from therapy. A clinical neuropsychologist performed an in-person clinical examination of Child, at which Mother was present. The doctor diagnosed Child with major depressive disorder, generalized anxiety disorder, parent-child relationship problem, and gender dysphoria. Appellants' App. Vol. 2 at 107. He recommended family therapy if the Parents "are willing and able to work on

[4] The Parents attempt to frame this case as a philosophical disagreement about transgender ideology between them and DCS. We disagree. The focus of DCS's intervention in this case is to provide Child with the help and resources to address Child's eating disorder and provide therapy to enable Child to establish a healthier response to Child's disagreement with the Parents so that reunification can be achieved.

conflict resolution." *Id*. He also explained that Child's "considerable anger and disappointment are closely associated with [Child's] gender identity issue" and that Child might "benefit from proper education based on scientific evidences [sic] that helps [Child] understand the role of physiological aspects that plays [sic] a major role in this type of decision rather than following online information and/or opinions of his peers." *Id*.

[26] Another report was prepared by a psychologist and sex researcher who reviewed Child's records. That doctor opined that Child may be suffering from borderline personality disorder (BPD) rather than gender dysphoria and explained that BPD is associated with eating disorders. *Id*. at 143. He also opined that Child's "reported features have few similarities with the populations who respond well to transition, but many significant similarities with other phenomena, such as BPD, who respond best to other therapies." *Id*. at 144. We conclude that the evidence is sufficient to show that Child's continued removal from the home is in Child's best interest.

[27] In their appellants' brief, the Parents' sufficiency of the evidence argument rests largely on their contention that the Dispositional Order is contrary to the CHINS-6 statute because the order is based on parental acts or omissions related to their repudiation of Child's transgender identity. We have already found no merit to this argument. The Parents also contend that they participated in the DCS case management plan, maintained a safe and sanitary home, and sought medical and therapeutic services before the State became involved, and that Mother testified that she believed that they would be able to

continue treatment while having Child at home. This argument is merely an invitation to reweigh the evidence, which we must decline. Accordingly, we conclude that the trial court's decision to continue Child's removal from the home is not clearly erroneous.

Section 3 – The Dispositional Order does not violate the Parents' constitutional rights.

[28] The Parents also argue that the Dispositional Order violates their fundamental rights to the care, custody, and control of their child under the Fourteenth Amendment to the United States Constitution, their rights to the free exercise of religion under the First Amendment, and their rights to free speech under the First Amendment.

Section 3.1 – The Dispositional Order does not violate the Parents' constitutional rights to the care, custody, and control of Child.

[29] A parent has a fundamental right to raise his or her child without undue influence by the state. *In re A.C.*, 905 N.E.2d 456, 461 (Ind. Ct. App. 2009). "Indeed, the courts of this state have long and consistently held that the right to raise one's children is essential, basic, more precious than property rights, and within the protection of the Fourteenth Amendment[.]" *E.P. v. Marion Cnty. Off. of Fam. & Child.*, 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995). However, "that right is limited by the State's compelling interest in protecting the welfare of children." *In re Ju.L.*, 952 N.E.2d 771, 776 (Ind. Ct. App. 2011). "[T]he State has the authority under its *parens patriae* power to intervene when parents neglect, abuse, or abandon their children." *F.S.*, 53 N.E.3d at 592.

[30] The Parents assert that the State does not have a compelling interest because they have not neglected, abused, or abandoned Child. We disagree. The unchallenged CHINS-6 adjudication establishes that the State has a compelling interest in protecting Child's welfare. As previously noted, the CHINS-6 adjudication establishes that Child substantially endangers Child's own health and needs care, treatment, and rehabilitation that Child is not receiving, and that the coercive intervention of the court is necessary to ensure that Child engages in needed treatment. As our supreme court has observed, the CHINS element that the care, treatment, or rehabilitation that the child needs is unlikely to be provided or accepted without the coercive intervention of the court "guards against unwarranted State interference in family life." *In re D.J.*, 68 N.E.3d 574, 580 (Ind. 2017) (citation and quotation marks omitted).

[31] The Parents argue that "the trial court's decisions in this matter show a patent disregard for the parents' rights to the care, custody, and control of their child and are clear examples of the state unlawfully substituting its own judgment for that of the parents." Appellants' Br. at 44. In support of these claims, the Parents present a rehash of their arguments that the Dispositional Order is clearly erroneous. That is, they contend that the trial court focused on the disagreement between the Parents and Child regarding Child's transgender identity despite the dismissal of the CHINS-1 and CHINS-2 allegations. We have already concluded that the Dispositional Order was not based on the dismissed CHINS-1 and CHINS-2 allegations and is consistent with the CHINS-6 statute and that sufficient evidence supports the trial court's

determination that Child's continued removal is in Child's best interest. Accordingly, we are unpersuaded that the trial court unlawfully substituted its own judgment for that of the Parents.

[32] Finally, we note that the Parents argue that "DCS failed to provide 'clear and convincing' evidence necessary to overcome the parents' right to control the upbringing of their child." Appellants' Br. at 44 (quoting *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1230 (Ind. 2013)). The clear and convincing evidence standard applies to termination of parental rights, Ind. Code § 31-34-12-2, not a CHINS proceeding. Accordingly, we conclude that the Dispositional Order does not impinge on the Parents' constitutional right to the care, custody, and control of Child.

Section 3.2 – The Dispositional Order does not violate the Parents' rights to the free exercise of religion.

[33] The Parents next assert that the Dispositional Order violates their rights to the free exercise of religion. The First Amendment provides in relevant part that "Congress shall make no law ... prohibiting the free exercise" of religion.[5] The

[5] The Parents also claim that their rights were violated under Article 1, Sections 2 and 3 of the Indiana Constitution, which guarantee the rights to worship according to the dictates of one's own conscience and to the free exercise and enjoyment of religious opinions. Our supreme court has held that federal jurisprudence does not govern the Indiana Constitution's guarantees of religious protection and that the Indiana Constitution requires a separate analysis. *City Chapel Evangelical Free Inc. v. City of S. Bend ex rel. Dep't of Redev.*, 744 N.E.2d 443, 446 (Ind. 2001). Although the Parents provide the text of the state constitutional provisions and the appropriate standard under which to analyze this claim, they fail to develop a cogent argument in support of it. By failing to provide an independent analysis under the Indiana Constitution, the Parents have waived their claim. *See* Ind. Appellate Rule 46(A)(8)(a); *Brown v. State*, 744 N.E.2d 989, 995 (Ind. Ct. App. 2001) (concluding that appellant waived state equal privileges claim by failing to provide independent analysis based on state constitutional jurisprudence).

First Amendment applies to the states through the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The First Amendment protects "the right to believe and profess whatever religious doctrine one desires[,]" *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990), as well as "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (citation and quotation marks omitted). "Thus the Amendment embraces two concepts,—freedom to believe and freedom to act." *Cantwell*, 310 U.S. at 303. The freedom to believe cannot be restricted by law, but the freedom to act is "subject to regulation for the protection of society." *Id*. at 303-04.

[34] "The free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden." *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989). A substantial burden is one that "put[s] substantial pressure on an adherent to modify his behavior and violate his beliefs." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 718 (1981). The plaintiff bears the burden to show that the government action imposes a burden on his or her sincerely held religious practice. *Kennedy*, 142 S. Ct. at 2422. If the plaintiff carries this burden, the focus then shifts to the government to "satisfy strict scrutiny by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Id*. (citation and quotation marks omitted). Laws "incidentally burdening religion are ordinarily

not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021).

[35] At the initial hearing, Father testified that the Parents cannot affirm Child's transgender identity or use Child's preferred pronouns based on their sincerely held religious beliefs. Tr. at 34. On appeal, the Parents contend that "the state's actions clearly burdened [their] religious beliefs by forcing them to choose between (1) violating their religious beliefs by affirming their child's transgender ideology or (2) losing custody of [Child] with the knowledge that the state's placement would directly contradict their religious beliefs." Appellants' Br. at 44. We disagree that the Dispositional Order created such a choice.

[36] As discussed in Section 2, the Dispositional Order was based on Child's medical and psychological needs and not on the Parents' disagreement with Child's transgender identity. We observe that at the dispositional hearing, the FCM testified that it was *not* DCS's position to continue Child's removal from home if the Parents continued to exercise their religious views by affirming their view of Child's transgender identity. Tr. at 71. The FCM explained that it "was not a matter of who's right or who's wrong […], it's just more of a matter of ensuring [Child's] safety." *Id*. She also stated that it is "DCS's hope that family therapy will help to rectify any conflict between parents and child so that child can safely return home." *Id*. at 78. She attested that DCS had not made any decision in the case based on the Parents' religious beliefs. *Id*. at 79. Additionally, Mother acknowledged that no one from DCS ever made a

statement to her indicating that DCS staff disapproved of the Parents' religious beliefs. *Id*. at 88-87. Thus, Child's continued removal from the home was not based on the fact that the Parents did not accept Child's transgender identity, and reunification is not contingent on the Parents violating their religious beliefs and affirming Child's transgender identity. We conclude that the Dispositional Order does not impose a substantial burden on the Parents' free exercise of religion.

[37] Even if the Parents were able to demonstrate that the Dispositional Order imposes a substantial burden on their religious freedom, their claim that Child's continued removal from the home violates the Free Exercise Clause would fail. The United States Supreme Court has observed that "neither rights of religion nor rights of parenthood are beyond limitation" and that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and … this includes, to some extent, matters of conscience and religious conviction." *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944). Simply put, "[t]he right to practice religion freely does not include liberty to expose … the child … to ill health or death." *Id*. Thus, protecting a child's health and welfare is well recognized as a compelling interest justifying state action that is contrary to a parent's religious beliefs.[6] *See Jehovah's Witnesses v.*

[6] This principle is codified in Indiana Code Section 31-34-1-14, which provides that, if a parent fails to provide specific medical treatment for a child because of the legitimate and genuine practice of religious beliefs, a rebuttable presumption arises that the child is not a CHINS, but the presumption does not prevent a court from ordering medical services when the health of a child requires or apply to situations in which the life or health of a child is in serious danger.

King Cnty. Hosp. Unit No. 1, 278 F. Supp. 488, 504-05 (W.D. Wash. 1967) (concluding that government may order that child be given blood transfusion over parents' religious objection), *aff'd*, 390 U.S. 598, 598 (1968) (one sentence affirmation); *In Re Sampson*, 278 N.E.2d 918, 918-19 (N.Y. 1972) (affirming court's order for blood transfusion necessary to perform required surgery on child's deformed face over parent's religious objection); *Schmidt v. Mut. Hosp. Servs., Inc.*, 832 N.E.2d 977, 982 (Ind. Ct. App. 2005) ("[A] parent's decision to refuse lifesaving medical treatment for a minor child [based on the parent's religious principles] must yield to the State's interest in protecting the health and welfare of the child.").

[38] The CHINS-6 adjudication and the factual basis establish that Child's health was substantially endangered and that the care, treatment, and rehabilitation would likely not occur without the court intervention. Thus, the State has a compelling interest in protecting Child's physical and mental health.

[39] In addition, Child's removal from the home is narrowly tailored to serve the State's compelling interest based on the same analysis that supports our conclusion that continued removal from the home is in Child's best interest. The FCM testified that maintaining Child's placement outside the home is essential to focus on treating Child's eating disorder and providing therapy, and Child's mental health evaluations both showed that Child suffered from significant psychological disorders and conditions. Although Child was placed outside the home, Parents have unsupervised visitation with Child. Therefore,

we conclude that the Dispositional Order does not violate the Free Exercise Clause.

Section 3.3 – The trial court's temporary restriction on discussion of Child's transgender identity between the Parents and Child outside of family therapy does not violate the Parents' freedom of speech.

[40] At the close of the dispositional hearing, the trial court informed the Parents that it would continue to enforce its earlier order requiring them to refrain from discussing Child's transgender identity during visitation. The Parents objected on First Amendment grounds and asserted that they "would need to be able to have that conversation with their child at some point." Tr. at 93. The court explained,

> I am leaving that Order in place at this time. I don't believe it is a first amendment issue under the circumstances of this case. You are certainly entitled to your opinion on that and your objection is noted. [B]ut if that discussion is had within the family therapy that is being Ordered[,] then that is perfectly alright to have those discussions[.] [B]ut during visitations I am Ordering that that topic not be discussed until further Order of the Court. … I am going to need a therapist or someone to tell me it is a safe conversation … and I am just not sure it's in the best interest of [Child] to have that conversation at this point yet.

Id. at 93-94 (verbal hesitations omitted).

[41] On appeal, the Parents contend that the restriction of this topic during visitation violates their freedom of expression. The First Amendment provides in pertinent part that "Congress shall make no law ... abridging the freedom of speech." "Under that Clause, a government … 'has no power to restrict

expression because of its message, its ideas, its subject matter, or its content.'" *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (quoting *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)). "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id*. However, "[i]t is well established that not all speech is afforded the same protection under the First Amendment." *Barlow v. Sipes*, 744 N.E.2d 1, 10 (Ind. Ct. App. 2001), *trans. denied*. "[S]peech concerning public affairs" receives heightened protection because it "is more than self-expression; it is the essence of self-government.'" *Id*. (quoting *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964)) (brackets in *Barlow*). "In contrast, speech on matters of purely private concern is of less First Amendment concern." *Id*. (quoting *Carey v. Brown*, 447 U.S. 455, 467 (1980)).

[42] *In re Paternity of G.R.G.*, 829 N.E.2d 114 (Ind. Ct. App. 2005), provides guidance in balancing a parent's free speech rights and the welfare of the child. There, the court concluded that an order restraining the parents from discussing their disputes with the child was not an impermissible prior restraint for two reasons. First, the court reasoned that the order focused solely on private speech rather than speech that was important to "the marketplace of ideas." *Id*. at 125. Second, the court explained that the order reasonably furthered the child's best interests:

> The order in the case before us did not preclude Father and Mother from disagreeing with each other. Nor did it preclude

> Father from discussing with any other third party his disputes with Mother. Rather, it obviously reflects the trial court's reasonable belief that exposing G.R.G. to such matters would not be in the child's best interests.

Id.[7]

[43] The order in this case, like the order in *G.R.G.*, involves only the Parents' private speech with Child rather than public speech. Moreover, the Parents' contention that the State "did not have a compelling interest in protecting the welfare of the child because the parents were already doing so" fails once again. Appellants' Br. at 47. The CHINS-6 adjudication establishes that the State has a compelling interest in protecting Child's physical and psychological health.

[44] We also find the restriction narrowly tailored to address the State's compelling interest. Child was adjudicated a CHINS because Child has an eating disorder that jeopardizes Child's health. The trial court recognized that Child's eating disorder and self-isolation were connected to the discord at home regarding Child's transgender identity. Thus, the limitation of discussion of this topic directly targets the State's compelling interest in addressing Child's eating disorder and psychological health. Further, the order is narrowly tailored because it restricts the Parents from discussing the topic with Child only during visitation but permits the topic to be discussed in therapy, which permits the

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[7] In a recent case, another panel of this Court upheld an order prohibiting each parent from disparaging the other in their child's presence, concluding that "the order furthers the compelling State interest in protecting the best interest of [the child] and does not violate the First Amendment." *Israel v. Israel*, 189 N.E.3d 170, 180 (Ind. Ct. App. 2022), *trans. pending*.

family to work on conflict management so that they will eventually be able to safely talk about it outside family therapy. Accordingly, we conclude that the order restricting conversation of this topic outside of family therapy is a permissible prior restraint.

Conclusion

[45] We conclude that the Parents' appeal of the Initial/Detention Order is moot and decline to address it. In addition, we conclude that Child's continued removal is not contrary to the CHINS-6 statute and is supported by sufficient evidence that it is in Child's best interest. We also conclude that Child's continued removal from the home does not violate the Parents' constitutional rights to the care, custody, and control of Child or to their rights to the free exercise of religion. The Parents have the right to exercise their religious beliefs, but they do not have the right to exercise them in a manner that causes physical or emotional harm to Child. Finally, we conclude that the trial court's temporary restriction on the discussion of Child's transgender identity outside of family therapy does not violate the Parents' free speech rights. Therefore, we affirm the Dispositional Order.

[46] Affirmed.

Vaidik, J., and Altice, J., concur.