

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
Ai.W. (Minor Child) and A.W.
(Father)

A.W. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

October 31, 2023

Court of Appeals Case No.
23A-JT-1144

Appeal from the
Greene Circuit Court

The Honorable
Erik C. Allen, Judge

Trial Court Cause No.
28C01-2208-JT-15

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

- [1] A.W. (“Father”) appeals the termination of his parental rights to his child, Ai.W. (“Child”). We affirm.

Facts and Procedural History

- [2] K.S. (“Mother”) and Father are the biological parents of Child, who was born in April 2015. Mother’s parental rights were also terminated, but she does not participate in this appeal.
- [3] As of May 2021, Mother was the primary custodian of Child, and Child lived with Mother and her boyfriend. On May 24, the Indiana Department of Child Services (DCS) received a report that there were drugs in Mother’s house and no sober caregivers for Child. Law enforcement responded and arrested Mother and her boyfriend for several drug-related offenses and neglect of a dependent. DCS Family Case Manager (FCM) Christie Burton also went to the home, and Mother admitted to her that she struggled with substance abuse and had used drugs in Child’s presence in the past. DCS removed Child from Mother’s care.
- [4] That same day, FCM Burton met with Father at the DCS office to determine whether Child could be placed with him. He admitted he used heroin and fentanyl a few days prior but refused to submit to a drug screen. DCS decided not to place Child with Father because he was not an appropriate caregiver.

FCM Burton told Father there would be a detention hearing for Child and put in a referral for Father to have supervised visitation. The next day, May 25, DCS petitioned the Greene Circuit Court alleging Child to be in need of services (CHINS). The detention hearing was held that day, but Father did not appear. The trial court scheduled a fact-finding hearing for July 19.

[5] On July 7, Father was booked into the Monroe County Jail after having his bond revoked in an unrelated criminal case, and he received notice of the fact-finding hearing while in jail. Despite the notice, Father did not ask to be transported from the jail to the hearing, and consequently, the trial court did not issue a transport order. Father did not appear at the fact-finding hearing or otherwise respond. At the end of the hearing, the trial court defaulted Father, adjudicated Child a CHINS, and scheduled a dispositional hearing for August 19.

[6] DCS mailed notice of the dispositional hearing to Father's home address, but Father was still in jail. When he got out of jail on August 17, he was immediately released to the custody of Centerstone Recovery Center for inpatient substance-abuse treatment, so he never received the notice. Father was not present at the dispositional hearing. In its dispositional order, the trial court ordered Father to, among other things, contact the FCM every week, participate in any recommended programs or assessments, and submit to random drug screens.

[7] Kathryn Hayes was the permanency FCM assigned to the CHINS case. Between the fact-finding hearing and dispositional hearing, she had communicated with the Monroe County Jail and arranged to meet with Father there, but Father had been released to the custody of Centerstone before the meeting date. Father's first contact with FCM Hayes was approximately two months after the CHINS dispositional hearing when he called to set up visitation with Child. By that time, DCS had closed the original parenting-time referral from May because Father was noncompliant, so FCM Hayes put in another referral for supervised visitation. By the end of 2021, DCS had referred Father for visitation, a batterer's service, and after-care services following his inpatient treatment at Centerstone.¹ Father never attended the batterer's service or after-care. He also did not complete drug screens on a regular basis as required by the dispositional order.

[8] Father's supervised visitation with Child began in November 2021 through Lifeline Youth and Family Services. In addition to the visitation, DCS put in a referral for home-based casework in January 2022, but it was closed in February for noncompliance. Father's last visit with Child was on or around January 27, and DCS closed the visitation referral for noncompliance in March.

¹ Around September 2021, another one of Father's children was adjudicated a CHINS in a separate case in Monroe County. Father also had multiple pending criminal cases during the CHINS case for Child. As relevant here, Father pled guilty to Level 6 felony auto theft in December 2021 and was sentenced to 626 days of probation. To prevent duplicating services, FCM Hayes worked with the FCM for Father's Monroe County CHINS case and his probation officer for the criminal case to consolidate Father's referrals. The referrals discussed here are only those made by DCS in the Greene County CHINS case.

[9] The first time FCM Hayes and Father met in-person was in April, and he told her he was going to Centerstone for treatment again as a condition of probation in his criminal case. However, on or around May 6, Father left Centerstone against medical advice without completing treatment, in violation of his probation. The next day, he was arrested for the violation and held in the Monroe County Jail. He was released to the custody of Hickory Treatment Center for inpatient treatment as ordered by the trial court thereafter, but he left before completing the program, again violating his probation. Father re-admitted himself to Centerstone afterwards despite there being an active warrant in his criminal case for the probation violation. After Father completed treatment at Centerstone in July, DCS recommended he participate in Centerstone's Moral Reconciliation Therapy group, but he never attended. Father turned himself in on the outstanding warrant on August 8 and was again held in the Monroe County Jail, where he remained throughout the termination proceedings.

[10] On August 24, DCS petitioned to terminate Mother's and Father's parental rights to Child, and the termination hearing was held in February 2023. Father was transported from the Monroe County Jail for the hearing, where he testified and was represented by counsel who cross-examined witnesses. FCM Hayes testified that she could not locate Father until several months after the CHINS dispositional hearing and that she was only able to get ahold of him by phone because he was uncooperative in setting up in-person meetings. She said she sent him messages to discuss his noncompliance and any barriers to

completing his services, but he did not stay in touch with her. She added that when she met with Father in April 2022, she emphasized to him the importance of contacting her when he was released from Centerstone so DCS could make sure he was receiving services. However, he did not contact her after he left against medical advice. FCM Hayes said that during the periods Father was in jail in 2022, DCS could not provide or refer him for services because service providers were not allowed in the jail, and she was not allowed to visit him. She stated that DCS would not have been able to provide services while Father was in rehab either, and she did not believe she could visit him during his stays.

[11] The visit supervisors from Lifeline also testified. The first supervisor, Kimberly Martin, stated that the visits initially went smoothly, and Father actively participated. But as time went on, Father started arriving late to visits, he was less engaged with Child, and his behavior grew aggressive. Kay Munov also testified and explained that she began supervising the visits after Martin asked to be removed from the case because Father sent her threatening text messages. When DCS referred Father for home-based casework, Munov contacted Father to set up the casework, but he never responded. Munov said she supervised only two visits with Father and Child and had to cancel the rest of the visits because Father flouted Lifeline's visitation policy.

[12] In April 2023, the trial court terminated Father's parental rights to Child.

[13] Father now appeals.

Discussion and Decision

[14] Father’s only argument on appeal is that he was denied due process in the CHINS and termination proceedings. Specifically, he claims his right to procedural due process was violated because he was not given an opportunity to be heard at the CHINS proceedings, and his substantive-due-process right to raise Child was violated because DCS failed to make reasonable efforts to reunify Father and Child. As Father concedes, he waived these issues by failing to raise them in the trial court. However, we have discretion to address such claims because they involve a parent’s constitutional rights. *In re D.H.*, 119 N.E.3d 578, 586 (Ind. Ct. App. 2019), *aff’d as modified on reh’g*, 122 N.E.3d 832 (Ind. Ct. App. 2019), *trans. denied*.

[15] Father first alleges a violation of his right to procedural due process in the CHINS and termination proceedings. When the State seeks to terminate a 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 910, 917 (Ind. 2011). “[T]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). The Indiana Supreme Court has held that “[t]he process due in a termination of parental rights proceeding turns on the balancing of three [*Mathews*] factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure.” *Id.* Because both a parent’s and the State’s countervailing interests

are substantial, when faced with a claim of denial of due process in a termination case, we focus on the second factor: the risk of error created by DCS's chosen procedure. *Id.* at 917-18. In considering this risk, we recognize that any procedural irregularities in CHINS proceedings may be so significant that they deprive a parent of procedural due process in the termination of his or her parental rights. *In re D.H.*, 119 N.E.3d at 588.

[16] Father argues he was denied notice and an opportunity to be heard in the CHINS matter because the trial court did not order him to be transported from jail to the fact-finding and dispositional hearings, and DCS sent notice of the dispositional hearing to his home address even though FCM Hayes knew he was in jail. He claims “the risk of error in not providing Father with notice and an opportunity to be heard was very high,” which deprived him of his procedural-due-process right to a fair termination proceeding. Appellant’s Br. p. 16. Yet Father knew there would be future proceedings related to Child’s removal because FCM Burton told him about the case the day Child was removed. And despite being served notice of the CHINS fact-finding hearing while he was in jail, Father did not move for a transport order or in any way request to attend the hearing. Even if the trial court erred in failing to have Father transported to the CHINS hearings or DCS erred in failing to ensure he received notice of the dispositional hearing, we cannot say any such error deprived Father of procedural due process in the termination of his parental rights. Father was transported from jail to the termination hearing, where he testified and was represented by counsel who cross-examined witnesses. *See In*

re C.G., 954 N.E.2d at 918-21 (concluding any error in the delayed notice to Mother of the CHINS action or DCS’s failure to locate her during the action did not elevate the risk of error in the termination case where Mother was represented by counsel in the termination proceeding, who cross-examined DCS witnesses and presented evidence on Mother’s behalf); *Hite v. Vanderburgh Cnty. Off. of Fam. & Child.*, 845 N.E.2d 175, 184 (Ind. Ct. App. 2006) (finding the trial court did not deny Father due process where Father did not receive notice of the initial CHINS proceedings but was provided a meaningful opportunity to be heard at later CHINS hearings and in the termination proceedings). Because Father had a meaningful opportunity to be heard in the termination proceedings, his right to procedural due process was not violated.

[17] Father also contends DCS violated his substantive-due-process right to raise Child because it failed to make reasonable efforts to reunify them. While DCS is not required by statute to provide a parent with services before seeking termination of parental rights, “for a parent’s due process rights to be protected in the context of termination proceedings, DCS must have made reasonable efforts to preserve and/or reunify the family unit in the CHINS case[.]” *In re T.W.*, 135 N.E.3d 607, 612, 615 (Ind. Ct. App. 2019), *trans. denied*. What constitutes “reasonable” varies by case and does not always mean services must be provided to the parents. *Id.*

[18] Father argues “DCS’s unexplainable delay in engaging Father in services” constituted a failure to make reasonable efforts at reunification in violation of his right to substantive due process. Appellant’s Br. p. 16. But DCS did not

delay in providing services to Father. He claims that “[o]ther than making a referral for visits on Father’s request, DCS failed to make a single referral for reunification services until one month before it filed a petition to terminate Father’s parental rights.” Appellant’s Br. p. 16. This is simply untrue. The referral Father mentions was not the first visitation referral DCS made—it referred Father for supervised parenting time after filing the CHINS petition in May 2021 (but later closed the referral because of Father’s noncompliance). Later in 2021, DCS referred Father for a batterer’s service to address his aggressive tendencies, and Father had an ongoing referral for after-care services at Centerstone, but he never completed either. In January 2022, DCS made a referral for home-based casework for Father, but the referral was closed in February because Father never responded to Munov to initiate the casework. While Father was in and out of rehab and jail in 2022, even if DCS had referred him for additional services, he would not have been able to participate because neither the Monroe County Jail nor Centerstone could provide services. The evidence shows that DCS made reasonable efforts to reunify Father and Child. Father’s failure to engage in the referred services does not render DCS’s efforts unreasonable or insufficient.

[19] Father has not demonstrated that his due-process rights were violated.

[20] Affirmed.

Bradford, J., and Brown, J., concur.