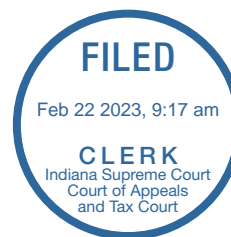


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEYS FOR APPELLANTS

Steven Knecht
Lafayette, Indiana

Michael B. Troemel
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Director, Child Services Appeals
Unit
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of:

J.P.M. and J.A.M. (Minor
Children)

and

H.M. (Mother) and D.M.
(Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

February 22, 2023

Court of Appeals Case No.
22A-JT-1482

Appeal from the Tippecanoe
Superior Court

The Honorable Faith A. Graham,
Judge

Trial Court Cause Nos.
79D03-2112-JT-86 and 79D03-
2112-JT-87

Appellee-Petitioner

Memorandum Decision by Chief Judge Altice
Judges Brown and Taviton concur.

Altice, Chief Judge.

Case Summary

[1] H.M. (Mother) appeals the involuntary termination of her parental rights to J.A.M. and J.P.M. (the Children). D.M. (Father) separately appeals the involuntary termination of his parental rights to J.A.M. In this consolidated appeal, Mother presents one issue for our review: Did the trial court abuse its discretion in denying her motion to continue the termination fact-finding hearing? Father also presents one issue for our review: Whether the court's finding that the reasons for removal are unlikely to be remedied is supported by clear and convincing evidence?

[2] We affirm.

Facts & Procedural History

- [3] This appeal involves the involuntary termination of Mother's parental rights to J.A.M., born February 26, 2016, and J.P.M., born July 23, 2020.¹ Father is the biological father of J.A.M. Mother's first involvement with the Department of Child Services (DCS) was a child in need of services (CHINS) action filed in 2010 involving Mother's two older children. The concerns at that time related to domestic violence and Mother's mental health and substance abuse. This first CHINS case was closed after the children's father obtained custody in 2011.
- [4] Mother's second CHINS case, and Father's first, began in November 2018 and involved J.A.M. DCS's concerns were Mother's heroin and methamphetamine use and Father's arrest for violating a protective order. During these CHINS proceedings, when Father was not incarcerated, he was unemployed, attended only some visits, and never completed any court-ordered services. The case was closed in early July 2020 after J.A.M. was reunified with Mother. A few weeks later, J.P.M. was born.
- [5] On January 8, 2021, DCS received a report that the Children were victims of neglect due to inadequate food and Mother's impairment. Police had been dispatched to Mother's home to perform a well check, and when they

¹ J.P.M.'s biological father voluntarily relinquished his parental rights and consented to the adoption of J.P.M. by his foster parents. He does not join in this appeal.

encountered Mother, they described their conversation with her as “scattered and incoherent.” *Exhibits Vol. 1* at 30. When DCS arrived, Mother appeared to be in “mental distress.” *Id.* Mother stated that she had been diagnosed with schizophrenia and admitted that she was not taking her medicine, but she refused to go to the hospital for treatment. Mother was “tearful, loud, uncooperative, and screamed profanities” that were threatening to DCS and police. *Id.* at 34. Further, J.A.M. stated that she had only a bowl of cereal to eat that day and that she had not eaten the day prior. DCS removed the Children from Mother and placed them with J.A.M.’s prior foster family. At the time of removal, Father was in the custody of the Indiana Department of Correction (DOC).

[6] The next day, Mother was reported as being “too delirious to talk” and was admitted for inpatient treatment. *Appellant’s Appendix Vol. 1* at 28. Mother believed that there were people who wanted to kill her or the Children, that she was hearing voices that were telling her to harm herself, and that she was “unable to get the evil out of her head.” *Id.*; *see also Exhibits Vol. 2* at 15.

[7] On January 12, 2021, DCS instituted the underlying CHINS proceedings. A court-appointed special advocate (CASA) was appointed on April 15, 2021, and on May 3, 2021, the court found the Children to be CHINS. A week later, the court entered its dispositional order and parental participation decree.

[8] On December 15, 2021, DCS filed petitions to terminate the parent-child relationship between J.A.M. and J.P.M. and their respective parents. The court

scheduled a termination fact-finding hearing for March 9, 2022. At the beginning of that hearing, it was noted that the DOC had filed a pleading indicating that Father was “not available” for the termination hearing.

Transcript Vol. 2 at 4. Father’s counsel requested a continuance of the hearing as to Father, which the court granted. Mother also moved to continue the hearing on two bases: (1) that one termination hearing served judicial economy and (2) that she had been granted continuances in three separate criminal proceedings in order to submit to a psychological evaluation to determine her competency.² Mother’s counsel questioned whether Mother could even participate in the termination hearing given her lack of competency. The court denied Mother’s request for a continuance and proceeded with the termination fact-finding hearing as to Mother.

[9] Evidence presented at the fact-finding hearing detailed Mother’s history of mental illness. Specifically, Mother had been diagnosed with schizoaffective disorder, PTSD, generalized anxiety disorder, insomnia, adjustment disorder with depressed mood, and ADHD. Mother was hospitalized for psychiatric reasons in May, August, November, and December 2021, which included one emergency detention. Since the initiation of the underlying CHINS case, Mother has been involved in several incidents of criminal conduct, often centering around her mental illness. There was also evidence relating to

² These three criminal cases were resolved the following month with Mother being found not responsible by reason of insanity. Thereafter, on April 29, 2022, the State filed a petition for Mother’s involuntary commitment.

Mother's history of substance abuse, including methamphetamine, heroin, and cocaine, with a relapse in August 2021.

[10] In late December 2021, just after the petitions for termination were filed, the CASA met with Mother and reported that Mother was crying a lot and hearing voices. She also noted that when the door was opened, Mother told her that people outside, as well as animals, were trying to talk to her. Then, on December 25, 2021, law enforcement responded to reports of Mother walking up and down the street with a baseball bat. Mother was distraught, believing the Children had been killed. Mother was arrested for violating rules of community corrections and has since been detained at the Tippecanoe County Jail.

[11] The court held a termination fact-finding hearing as to Father on May 20, 2022. Father has a long-standing history of criminal behavior. His criminal history includes arrests and/or convictions for fraud on a financial institution, theft, credit card fraud, possession of controlled substances, and OWI. He was incarcerated in the DOC from 2009 through 2012. Beginning in 2016, he was at the DOC until early 2018 on probation and parole violations. Most recently, Father was convicted on July 7, 2020, of Level 4 felony possession of a deadly weapon and determined to be a habitual offender. He was sentenced to thirteen years, with eight years executed followed by two years on community corrections and three years on probation. During his incarceration Father received two Level C conduct reports for disfigurement of body and insolent/vulgar/profane behavior.

[12] Father’s last in-person contact with J.A.M. was at the end of 2019. During the first CHINS case in which he was involved, he had some contact with J.A.M. via telephone. During the underlying CHINS case, he had about ten minutes of weekly telephone contact with J.A.M. until approximately two months before the termination hearing. Father’s earliest possible release date is February 2026.³

[13] The CASA and family case manager both supported termination of Mother’s parental rights to the Children and Father’s parental rights to J.A.M. At the time of the termination hearing, the Children were in a pre-adoptive home where they had been placed since their removal in January 2021.

[14] On May 24, 2022, the juvenile court issued its order involuntarily terminating Mother’s parental rights to the Children and Father’s parental rights to J.A.M. Mother and Father separately appeal. Additional evidence will be provided as needed.

Discussion & Decision

Mother – Motion to Continue

[15] Mother does not challenge the sufficiency of the evidence supporting the trial court’s termination order. Mother argues only that the trial court abused its discretion in denying her oral request for a continuance on the basis that “her

³ Father requested a sentence modification, which was denied by the court.

mental illness prevented her from being able to participate in the hearing.” *Appellant’s Brief* at 12. Mother pointed out that her competency was being questioned in three separate criminal proceedings and that she was eventually determined to be incompetent due to her mental illness.

[16] A trial court’s decision to grant or deny a motion to continue is subject to abuse of discretion review. *In re K.W.*, 12 N.E.3d 241, 243-44 (Ind. 2014). 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; however, no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial. *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006) (internal citations omitted), *trans. denied*. There are no “mechanical tests” for deciding whether a request for a continuance was made for good cause; instead, the decision to grant or deny a continuance turns on the circumstances present in a particular case. *In re M.S.*, 140 N.E.3d 279, 285 (Ind. 2020). There is, however, a strong presumption that the trial court properly exercised its discretion. *In re B.H.*, 44 N.E.3d 745, 748 (Ind. Ct. App. 2015), *trans. denied*.

[17] In support of her argument, Mother relies on Ind. Code § 31-35-1-7, which provides, in pertinent part, that if there is competent evidence of probative value that a parent is incompetent, the court shall dismiss the petition or continue the proceeding. Mother’s reliance on this statute, however, is misplaced. As DCS points out, this statute applies in matters involving *voluntary* termination of

parental rights. It does not apply to the *involuntary* termination of parental rights.

[18] The statute aside, there is no dispute that Mother suffers from a serious mental illness. DCS maintains that even taking as true that Mother was incompetent at the time of the termination hearing, “her mental illness/incompetency rendered her unfit to parent Children, and the same supported termination.” *Appellee’s Brief* at 21. We agree.

[19] The Fourteenth Amendment to the United States Constitution protects a parent’s right to raise his or her children. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although “[a] parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests[,]’” parental interests are not absolute and “must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Thus, the parent-child relationship may be terminated when a parent is *unable* or unwilling to meet parental obligations. *Id.*

[20] As noted by DCS, “parental unfitness, including parental inability, is at the heart of whether parental rights should be terminated.” *Appellee’s Brief* at 21. In considering whether a parent is fit to parent a child in a termination case, courts consider such factors as a parent’s substance abuse, mental health, willingness to follow recommended treatment, lack of insight, instability in housing and

employment, and ability to care for a child's special needs. *K.H. v. M.M.*, 151 N.E.3d 1259, 1267-68 (Ind. Ct. App. 2020), *trans. denied*. Further, this court has consistently held that it need not wait until children are irreversibly harmed such that their physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *See id.* (citing *In re A.P.* 981 N.E.2d 75, 83 (Ind. Ct. App. 2012)).

[21] Mother's mental illness has been a concern through two separate CHINS proceedings. Here, her incompetency was her stated reason for requesting a continuance of the termination hearing. Her incompetency, however, was also the exact question the court had to address in deciding whether to terminate her parental rights. Thus, Mother's ongoing incompetency was not a basis upon which to continue the termination hearing. Mother also cannot show that she was prejudiced. The trial court was not required to put permanency for the Children on hold until some potential further time when she may be competent. The trial court did not abuse its discretion in denying Mother's request to continue the termination hearing based on her incompetency due to mental illness.

Father – Sufficiency

[22] Father argues that termination is premature and contends that he has made good progress in his life due to completing programs in prison. He thus argues that DCS did not prove by clear and convincing evidence that he would be unlikely to remedy the reasons for removal of J.A.M.

[23] As an initial matter, we note that Father does not challenge the trial court's findings of fact and conclusions thereon as clearly erroneous. Father has, therefore, waived any arguments relating to these unchallenged findings. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019) (explaining that this court will accept unchallenged trial court findings as true). Inasmuch as Father has not challenged the trial court's conclusions, he has conceded that DCS proved, by clear and convincing evidence, the allegations in the petition to terminate his parental rights. *See id.*

[24] Waiver notwithstanding, we conclude that clear and convincing evidence supports the court's termination of Father's parental rights. As we noted above, parental interests are not absolute and "must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights." *Bester*, 839 N.E.2d at 147. In determining whether there is a reasonable probability that the conditions resulting in child's removal will not be remedied, courts must consider a parent's habitual patterns of conduct. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231-32 (Ind. 2013).

[25] Here, the court noted Father's criminal history and current incarceration. While the court acknowledged that Father had completed programs while incarcerated on his most recent sentence, the court also noted Father's two conduct reports while in the DOC. Further, as found by the trial court, Father had not had in-person contact with J.A.M. in nearly three years, which was almost half of her young life, and he still had nearly four years left on his sentence to be served at the DOC. The trial court's conclusion that there was a

reasonable probability that the conditions resulting in J.A.M.'s removal would not be remedied is supported by sufficient evidence.

[26] Judgment affirmed.

Brown, J. and Tavitas, J., concur.