

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of C.G., J.G., and M.G. (Minor
Children)

and

S.G. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

June 8, 2023

Court of Appeals Case No.
22A-JT-3091

Appeal from the LaGrange Circuit
Court

The Honorable William R. Walz
IV, Judge

Trial Court Cause Nos.
44C01-2111-JT-20
44C01-2111-JT-21
44C01-2111-JT-22

Memorandum Decision by Judge Bradford
Judges Riley and Weissmann concur.

Bradford, Judge.

Case Summary

[1] S.G. (“Father”) is the father of C.G., J.G., and M.G. (collectively, “the Children”).¹ The Department of Child Services (“DCS”) became involved with the Children after receiving reports of neglect and, on June 10, 2019, filed petitions alleging that the Children were children in need of services (“CHINS”). After the Children were found to be CHINS, the juvenile court ordered Father to participate in certain services. Father’s participation in services, however, was inconsistent and he never achieved the level of stability necessary to put him in the position to safely and successfully care for the Children. In light of Father’s failure to successfully complete services and to achieve and maintain stability, DCS eventually petitioned to terminate Father’s parental rights to the Children. The juvenile court conducted an evidentiary hearing over the course of three separate days in June of 2022. Father did not appear at any part of the evidentiary hearing but was represented by counsel throughout. Following the evidentiary hearing, the juvenile court granted DCS’s termination petitions. On appeal, Father contends that the juvenile

¹ The Children’s mother does not participate in this appeal.

court denied him due process by conducting the evidentiary hearing in his absence. We affirm.

Facts and Procedural History

- [2] DCS removed the Children from A.F.'s ("Mother") and Father's (collectively, "Parents") care on June 9, 2019, after receiving reports of neglect. At the time of the Children's removal from Parents' home, both the home and the Children were filthy. In the months prior to the Children's removal, DCS had worked with Parents to improve the condition of the family's home after receiving similar reports. The family had also been involved in a prior CHINS action involving C.G. and M.G.
- [3] DCS filed CHINS petitions on June 10, 2019, alleging neglect. The Children were returned to Parents' care on June 26, 2019. On September 10, 2019, the juvenile court adjudicated the Children to be CHINS. The juvenile court ordered Father to complete certain services aimed at improving his ability to parent the Children. On January 29, 2020, the Children were again removed from Parents' home due to neglect and safety concerns. Father has failed to consistently participate in services since the Children were removed from his care in January of 2020. DCS filed petitions to terminate the parent-child relationship between the Children and Father on November 12, 2021.
- [4] The juvenile court conducted an evidentiary hearing on DCS's termination petitions over the course of three days: June 1, 2022; June 22, 2022; and June

29, 2022. Father did not appear for the first day of the evidentiary hearing on June 1, 2022. Father's counsel indicated that she had "communicated with him directly via text, as well as email, concerning, um, the date and time of today's hearing. Uh, as well as making preparations for the hearing and so forth. And he has responded that he's received at least some of those." Tr. Vol. II p. 19. Counsel indicated that she did not have any "ideas as to why [Father was] not present," stating that she had "expected him this morning." Tr. Vol. II pp. 19–20. Mother's counsel informed the trial court that Mother had been supposed to be Father's transportation to the hearing but that Mother had not been able to "communicate with him in order to establish a pickup time." Tr. Vol. II p. 20. Father's counsel did not request a continuance or that Father be permitted to participate in the hearing virtually or by telephone. In moving forward with the evidentiary hearing, the juvenile court found that Father had received notice of the date and time of the evidentiary hearing and that all other relevant parties were present.

- [5] Father also did not appear for the second day of the evidentiary hearing on June 22, 2022. The juvenile court noted on the record that Father "has failed to appear again at this point in time" and that "[i]t's also the Court's understanding that he may have warrants out of Noble County." Tr. Vol. II p. 152. The juvenile court asked Father's counsel whether she had "any information in regards to [Father's] whereabouts" to which counsel replied that Father had "not been in contact with [her] since the last hearing." Tr. Vol. II p. 152. Father's counsel did not request a continuance or that Father be permitted

to participate in the hearing virtually or by telephone. The juvenile court then continued on with the hearing.

- [6] Finally, Father did not appear for the third day of the evidentiary hearing on June 29, 2022. The juvenile court noted that Father was once again represented by counsel and inquired into whether Father's counsel had "any contact from" Father. Tr. Vol. II p. 207. Counsel indicated that she had, stating:

Yes, Your Honor. I have heard from my client. Uh, I expected to hear more from him, uh, before this hearing. He, uh, explained his reasoning for why he was unable to be present. And, uh, he told me he wanted to record something to submit to the court, that he was going to send me first. And I've not received that, nor have I heard back from him. Uh, asked for a good phone number and I send it to him the office number again, and he's not responded (indiscernible).

Tr. Vol. II p. 207. Father's counsel did not go into any further detail regarding Father's "reasoning" for failing to attend the evidentiary hearing and did not request a continuance or that Father be permitted to participate in the hearing virtually or by telephone. Tr. Vol. II p. 207. Before continuing on with the evidentiary hearing, the juvenile court again noted that Father had been made aware of the hearing but was not present.

- [7] In Father's absence, DCS presented evidence during the evidentiary hearing indicating that Father had failed to complete services and that the conditions leading to the Children's removal from Father's care had not been remedied. Family Case Manager ("FCM") Supervisor Stephanie Walker testified that

Father had been arrested multiple times during the period of DCS's involvement with the family.² FCM Madison Carpenter testified that Father had had services cancelled due to lack of involvement and had last seen the Children in May of 2022. FCM Carpenter further testified that Father posed a significant safety risk to the Children and had failed to complete assessments and services and to obtain and maintain stable employment and housing.

- [8] Kelly Wilkinson, the Children's court-appointed special advocate, testified that she believed adoption was in the Children's best interests because Father was not stable. Dr. Jason Cook, a clinical psychologist who had met with Father, testified that Father suffered from mental illness, with some of his diagnoses posing safety concerns for the Children. DCS team leader Heidi Henderson testified that she had first met Father when she picked him up from the hospital following a suicide attempt in or around February of 2021. Henderson further testified that while Father had attended some services, Father had failed to successfully complete services and had seemingly failed to refrain from using illegal substances. Henderson also testified that she had witnessed Father verbally abusing Mother; that Parents have engaged in a pattern of domestic violence, creating a toxic environment; and that if returned to Father's care, she

² Although Father had been arrested multiple times during the pendency of the underlying CHINS and termination proceedings, there is nothing in the record to suggest that these arrests had anything to do with his failure to appear for the evidentiary hearing or that he was incarcerated on any of the three days of the evidentiary hearing.

did not believe that the Children would be provided with consistent housing or food.

- [9] On September 20, 2022, the juvenile court issued three nearly identical orders terminating Father’s parental rights to the Children. In these orders, the juvenile court noted that Father had “failed to appear for all bifurcated proceedings” but had been represented throughout the evidentiary hearing by counsel. Appellant’s App. Vol. II pp. 30, 41, 52. The juvenile court also made the required statutory findings, including that the Children had been removed from Father’s care for at least fifteen of the most recent twenty-two months, the conditions leading to the removal of the Children from Father’s care would not be remedied, termination of Father’s parental rights was in the Children’s best interests, and DCS had a satisfactory plan for the care and treatment of the Children, that being adoption.

Discussion and Decision

- [10] “The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the children. *Id.* Termination of parental

rights is proper where the children's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* In reviewing termination proceedings on appeal, we do not reweigh the evidence or assess the credibility of the witnesses but rather consider only the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *In re Involuntary Term. of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004).

[11] In challenging the juvenile court's termination orders, Father does not challenge the sufficiency of the evidence to sustain the orders. Instead, he contends only that the juvenile court denied him due process by conducting the three-day evidentiary hearing in his absence. For its part, DCS asserts that Father has waived his due-process claim. We agree with DCS.

[12] In this case, the evidentiary hearing was conducted over the course of three days: June 1, 2022; June 22, 2022; and June 29, 2022. Again, Father did not appear at any point during the evidentiary hearing. Father acknowledges "that Indiana law holds that a parent facing termination does not have an absolute right to be physically present in the courtroom." Appellant's Br. p. 10. Importantly, despite Father's failure to appear for any portion of the evidentiary hearing, Father was represented by counsel throughout the proceedings. Father's counsel, however, never requested a continuance or that Father be permitted to participate in the evidentiary hearing virtually or by telephone.

- [13] Father argues for the first time on appeal that the juvenile court denied him due process by failing “to have [him] participate by telephone or video.” Appellant’s Br. p. 13. “It is well established that we may consider a party’s constitutional claim waived when it is raised for the first time on appeal.” *Hite v. Vanderburgh Cnty. Off. of Fam. & Child.*, 845 N.E.2d 175, 180 (Ind. Ct. App. 2006). In *Hite*, following the termination of his parental rights, Hite argued that his due process rights had been violated by a lack of notice of the CHINS proceedings. *Id.* We noted that Hite had “never objected to the termination because he lacked notice of the CHINS proceedings[,]” instead raising the issue for the first time on appeal from the termination of his parental rights. *Id.* We concluded that Hite had therefore waived his due-process argument on appeal. *Id.*; see also *In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016) (concluding that mother had waived her due-process claim by failing to raise it during the juvenile court proceedings but rather raising it for the first time on appeal).
- [14] The record reveals that Father had notice of the proceedings and had been in contact with his attorney, yet he chose not to appear. Further, the juvenile court had allowed Mother to appear via Zoom on at least one day of the evidentiary hearing, suggesting that it would have similarly allowed Father to appear virtually had Father requested to do so. Father, however, made no request at any point in the evidentiary hearing to be permitted to appear virtually or by telephone. Father has therefore waived appellate review of his claim that the juvenile court denied him due process by failing to allow him to appear at the hearing virtually or by telephone. Given that Father makes no

other challenge to the juvenile court's orders, we affirm the judgments of the juvenile court terminating Father's parental rights to the Children.

[15] The judgment of the juvenile court is affirmed.

Riley, J., and Weissmann, J., concur.