MEMORANDUM DECISION

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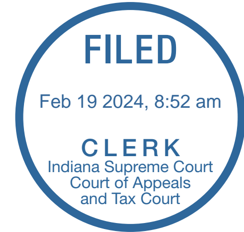

IN THE

Court of Appeals of Indiana

In the Termination of the Parent-Child Relationship of:

R.S. and N.S.,
Minor Children,

and

M.Y. (Mother) and T.S. (Father),

Appellant-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner

February 16, 2024

Court of Appeals Case No.
23A-JT-1192

Appeal from the Clark Circuit Court

The Honorable Joni L. Grayson, Magistrate

Trial Court Cause No.
10C04-2301-JT-000004
10C04-2301-JT-000005

Memorandum Decision by Judge Felix
Judges Bailey and May concur.

Felix, Judge.

Statement of the Case

[1] In August 2020, the Indiana Department of Child Services ("DCS") filed a petition alleging the children of M.Y. ("Mother") and T.S. ("Father"), R.S. and N.S. (collectively the "Children"), were children in need of services ("CHINS") and requesting detention based on the Children's deteriorating mental health. The CHINS petitions were based on allegations of Mother's and Father's inability, refusal, or neglect of the Children's mental health needs. The trial court granted the petitions and placed the Children with their adult half-sister, D.Y. ("Sister"). DCS offered reunification services to Mother and Father throughout 2020, 2021, and 2022.

[2] In January 2023, DCS filed its petition to terminate parental rights as to Mother and Father, which the trial court granted in its Order for the Involuntary Termination of the Parent-Child Relationship ("TPR Order"). Mother and Father now appeal separately, raising several issues for review, which we restate as the following two issues:

1. Whether the trial court clearly erred by entering the TPR Order; and
2. Whether the trial court violated Mother's or Father's due process rights when it entered the TPR Order.

[3] We affirm.

Facts and Procedural History

[4] The facts of the CHINS stage of this case are set out in this court's decision issued in Mother's appeal of the CHINS determination:

> Mother and [Father] are the parents of R.S., born in 2005, and N.S., born in 2008. Father has admitted that R.S. and N.S. are CHINS, and he is not involved in this appeal.
>
> In 2012, four-year-old N.S. told Mother that Father had "tried to put his wee-wee in her bottom." DCS later substantiated N.S.'s report, but no charges were filed, and the children were not removed from the home because Mother agreed that Father would no longer stay there. Father eventually moved back in, and he and Mother married in 2014.
>
> In 2019, fourteen-year-old R.S. reported that Father tried to "dry hump" her around the same time he allegedly molested N.S. Mother made Father leave the home. At the beginning of the 2019-2020 school year, R.S. was assessed for depression and had a "really high score." A school counselor told Mother that R.S. was suicidal. That fall, R.S. went to stay with Mother's older daughter from a previous relationship, D.Y.
>
> Father returned to live with Mother in November 2019. Eventually, N.S. started spending time at D.Y.'s house because she was having various issues: she was depressed, not going to school, and not doing her online schooling. Mother wanted her

> to come home but N.S. "started talking suicidal." In May 2020, N.S. joined R.S. at D.Y.'s house full time.
>
> On August 10, 2020, Mother went to D.Y.'s house accompanied by police officers, intending to bring the children home. The Department of Child Services (DCS) was called, and a family case manager (FCM) responded to the scene. Mother indicated that "this is basically a waste of everybody's time" and "was adamant about the children coming home." Out of concern for the children's safety, the FCM obtained permission to leave the children with D.Y. The next day, DCS filed petitions alleging R.S. and N.S. are CHINS.

In re R.S., 173 N.E.3d 1071, *1–*2, No. 21A-JC-435 (Ind. Ct. App. 2021) (internal citations omitted), *trans. denied* ("CHINS Case").

[5] On October 30, 2020, Mother and the Children attended a therapeutic visitation supervised by therapist Jackie Banet. Mother arrived 57 minutes late for the scheduled two-hour visitation. Once the visit began, it "didn't go very well." TPR Tr. Vol. II at 15. The Children were "shaken" by the visitation, *id.* at 14, which "proved to be a traumatic episode for the [C]hildren," Mother's App. Vol. IV at 164.

[6] At a hearing held December 3, 2020, regarding visitation, the trial court ordered Father to have no contact with the Children and suspended Mother's visitation pending the factfinding hearing. The trial court held a factfinding hearing on December 17, 2020, and January 28, 2021. Once again, quoting from our decision from the appeal of the CHINS determination:

At the fact-finding hearing, DCS presented evidence, including from the children's therapist, that both children suffered from depression and anxiety, had suicidal thoughts, and had been prescribed the anti-depressant Zoloft; they would not feel safe mentally, emotionally, or physically around Mother or Father; their mental health would decline if they were forced to go back home; and they "still have a long way to go to heal." In addition, the children "felt emotionally overwhelmed during and following" their last visit with Mother on October 30, 2020, and did not want to do any more visits. FCM Candace Orman testified she referred Mother for a psychological evaluation and individual therapy and that Mother hadn't done either. The children's court-appointed special advocate opined that the children are in need of services due to "the neglect of their mental health" and "the fact that the parents deny any issues at home but the girls threaten suicide if they're forced to return home[.]" Mother, on the other hand, testified she doesn't believe Father sexually abused the children and "everything is fine."

At the end of the hearing, the court found the children to be CHINS:

> Based on the evidence presented the Court is going to find that the children [N.S.] and [R.S.] are children in need of services as defined by Indiana code [31-34-1-1] with respect to [Mother]. In support of that conclusion the Court is going to find that over the course of time the children's mental health seems to have deteriorated. I have heard various explanations as to why that has happened but the bottom line is that we got to the point that the children have indicated that they are suicidal. And they have, they are each in counseling and have been receiving mental health treatment. I am gravely concerned that there appears to be an issue in this family that we still kind of took today to talk

> all the way around as to the relationship between these 2 children and their father and whether or not [Mother] believes them with the allegations that they've brought forward. Coupled with the fact that [Father] was asked to leave the home for a period of time but then returned and these children . . . had been in and out of the home and back and forth with the current placement over the last 2 and a half years or so. And the majority of that seems to be, essentially, by agreement. I will also note that [Father] has already admitted that the children are children in need of services and so the children were and are CHINS anyway with regard to him. I am finding that the children are CHINS with regard to [Mother] as well.

In a subsequent written order, the court made the following findings of fact:

> A) The children's respective mental health declined over time as a result of being in the home of Respondent Parents.
>
> B) At least one of the subject children is known to have a history of suicidal ideation.
>
> C) Despite serious allegations of a history of abuse on behalf of the Respondent Father, and despite the effects of same on the children, Respondent Mother has provided no assurances that Respondent Father has been appropriately separated from the presence of the children in the home at all relevant times prior to the Fact Finding, nor assurances that, should the children return to the home at the time of the Fact Finding, that the Respondent Father would

> be appropriately separated from the children on an ongoing basis.
>
> D) A visit between the children and the Respondent Mother on or about October 30, 2020, proved to be a traumatic episode for the children.

> The court then held a dispositional hearing and issued a dispositional order.

In re R.S., No. 21A-JC-435, slip op. at ¶¶ 7–8 (internal citations omitted).

[7] Following a dispositional hearing on February 18, 2021, the trial court approved Father's agreement to the dispositional order, and, on March 17, 2021, entered a dispositional order as to both parents (the "Dispositional Order"). The Dispositional Order restrained the parents from direct or indirect contact with the Children pursuant to Indiana Code § 31-32-13-1(1) and specified that Father was to have no contact with the Children, while Mother "should only have contact [with the Children] through ordered services." Mother's App. Vol. V at 25.

[8] Mother appealed the CHINS determination,[1] which this court affirmed, observing:

> The primary basis for the trial court's decision was not Mother's disbelief of the children's accusations. Rather, it was the children's significant mental-health issues and Mother's failure to

[1] Father did not appeal the CHINS determination.

> take those issues seriously and address them. The court found, among other things, that the children's mental health was in decline as a result of being in a home with Mother and Father, things have gotten to the point where the children have indicated they are suicidal, and a visit between the children and Mother in October 2020 was traumatic for the children. Mother does not challenge any of these findings or contend that they are insufficient, standing alone, to support the trial court's decision. Instead, Mother focuses on the trial court faulting her for not keeping Father "appropriately separated" from the children. But such separation is appropriate regardless of whether Father actually abused the children, since it is undisputed that being around Father is currently very traumatic for the children (which is presumably why Father himself admitted the children are CHINS).

In re R.S., No. 21A-JC-435, slip op. at ¶ 13.

[9] On January 11, 2023, DCS filed petitions for the involuntary termination of parental rights ("TPR") as to the Children. The court held a factfinding hearing on March 28 and April 4, 2023, and issued the TPR Order as to both parents and the Children on May 15, 2023. Mother and Father separately appealed, and this court consolidated their appeals.

Discussion and Decision

1. The Trial Court's Order Terminating Parental Rights Was Not Clearly Erroneous

[10] "Parents have a fundamental right to raise their children—but this right is not absolute. When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated." *In re Ma.H.*, 134 N.E.3d 41, 45–46

(Ind. 2019) (internal citations omitted) (citing *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013)), *cert. denied*.

[11] To terminate Mother's and Father's parental rights, DCS had to prove by clear and convincing evidence, that, among other things,

> (B) one (1) of the following is true:
>
> > (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
> >
> > (ii) There is a reasonable probability that the continuation of the parent-child relationship[s] poses a threat to the well-being of the child.
> >
> > (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;
>
> (C) that termination is in the best interests of the child; and
>
> (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2);*see id.* § 31-37-14-2.

[12] We will affirm a trial court's termination of parental rights unless that decision is clearly erroneous. *In re Ma.H.*, 134 N.E.3d at 45 (citing *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014)). A trial court's termination decision is clearly erroneous if the court's findings of fact do not support its legal conclusions or if the legal

conclusions do not support its ultimate decision. *Id.* (citing *E.M.*, 4 N.E.3d at 642). We will not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court's decision. *Id.* (citing *In re K.E.*, 39 N.E.3d 641, 646 (Ind. 2015)). Furthermore, we accept as true any findings which Mother does not challenge on appeal. *See R.M. v. Ind. Dep't of Child Servs.*, 203 N.E.3d 559, 564 (Ind. Ct. App. 2023) (citing *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992)), *trans. not sought*.

a. The Termination of Mother's Parental Rights Was Not Clearly Erroneous

[13] Mother asserts several arguments in support of her contention that the trial court's entry of the TPR Order was clearly erroneous. We address first her argument that the evidence did not support the trial court's findings.

[14] The trial court's findings that Mother did not challenge show that: the Children were removed from the home because Mother and Father failed to acknowledge or seek treatment for the Children's severe mental health issues, including suicidal ideations and self-harming behaviors; Mother met with the DCS-referred therapist for approximately one year, but that referral was closed unsuccessfully due to Mother's "resistance to change" and "refus[al] to see the CHINS case through the eyes of the [C]hildren," but instead saw herself as the victim, Mother's App. Vol. II at 24; when her therapist asked what Mother might have done to improve her parenting, Mother answered she "could have been more stern," *id.*; in family reunification therapy with Sister, Mother "demonstrated poor insight into the needs of the [C]hildren and continued to

blame [Sister] for the circumstances that led to [the Children's] removal," *id.* at 24; Mother's family reunification therapy was closed as unsuccessful; as late as 2023, DCS made a referral for family preservation services through Ireland Homebased Services, but Mother refused to participate; and "the obligation to make positive changes necessary to reunite and preserve the family [was] squarely with the parents," including the "responsibility to create a safe home" and to "meet the emotional and physical needs of the [C]hildren," and this responsibility was "not on the [C]hildren, not on placement and not on the Department," *id.* at 24–25.

[15] Mother also does not challenge the following conclusions: the reasons for the initial removal of the Children had not been remedied; termination of Mother's parental rights was in the Children's best interests; and DCS's plan for adoption was satisfactory. These uncontested findings support the trial court's conclusions, which Mother also did not challenge, that there was a "reasonable probability that the conditions that resulted in the [C]hildren's removal or the continued placement outside of the parents' home [would] not be remedied, or that there [was] a reasonable probability that the continuation of the parent-child relationship pose[d] a threat to the well-being of [the Children]," Mother's App. Vol. II at 25; and that the court need not wait until the Children were irretrievably harmed such that their physical, mental, and social development was permanently impaired before terminating the parent-child relationship.

[16] In sum, the evidence supports the uncontested findings listed above, and those findings support the conclusions and the court's termination of Mother's

parental rights to the Children. As a result, we need not address Mother's challenged findings.

[17] Mother also argues that the trial court erred when it suspended her visits with the Children because the court used an incorrect or incomplete legal standard. She contends that the suspension of her therapeutic (or any) visits constituted a de facto no-contact order that sabotaged reunification and/or shows a lack of reasonable efforts toward reunification. Alternatively, she argues that the trial court failed to follow the standard procedure required by the CHINS no-contact order statute, Indiana Code sections 31-34-25-1 through -5, when it allegedly entered a de facto no-contact order as to her.

[18] The evidence shows that the Children's October 2020 therapeutic visit with Mother left the Children "shaken," TPR Tr. Vol. II at 14, and "proved to be a traumatic episode for the [C]hildren," Mother's Ex. Vol. III at 67–68. Moreover, throughout the CHINS and TPR proceedings, the trial court received reports that resuming Mother's visitation with the Children would be detrimental to the Children's mental health. Further, despite the lack of visitation, Mother was told she could write letters to the Children, but no letters were ever received. The evidence clearly showed that visitation between Mother and the Children was detrimental to their mental health. The Children's mental condition and lack of recognition and treatment therefor were the very basis for the CHINS proceedings. On this record, we do not find that the suspension of Mother's visitation with the Children constituted a de facto no-contact order but, rather, was ordered as necessary to protect the

Children's well-being. Mother's argument is that the trial court should have used the procedures prescribed in the no-contact order statute, but such is without merit.

[19] Mother also argues that the suspension of parenting time "sabotaged" reunification efforts or undermines the trial court finding that DCS made reasonable efforts toward reunification. Mother appears to challenge, without specifically identifying,[2] the trial court's findings that "[s]ervices were offered to the parents to help them overcome the parenting problems that led to the filing of the CHINS petition," Mother's App. Vol. II at 21; "sufficient time was given to the parents to remedy the conditions which led to the [C]hildren's removal or required the [C]hildren's continued placement outside the home, *id.* at 21; and, "[a]s a result of the parents' failure to make progress toward reunification, the court changed the permanency plan to adoption, with a concurrent plan of guardianship," *id.* at 21. Any challenge to these findings amounts to a request that this court reweigh the evidence, which we cannot do. *See R.M.*, 203 N.E.3d at 564 (citing *Madlem*, 592 N.E.2d at 687). On the record before us, Mother has not shown that the trial court's order terminating her parental rights was clearly erroneous.

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[2] Mother does not identify the specific findings by the trial court that she challenges in her "sabotage" argument. *See* Mother's Br. at 5, 17. Such an omission violates Appellate Rule 46(A)(8)(a). However, given the nature of the rights at issue here, we exercise our discretion to review her claim on the merits. *See Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015).

b. The Termination of Father's Parental Rights Was Not Clearly Erroneous

[20] Father challenges certain of the trial court's findings and conclusions in the TPR Order. First, he argues that the evidence does not support certain enumerated findings in the TPR Order. A review of the evidence convinces us of the opposite.

[21] The evidence shows that DCS filed a CHINS petition because neither parent was taking seriously or addressing the Children's dire mental health issues, which included self-harming and suicidal ideation. Father also admitted the allegations in the CHINS petition, which provides that the Children were in need of services because they were suffering from serious mental conditions and that Mother and Father were not acknowledging or obtaining appropriate care for them. Further, Father agreed to the provisions in the dispositional order, which included a no-contact order prohibiting him from having any contact with the Children, (*id.* at 82**)**, and Father did not appeal the CHINS determination. Additionally, Father was in DCS-referred therapy to help him "identify[] any issues or concerns and safety risks for the [C]hildren," treatment that lasted for approximately one year. TPR Tr. Vol. II at 56. However, Father's treatment progress stalled, preventing him from coming to "an awareness of the girls' side," in empathizing with them, or validating their concerns, *id.* at 58, and his DCS-referred therapist ultimately discharged him from treatment despite the lack of success. The Children's service providers,

Family Case Manager, and CASA all recommended termination of parental rights.

[22] Significantly, Father does not point to any evidence in the record to show that he made efforts toward reunification outside of attending DCS-referred therapy services or that reunification—or even visitation with Father—was in the Children's best interests. Father also does not direct us to evidence that he ever requested visitation with the children during the CHINS or TPR cases or requested the trial court reconsider its no contact-order. Additionally, the Children's therapist never recommended resuming visitation with Father given the serious negative impacts the therapist believed visitations could have on the Children's mental health.

[23] Moreover, Father does not contest the following findings by the trial court: the Children were severely traumatized at the time of their removal and had, "at different times, alleged [Father] had sexually abused them," Mother's App. Vol. II at 20, 23, 23; both Mother and Father needed to "demonstrate an understanding of the emotional needs of their [C]hildren" in order to successfully preserve the family, *id.* at 20; the "trial court took judicial notice of the filings and orders in the underlying CHINS matter; and it considered the exhibits that were admitted and the testimony that was given during termination hearing," *id.* at 22; "[s]ince being removed from their parents' home, the [Children] have made significant improvements physically, mentally, and socially, *id.* at 26; and the Family Case Manager and the court appointed

special advocate, or CASA, assigned to the Children's cases both recommend termination of parental rights, *id.* at 26.

[24] Father's identification of select testimony to support his argument that the evidence does not support the findings ignores other evidence in the record. In sum, Father's challenges to the trial court's findings amount to a request that we reweigh the evidence, which we cannot do. *See R.M.*, 203 N.E.3d at 564 (citing *Madlem*, 592 N.E.2d at 687). The evidence highlighted above supports the trial court's findings in this case.

[25] Father also argues on appeal that the findings do not support the trial court's legal conclusions. We have already held that Father's challenge to the findings fails. On the record before us, we further hold that the trial court's findings support its legal conclusions that there is a "reasonable probability that the conditions that resulted in the [Children's] removal or the reasons for placement outside the home of the parents will not be remedied," there is a "reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the [Children]," and termination is in the best interests of the Children. Mother's App. Vol. II at 22. Father has not shown that the TPR Order is clearly erroneous.

2. The Trial Court Did Not Violate Mother's or Father's Due Process Rights

[26] Mother and Father each argue that the trial court violated their respective due process rights in the TPR proceedings. "The Due Process Clause of the U.S. Constitution and the Due Course of Law Clause of the Indiana Constitution

prohibit state action that deprives a person of life, liberty, or property without a fair proceeding." *In re C.G.*, 954 N.E.2d 910, 916 (Ind. 2011) (quoting *In re Paternity of M.G.S.*, 756 N.E.2d 990, 1004 (Ind.Ct.App.2001), *trans. denied*). "Parental rights constitute an important interest warranting deference and protection, and a termination of that interest is a 'unique kind of deprivation.'" *In re C.G.*, 954 N.E.2d at 916–17 (quoting *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981)). "When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process." *In re C.G.*, 954 N.E.2d at 917 (citing *J.T. v. Marion Cnty. Off. of Fam. & Children*, 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000), *trans. denied*). "The U.S. Supreme Court has written on the importance of heightened due process protections whenever the State wishes to sever the parental bonds of children:

> The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

In re C.G., 954 N.E.2d at 917 (quoting *Santosky v. Kramer*, 455 U.S. 745, 753–754 (1982)).

[27] Although parental rights are constitutionally protected, a parent's fundamental right to raise the parent's children is not absolute. *See In re Ma.H.*, 134 N.E.3d at 49 (citing *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013)). Rather, in deciding whether termination of parental rights is in the children's best interests, "trial courts must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children." *Id.* (citing *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*).

[28] Neither parent raised a due process argument to the trial court. Nevertheless, this court has "discretion to address the merits of a party's constitutional claim notwithstanding waiver." *Plank*, 981 N.E.2d at 53. Given the nature of Mother's and Father's rights at issue, we exercise that discretion here.

a. Mother Has Not Shown a Due Process Violation in the TPR Proceedings

[29] Mother argues that the trial court used an incomplete legal standard when it suspended her parenting time with the Children.[3] However, we have already rejected the arguments underlying Mother's due process claim, namely, that the trial court's suspension of visitation constituted a de facto no-contact order and

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[3] Mother's argument on this issue contains a single citation to the Record on appeal, which does not comply with Indiana Appellate Rule 46(A)(8)(a). Such a defect risks waiver of the issue. *See Carter ex rel. CNO Fin. Grp., Inc. v. Hilliard*, 970 N.E.2d 735,755 (Ind. Ct. App. 2012) (citing *Nealy v. Am. Fam. Mut. Ins.*, 910 N.E.2d 842, 845 n.2 (Ind. Ct. App. 2009), *trans. denied*). However, because we have already analyzed the substance underlying Mother's due process claim and because of the nature of parental rights, we address Mother's argument on the merits.

that the trial court failed to use the appropriate standard to issue that order. *See supra*, Section 1. As such, Mother's due process argument fails.

b. Father Has Not Shown a Due Process Violation in the TPR Proceedings

[30] Father argues that the entry of the order terminating his parental rights violated due process. Specifically, he claims that the trial court subordinated his parental rights to the Children's desire not to see him and that DCS's failure to make reasonable efforts toward reunification constituted a violation of his parental rights.[4] We cannot agree.

[31] Regarding Father's argument that the trial court improperly allowed the Children's wishes to dictate the result in this case to the detriment of Father's constitutionally protected parental rights, we must disagree. Parental rights are indeed constitutionally protected, but they are not absolute. *In re Ma.H.*, 134 N.E.3d at 49 (citing *In re K.T.K.*, 989 N.E.2d at 1230). Here, the trial court relied on evidence from the Children's therapist that visitation with Father could harm their mental health, treatment for which was the basis for the CHINS action and arose from allegations of sexual abuse by Father. We held above that the evidence supports the trial court's findings on this point—which

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[4] Father, too, violates Appellate Rule 46(A)(8)(a) by failing to provide adequate citation to the Record on appeal. Because we have already analyzed the TPR Order for clear error and affirmed, we briefly address his due process argument on the merits.

includes the finding that the termination of Father's parental rights is in the best interests of the Children—and that the findings support the court's conclusions.

[32] Father also argues that DCS failed to make reasonable efforts to reunify. We have already held that Father's argument on this point is merely a request that we reweigh the evidence, which we cannot do. *See R.M.*, 203 N.E.3d at 564 (citing *Madlem*, 592 N.E.2d at 687). Therefore, this argument fails as well.

[33] Therefore, we hold that Father has not demonstrated a due process violation in the termination of his parental rights.

Conclusion

[34] Neither Mother nor Father has shown that the trial court committed clear error in terminating their parental rights to the Children or at any point during the TPR proceedings. Nor has either demonstrated a due process violation. As a result, we affirm the trial court's termination of Mother's and Father's parental rights to the Children.

[35] Affirmed.

Bailey, J., and May, J., concur.

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