

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
C.R.J. and C.P.J. (Minor
Children)

and

A.F. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

November 23, 2021

Court of Appeals Case No.
21A-JT-1251

Appeal from the Fulton Circuit
Court

The Honorable A. Christopher
Lee, Judge

Trial Court Cause No.
25C01-2011-JT-119
25C01-2011-JT-120

Appellee-Petitioner.

Mathias, Judge.

- [1] The Fulton Circuit Court terminated Mother’s parental rights to her twin children. Mother appeals, arguing that the trial court abused its discretion when it denied her request to continue the fact-finding hearing.
- [2] We affirm.

Facts and Procedural History

- [3] Mother has twin children, C.R.J and C.P.J., who were born in November 2017.¹ DCS removed the twins from Mother’s care due to allegations of abuse and neglect in October 2019, shortly before their second birthday, and placed them in foster care.² Specifically, on the date the twins were removed, DCS discovered the twins were unsupervised because Mother was asleep in her bed. The home was full of trash, including dirty diapers and cigarette butts throughout the home. Household cleaners were left on the floor where the children had access to them. Tr. p. 41. Both twins had “extensive soiled

¹ DCS filed separate petitions for the termination of parental rights of the twins’ alleged father.

² A third child, K.B.J., was removed from Mother’s care and placed with his biological father. That child is not a subject of these proceedings. Mother has two more children who are cared for by paternal relatives. Mother does not provide support for any of her children.

diapers” and diaper rash. *Id.* at 42. One twin drank from a bottle containing spoiled milk.

- [4] On October 30, 2019, DCS filed a petition alleging that the twins were children in need of services (“CHINS”). From October through December 2019, Mother complied with services and participated in visitation with the twins.
- [5] On December 31, 2019, an in-patient mental health facility admitted Mother due to psychosis, paranoia, acute mania, and grave disability. Mother remained at the facility for approximately four days. After her release, Mother maintained communication with her family case manager for several weeks. But she failed to attend four therapy appointments scheduled in January and February 2020.
- [6] The CHINS fact-finding hearing was held on January 17, 2020, and Mother admitted that the twins were CHINS. The trial court adjudicated the twins CHINS and issued its dispositional order on February 18. The court ordered Mother to participate in many services, including a mental health assessment, therapy, and a psychological evaluation.
- [7] At a review hearing in April, which Mother did not attend, DCS presented evidence that Mother had partially complied with the case plan. However, Mother ceased communicating with her service providers in February 2020. As noted above, she failed to attend scheduled therapy sessions, and her medication management service referral was canceled after she prematurely depleted her psychiatric prescriptions and failed to attend her medication management appointment.

- [8] Mother's last visitation with the twins was January 28, 2020. Mother tested positive for amphetamine the next day. Mother was evicted from her home in February 2020, and she has not had a stable home since her eviction.
- [9] Mother failed to appear for a hearing on August 27, at which DCS presented evidence that Mother was not participating in services. In October 2020, the State charged Mother with several drug related offenses. She was incarcerated in the Starke County Jail from October 7, 2020, to January 8, 2021. Mother did not notify DCS of the criminal charges or her incarceration. On November 6, 2020, while Mother was incarcerated, DCS filed a petition to terminate Mother's parental rights to the twins. On January 7, 2021, Mother pleaded guilty to Level 6 felony unlawful possession of a syringe.
- [10] The court held a fact-finding hearing on the termination petition on March 18, 2021. Mother orally requested a continuance to give her additional time to complete her psychological evaluation. Mother also argued that she had telephone problems and was unable to prepare for the hearing with her attorney. Tr. p. 5. DCS objected to the motion, and the trial court denied Mother's request.
- [11] DCS presented evidence that the twins do not have a bond with Mother. Mother failed to participate in individual therapy and the referral for home-based case management was canceled after she failed to attend four scheduled appointments. Mother does not have safe, stable housing, she is unemployed, and she does not have an income. The family case manager and court

appointed special advocate both testified that termination of Mother's parental rights was in the twins' best interests. *Id.* at 63, 85.

[12] Mother had an appointment for psychological testing on March 4, 2021, but she canceled the appointment on that date and did not reschedule. *Id.* at 58. Mother completed the interview portion of the testing the week before the fact-finding hearing but had not rescheduled the testing portion. *Id.* at 74.

[13] The family case manager testified that Mother requested supervised visitation with the twins in January 2021. *Id.* DCS did not want Mother to have visitation with the children until she started retaking her medications. *Id.* Therefore, DCS told Mother she needed to participate in a mental health assessment with the Bowen Center. *Id.* at 75. Mother scheduled a mental health assessment but canceled it and had not rescheduled it on the date of the fact-finding hearing. *Id.*

[14] On May 27, 2021, the trial court issued its order terminating Mother's parental rights to the twins. The trial court summarized its findings of fact as follows:

28. Throughout her testimony, Mother offered a multitude of circumstances in her life that she claims impeded her ability to participate in the children's case plan, including [the] death of [her] sister, COVID restrictions, divorce, loss of her phone, eviction, loss of her job, homelessness, conflict with the children's Former Legal Father, brother's heart attack, and various illnesses/mental conditions. While the Court empathizes with Mother because of her mental health, the Court finds her excuses for failing to participate in services unpersuasive.

29. Mother exhibits an unwillingness to accept responsibility for the current circumstances of her life, attributing her lack of

participation and stability to others and/or outside influences. Mother appears incapable of handling the normal affairs of adulthood. This limits her ability to provide proper supervision and care of her children. She presents as almost entirely self-focused and rarely mentions the effect that her actions have had on her children.

30. Since being placed in foster care on October 29, 2019[,] the children have made great strides in overcoming developmental delays evident at the time they were detained. They have fully integrated with the foster family and refer to the foster parents as mom and dad. The children have been in the same foster home since their initial placement on October 29, 2019.

Appellant's App. pp. 156, 176.

[15] Mother appeals the trial court's order terminating her parental rights.

Discussion and Decision

[16] Mother does not challenge the trial court's findings of fact and conclusions thereon, or the evidence supporting the court's findings. But Mother argues that the trial court's order terminating her parental rights should be reversed because the trial court abused its discretion when it denied her motion to continue the fact-finding hearing. We disagree.

[17] The decision whether to grant a motion to continue rests within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. *Rowlett v. Vanderburgh Cnty. Off. of Fam. & Child.*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. "An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion," but "no abuse of discretion will be found

when the moving party has not demonstrated that he or she was prejudiced by the denial.” *In re K. W.*, 12 N.E.3d 241, 244 (Ind. 2014) (quoting *Rowlett*, 841 N.E.2d at 619).

[18] Mother made an oral motion to continue at the start of the fact-finding hearing. Mother claimed she had been unable to prepare for the hearing with counsel because of telephone problems. Tr. p. 5. She also argued that the court should grant her motion because she had started, but not completed, her psychological evaluation. *Id.* DCS objected and argued that Mother had plenty of time and opportunity to prepare for the hearing and complete the evaluation. *Id.*

[19] First, we consider Mother’s claim that completion of the psychological evaluation “was necessary to determine the appropriate mental health services [she] needed to reunify with her twins. Mother was never properly evaluated by a psychiatrist to determine her essential needs.” Appellant’s Br. at 18. Mother properly observes that her mental health was a barrier to reunification with her children and that “only through proper and continuous treatment could Mother complete the reunification process.” *Id.* Mother claims that “[t]he record shows that when her mental health was properly treated, Mother could reunify with her children.” *Id.* at 19.

[20] Mother blames DCS and the trial court for her lack of participation in the psychological evaluation and appropriate mental health services. However,, Mother’s own conduct prevented her from participating in those services. Mother ceased communicating with service providers in February 2020. In that

same month, Mother's medication management service referral was canceled after she prematurely depleted her psychiatric prescriptions and failed to attend her medication management appointment. She did not attend any individual therapy appointments during these proceedings. Mother was incarcerated for several weeks during these proceedings as well. Mother had an appointment for psychological testing on March 4, 2021, but she canceled the appointment on that date and did not reschedule.³ Tr. p. 58. Finally, there is no evidence in the record to support Mother's claim that she could reunify with her children if her mental health was properly treated. It is not possible to assess Mother's claim because Mother did not establish that she benefited from any of the mental health treatment offered throughout the CHINS and termination proceedings.

[21] Turning to Mother's claim that she was not able to prepare for the hearing with her counsel, we observe that Mother did not explain why her alleged telephone problems prevented her from meeting with counsel. And after the trial court denied Mother's motion to continue, the trial court asked counsel if she and Mother needed additional time to speak before the hearing began. After conferring with Mother, counsel replied that they did not need additional time.

³ Mother claims that she did not have an opportunity to complete a psychological evaluation because DCS did not make the referral until early 2021. Mother ceased participating in the case at the end of February 2020 and did not reengage with service providers until January 2021. Consequently, Mother's failure to participate in services resulted in the delay. Mother also argues that the trial court incorrectly found that she participated in a psychological evaluation in December 2019. It is not clear from the record before us whether that evaluation took place. It is possible Mother had a psychiatric evaluation when she was admitted to the hospital on December 31, 2019. However, whether Mother participated in an earlier evaluation does not affect our resolution of the issue in this appeal.

Id. at 5–6. Moreover, Mother did not argue that she wished to present additional witnesses or evidence but could not do so because she had not been able to prepare with counsel. Because Mother did not inform the trial court why she needed additional time to prepare for the hearing, she cannot establish good cause or prejudice.

[22] Mother did not establish good cause in support of her motion to continue or that she was prejudiced by the denial.⁴

[23] Mother also claims that the denial of her motion for a continuance constitutes a denial of due process under the state and federal constitutions. However, Mother failed to raise this argument in the trial court, and therefore, it is waived. *See In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016) (explaining that “a party on appeal may waive a constitutional claim, including a claimed violation of due process rights, by raising it for the first time on appeal”).

[24] Moreover, Mother’s arguments in support of her due process claim mirror those considered and discussed above. Mother continues to claim that her own fault did not contribute to her request for a continuance. As we previously discussed,

⁴ We are not persuaded by Mother’s analogy of the circumstances surrounding her motion to those in *Rowlett*. 841 N.E.2d at 622. In that case, Rowlett presented evidence that he was bonded to his children. No such evidence exists here. While incarcerated, Rowlett voluntarily participated in nearly 1100 hours of services directed toward reunifying with his children. *Id.* at 622. Mother’s participation in services was insignificant, and she has not participated in visitation with the twins since January 2020. Importantly, in *Rowlett*, the court judged the father as an incarcerated parent, rather than as a parent whose incarceration status was about to change. *Id.* at 619-20. *See also Matter of A.S.*, 100 N.E.3d 723, 727–28 (Ind. Ct. App. 2018). Mother does not claim a recent or impending change in circumstances that could have a positive effect on her ability to care for her children that would have constituted good cause to continue the termination hearing.

the record does not support this assertion. Because Mother waived her due process claim and does not raise any additional argument to support her claim beyond those addressed above, we decline to consider her argument that her due process rights were violated when the trial court denied her motion to continue the fact-finding hearing.

Conclusion

[25] Mother did not establish good cause in support of her motion to continue the fact-finding hearing or that she was prejudiced by the denial. We therefore affirm the trial court's order terminating her parental rights to her children.

[26] Affirmed.

Bailey, J., and Altice, J., concur.