

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of:

G.W., Jr. (Minor Child),

and

G.W. Sr. (Father)

Appellants-Respondents,

v.

September 28, 2023

Court of Appeals Case No.
22A-JT-2649

Appeal from the Grant Superior
Court

The Honorable Dana J.
Kenworthy, Judge

Trial Court Cause No.
27D02-2203-JT-16

Indiana Department of Child
Services,
Appellee-Petitioner.

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

- [1] G.W., Sr. (“Father”), appearing pro se, appeals the termination of his parental rights with respect to G.W., Jr. (“Child”), upon the petition of the Grant County Department of Child Services (“DCS”). We affirm.

Issues

- [2] Father presents two consolidated and restated issues:
- I. Whether he was denied procedural due process in the Child in Need of Services (“CHINS”) proceedings; and
 - II. Whether he was denied procedural due process in the termination proceedings.

Facts and Procedural History

[3] Child was born to C.T. (“Mother”)¹ and Father on July 26, 2020. On August 1, DCS responded to a report that Mother had been evicted from Father’s home, was then homeless, and had used a prescription drug not prescribed for her while she had the care of Child. Mother was found walking with Child, who was not suitably dressed for the outside temperature and appeared to be dehydrated.

[4] Mother and Child returned to Father’s residence pursuant to an informal agreement with DCS. On August 24, DCS investigated a report that there had been domestic violence in the home and Child was being neglected. Although Child remained with Father, DCS petitioned to have Child adjudicated a CHINS.

[5] On August 27, an initial hearing was held in the CHINS court. Mother was appointed an attorney, and Father stated that he already had an attorney. Father subsequently filed a request for pauper counsel, but the request was denied on the basis that Father did not meet the qualifications. Father filed a request for a trial by jury, which was also denied. On October 20, an attorney entered his appearance for Father.

[6] On October 21, DCS filed a request to take custody of Child. DCS alleged that Father had failed to comply with a safety plan and had failed to facilitate Mother’s supervised visitation. The CHINS court authorized DCS to remove

¹ Mother consented to the termination of her parental rights and is not an active party to this appeal.

Child from Father's residence and set the matter for hearing. On November 4, the court conducted a fact-finding hearing, at which Mother and Father admitted that Child was a CHINS. On November 19, Child was returned to Father's care.

[7] On January 22, 2021, Child was again removed from Father's care. Mother, who had been staying with Father in violation of a detailed court-approved safety plan, reported that Father had been physically abusive to her. Father also reportedly had threatened to "shoot up" a residence where Mother took refuge and to harm Child and Child's family case manager ("FCM"). (Tr. Vol. II, pg. 40.) Mother and Child stayed four days in a domestic violence shelter; Child was then placed in foster care. Mother obtained a protective order prohibiting Father from contacting her.

[8] Father progressed from supervised visits to unsupervised visits, and, on July 22, the CHINS court approved a prospective trial home visit. However, the visit did not take place because DCS discovered that Mother was again living with Father. The parents produced drug screens that were positive for illicit drugs and their participation in services was sporadic.

[9] Child's FCM became concerned about Father's mental health because his behavior appeared erratic and he began to refer to Child as his "property." (*Id.* at 39.) Father filed multiple documents in Grant Superior Court regarding Child, some of which were captioned "Notice to Restore Property." (DCS Ex. 20, 27.) Father discovered the address of the foster parents and sent a demand

letter for return of his property, causing the foster parents to obtain a protective order against Father. When a service provider reached out to Father to initiate visitation with Child, Father informed the service provider that he had no binding contract with DCS and needed his “property back.” (*Id.*) Father also ended his participation in any other DCS recommended services.² Consequently, Father had no visits with Child from October of 2021 through June of 2022.

[10] On March 5, 2022, DCS petitioned to terminate Father’s and Mother’s parental rights. At the initial hearing on the termination petition, both parents were advised of their right to an attorney. Father stated that he had obtained “counsel” as opposed to an “attorney.” (*Id.* at 87.)³ The trial court advised Father that he could appear pro se or with a licensed attorney. Father responded that he would represent himself.

[11] At the termination hearing on June 22, Mother appeared in person and with an attorney, and Father appeared pro se. At the conclusion of the presentation of evidence by DCS, Mother’s attorney informed the trial court that Mother would consent to termination of her parental rights. Father called no witnesses, but proffered two uncertified documents, purportedly related to Father’s psychological assessment and mental health treatment. The trial court excluded

² Child’s FCM could not exclude the possibility that Father was receiving mental health counseling through the Veteran’s Administration, but DCS had not been provided with documentation of any such services.

³ The hearing transcripts do not appear in chronological order in the record on appeal.

the documents upon an objection from the DCS as to lack of foundation for admission. After the closing of the evidence, the trial court began to discuss the submission of proposed findings and conclusions thereon. Father interjected his opinion that he was a fit parent and requested a continuance of the proceedings. His motion for a continuance was denied.

- [12] On October 7, 2022, the trial court issued its order involuntarily terminating Father’s parental rights. Father now appeals.

Discussion and Decision

Standard of Review

- [13] Father does not challenge the trial court’s findings in support of termination under Indiana Code § 31-35-2-4. Rather, Father argues that his due process rights were violated.
- [14] The Fourteenth Amendment to the United States Constitution requires that no person shall be deprived of life, liberty, or property without due process of law. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment. *In re D.B.*, 942 N.E.2d 867, 871 (Ind. Ct. App. 2011). When the State seeks to terminate parental rights, “it must do so in a manner that meets the requirements of due process.” *M.K. v. Marion Cnty. Dep’t of Child Serv. (In re J.K.)*, 30 N.E.3d 695, 699 (Ind. 2015) (quotations and citations omitted). Due process has not been precisely defined, but at a

minimum it requires notice, an opportunity to be heard, and an opportunity to confront witnesses. *In re H.T.*, 911 N.E.2d 577, 579 (Ind. Ct. App. 2008).

[15] CHINS and termination of parental rights proceedings “are deeply and obviously intertwined to the extent that an error in the former may flow into and infect the latter,” and procedural irregularities in a CHINS proceeding “may deprive a parent of due process with respect to the termination of his or her parental rights.” *Matter of D.H.*, 119 N.E.3d 578, 588 (Ind. Ct. App. 2019), *aff’d in relevant part on reh’g, trans. denied*. “Our legislature’s enactment of an interlocking statutory scheme governing CHINS and involuntary termination of parental rights compels this court to make sure that each procedure is conducted in accordance with the law.” *In re N.E.*, 919 N.E.2d 102, 108 (Ind. 2010) (quoting *In re J.Q.*, 836 N.E.2d 961, 967 (Ind. Ct. App. 2005)).

Due Process in CHINS Proceedings

[16] Jury Trial. Father requested a jury trial upon the allegations of the CHINS petition and his request was denied. He asserts that he was entitled to a jury trial because Article 1, Section 20 of the Indiana Constitution “preserves the right for trial by jury in ALL civil cases.”⁴ Appellant’s Brief at 18 (emphasis in original). This Court has directly addressed the issue of whether a parent in a CHINS proceeding is entitled to a jury trial under the Indiana Constitution.

⁴ Article 1, Section 20 provides: “In all civil cases, the right of trial by jury shall remain inviolate.”

As for the Indiana Constitutional right to a jury trial the law is settled. The right has been construed to apply only to actions triable by jury at common law. *Gray v. Monroe County DPW* (1988), Ind. App., 529 N.E.2d 860 citing *State ex rel. Gannon v. Lake Circuit Court* (1945), 223 Ind. 375, 61 N.E.2d 168. Because no special judicial system for juveniles existed at common law, *Bible v. State* (1970), 253 Ind. 373, 254 N.E.2d 319, 320, juvenile matters obviously were not triable by jury. Thus, we have consistently held that Art. I § 20 does not give a party a right to a jury in juvenile court proceedings. *Gray*, 529 N.E.2d at 861; *see also, Shupe v. Bell* (1957), 127 Ind. App. 292, 141 N.E.2d 351. (Ind. Ct. App. 1995).

E.P. v. Marion Cnty. Off. of Fam. & Child, 653 N.E.2d 1026, 1030 (Ind. Ct. App. 1995). The Court stated its holding succinctly: “CHINS proceedings are not triable to a jury as a matter of right.” As such, Father has not shown that he was denied a right to a jury trial.

[17] Right to Counsel. Father also sets forth the following argument with respect to a CHINS review hearing:

Father’s counsel did file an appearance prior to the Review hearing, and in trying to enter [the] court room was denied by the bailiff, at the courts command, in that, trial court did err in doing so, and did impair father’s ability to make decisions at [the] hearing, as to confide with counsel, I know to be true and correct.

Appellant’s Brief at 22. Father provides no corresponding citation to the record. It appears that he may be referencing the initial hearing in the termination case, as opposed to a CHINS review hearing.

[18] At that initial hearing, Father attempted to draw a distinction between an attorney and counsel, indicating that he wished to have in-court counsel from a trusted relative. He now obliquely suggests that he was entitled to have “counsel” of his choice, arguing:

Trial court did verbally deny father’s counsel to attend Initial Hearing in TPR proceedings, DCS attorney did argue that counsel and attorney are the same thing, father says, what DCS believes counsel to be and what father says counsel to be may differ, but father is on trial here not DCS, the court stated, if counsel does not have a B.A.R. card then they’re not allowed, father says, counsel to father, is anyone with more experience on topic, that’s knowledgeable, experienced and I can trust, I trust my counsel more than anyone because he’s family, he does have child’s best interest in mind.

Appellant’s Brief at 21-22. To the extent that Father is contending that he has a right to representation by a non-attorney, he cites no legal authority for this proposition, and we are aware of none. Father has identified no deprivation of his rights in this regard.

Due Process in Termination Proceedings

[19] Right to Counsel. Father claims that the “trial court did err by not informing father he was entitled to State appointed counsel in the termination of parent child relationship proceedings.” Appellant’s Brief at 21. However, the record of the initial hearing in the termination proceedings includes an explicit

advisement from the trial court to the parents that they were “both entitled to an attorney.”⁵ (Tr. Vol. II, pg. 87.)

[20] Protective Order. Father makes the following argument with respect to a protective order:

The trial court did err by not revisit[ing] father’s request to be heard [that] was filed, in that the court did say, Mother is out of the County, and courts will revisit upon mother’s return, and fathers has [sic] had no opportunity to be heard.

Appellant’s Brief at 21. Father provides no corresponding citation to the record. Even assuming that the events transpired as Father now describes them, Father develops no argument with citation to legal authority for the proposition that he may collaterally attack a protective order in subsequent parental rights termination proceedings.

[21] Motion for a Continuance. Father next claims that he asked for a continuance but the “trial court did state; Well we’re hear [sic] now we’re just gonna go ahead with the hearing.” Appellant’s Brief at 22.

A denial of a motion for continuance is [considered to be an] abuse of discretion only if the movant demonstrates good cause for granting it. ... However, no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial. ... There are no mechanical tests for

⁵ Indiana Code Section 31-32-2-5 provides: “A parent is entitled to representation by counsel in proceedings to terminate the parent-child relationship.”

deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request was denied.

Blackford v. Boone Cnty. Area Plan Comm'n, 43 N.E.3d 655, 664 (Ind. Ct. App. 2015) (internal citations and quotations omitted).

- [22] Father does not provide a citation to the record; thus, it is unclear to what motion he refers. Father was granted at least one continuance upon the motion of his former counsel. Additionally, Father made a pro se motion for a continuance after the close of the evidence at the termination fact-finding hearing. We cannot conclude that the trial court abused its discretion – much less denied Father procedural due process – by denying his verbal motion for a continuance made after the evidentiary portion of the hearing had concluded.
- [23] Notice. Indiana Code Section 31-35-2-6.5 requires that DCS send notice of a hearing on a termination petition to a parent’s last known address at least ten days prior to the hearing. Father asserts that he was denied proper notice because DCS “tap[ed] termination paperwork on father’s door” only six days prior to the termination hearing. Appellant’s Brief at 22.
- [24] The CCS indicates that DCS issued to Father a summons and notice on March 25, 2022. Also, the CCS includes a notation of the return of service of process on both parents, as of April 1, 2022. The initial hearing on the termination petition took place on April 12, 2022. Facially, the record indicates that Father received the requisite service. He did not assert lack of notice to the trial court,

permitting development of any facts to the contrary. On this record, we discern no deprivation of due process.

[25] Admission of Psychological Evaluation. At the termination hearing, Father conducted cross-examination of FCM Danielle Baxter. Father asked whether the CHINS court had ordered Father to submit to a mental health assessment at “Grant Blackford” and Baxter responded: “not that I’m aware of.” (Tr. Vol. II, pg. 51.) Father subsequently sought admission of two uncertified documents, one of which was purportedly from “Blackford mental health,” and one of which purportedly contained notes from a Veteran’s Administration social worker, with reference to Father’s progress. (*Id.* at 73.) The documents were excluded for lack of foundation for admission into evidence.

[26] Father now contends that “DCS failed and/or did not remember to submit a favorable psychological [sic] evaluation on record of court, upon bring up [sic] to [the] trial court’s attention.” Appellant’s Brief at 23. As for Father’s unsuccessful attempt to introduce two documents into evidence, he made no offer of proof. The hearing transcript does not support Father’s claim that DCS negligently or intentionally withheld a relevant document. Nor does Father develop an argument to support his assertion that DCS had an obligation to offer a particular document into evidence. Father has not included his proffered documents as exhibits on appeal. In sum, Father has shown no deprivation of due process with respect to omission from evidence of a favorable psychological evaluation.

Conclusion

[27] Father was not denied procedural due process in the CHINS proceedings.
Father was not denied procedural due process in the termination proceedings.

[28] Affirmed.

May, J., and Felix, J., concur.