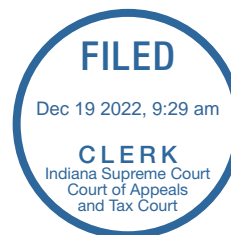


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
R.B.H.G. (Minor Child) and
K.B. (Mother)

K.B. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

December 19, 2022

Court of Appeals Case No.
22A-JT-1609

Appeal from the
Huntington Circuit Court

The Honorable
Amy C. Richison, Magistrate

Trial Court Cause No.
35C01-2107-JT-13

Vaidik, Judge.

Case Summary

- [1] K.B. (“Mother”) appeals the termination of her parental rights to her son, R.B.H.G. (“Child”). We affirm.

Facts and Procedural History

- [2] Mother is the biological mother of Child, born in 2012. R.G.S. (“Father”) is Child’s biological father, and his rights were also terminated, but he does not participate in this appeal.
- [3] In October 2020, police in Huntington County responded to a report of a broken-down car and found Mother and Child, then eight, in the car. Child did not have any socks or shoes, despite the cold weather. After noticing Mother and Child appeared to be living in the car, police contacted the Department of Child Services (DCS). Family Case Manager (FCM) Makenna Steinke met with Mother, who gave several false addresses before acknowledging she did not have a place for her and Child to stay for the night. FCM Steinke contacted Mother’s father, who would not allow Mother to stay with him due to her alleged use of illegal substances. Mother refused DCS’s offer to stay in a nearby hotel room or homeless shelter. Father’s whereabouts were unknown. DCS took Child into custody to ensure his safety for the evening. He was placed with his maternal aunt and uncle, where he has since remained. Mother’s teenage daughters, including seventeen-year-old D.C. (“Sister”), already resided in the aunt and uncle’s home after being removed from Mother’s care in 2019.

- [4] Further investigation of the family revealed Mother had removed Child from school and the pair had been living in the car for several days. On October 5, DCS filed a petition alleging Child is in need of services (CHINS). The next day, the trial court held an initial hearing and ordered Mother to participate in supervised visitation with Child and to submit to random drug screens. In the two months following Child's removal, Mother submitted four drug screens, all of which were positive for amphetamine and methamphetamine. She also attended a few supervised visits with Child, but failed to attend any scheduled visits after December 2020. In February 2021, the CHINS adjudication hearing occurred without Mother, and the trial court found Child to be a CHINS. Mother was again ordered to attend visitation with Child and submit to random drug screens, as well as to complete substance-abuse and mental-health assessments and follow any recommended treatment.
- [5] For the next year, Mother's whereabouts were generally unknown. She did not attend supervised visitation, participate in DCS services, or remain in consistent contact DCS. In February 2022, Mother was incarcerated on a criminal-trespass charge and reached back out to DCS. That same month, DCS filed a petition to terminate Mother's rights.
- [6] The termination hearing occurred in May 2022. At the hearing, the trial court asked if there were any people "that have either significant involvement or caretaking relationships with [Child] that should have been notified" of the termination hearing under Indiana Code section 31-35-2-6.5, which provides DCS shall give ten days notice of a termination hearing to certain persons,

including parents and persons with significant and caretaking relationships with the child. Tr. Vol. II p. 131. Mother noted that Sister, now nineteen years old, did not receive notice as set out in the statute. DCS disputed that Sister was a person to whom notice is required under the statute. The court called Sister, and she testified telephonically that she lived with her aunt (Child's placement) and watched Child and the aunt's other children a few days a week while her aunt worked. She stated she does not see herself as a "parent" or "caregiver" of Child but just "watch[es] him" "because he's [her] brother" and to "help" her aunt. *Id.* at 138. She also confirmed she received notice of the termination hearing from her aunt "more than ten days" in advance but that she chose not to attend. *Id.* at 136.

[7] After Sister's testimony, Mother moved for a continuance so Sister could be "properly notified" of the hearing. *Id.* at 139. The trial court denied the motion, stating:

I agree with DCS's position that this is an older sibling who is merely 18 [sic], living in the home, and effectively tending to her siblings or those who are pseudo siblings while the primary caregiver, who is [aunt] in this matter, is at work. I don't think that that creates a level of expected notification [under] the statute

Id. at 140. Also at the hearing, FCM Steinke testified she offered Mother DCS services, including services to address her housing instability, but Mother refused to participate. Mother, who was still incarcerated, testified she did not participate in DCS services or visit Child for the majority of the CHINS

proceedings because she was “trying to gather [herself]” and “obtain help.” *Id.* at 159. She also stated she did not have a place to live and planned to reside in a homeless shelter when she was released. After the hearing, the trial court issued an order terminating Mother’s rights.

[8] Mother now appeals.

Discussion and Decision

I. Notice

[9] Mother challenges the trial court’s denial of her motion to continue the termination hearing. A trial court’s decision to grant or deny a motion to continue is generally 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. *Id.* at 244.

[10] Mother argues the hearing should have been continued so Sister could receive proper notice under Indiana Code section 31-35-2-6.5(c)(5), which provides DCS shall provide ten days notice of a termination hearing to, among other parties, “Any other suitable relative or person who the department knows has had a significant or caretaking relationship to the child.” The statute does not contain a remedy for the failure to provide such a person with notice of a hearing. *See Matter of B.J.*, 110 N.E.3d 1178, 1181 (Ind. Ct. App. 2018) (noting Section 31-35-2-6.5 requires a continuance only when the court does not receive

signed verification that the foster parents received notice). “We interpret that to mean that the legislature left it to the trial court to determine, in its discretion, whether a continuance is warranted if DCS failed to provide this statutorily required notice.” *Id.*

[11] Assuming Mother even has standing to challenge lack of notice to Sister, we are inclined to agree with the trial court that she wasn’t entitled to notice. The statute requires notice be given to a “suitable relative” or “person” who has a “significant or caretaking relationship to the child.” The trial court determined Sister did not meet this criteria. Sister was nineteen years old and had been living with her aunt since she and her siblings were placed there as minors. Sister testified that she did not consider herself Child’s caretaker or parent, but simply helped watch all the children in the home when her aunt was at work. Essentially, Sister is a babysitter. This does not appear to be the type of relationship that requires notice.

[12] But even if notice to Sister was required under the statute, the lack of formal notice didn’t require a continuance. The purpose of the notice statute is to provide the relevant parties an “opportunity to be heard and make recommendations to the court at the hearing.” Ind. Code § 31-35-2-6.5(e). Here, Sister knew about the hearing well in advance. She also testified telephonically and confirmed she chose not to attend. Given that Sister had actual notice of the hearing and participated to the extent she desired, there was no need for a continuance. *See In re T.W.*, 831 N.E.2d 1242, 1247 (Ind. Ct. App. 2005) (even

if DCS failed to provide the mother with the requisite 10-day notice, no reversible error where the mother attended the hearing and testified).

- [13] The trial court did not err in denying Mother's motion to continue based on insufficient notice to Sister.

II. Sufficiency

- [14] Mother also argues the evidence presented at the termination hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

- [15] A petition to terminate parental rights must allege, among other things:

(B) that 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 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.

I.C. § 31-35-2-4(b)(2). DCS must prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

[16] Mother challenges the trial court's conclusion that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to Child's well-being. As an initial matter, we need not even address this argument. Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires the trial court to find only one of the elements. *In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015), *trans. denied*. Here, the trial court found two elements: (1) there is a reasonable probability the conditions resulting in Child's removal or the reasons for placement outside the home will not be remedied and (2) there is a reasonable probability the continuance of the parent-child relationship poses a threat to the well-being of Child. Mother does not

challenge the trial court's first conclusion, and thus we could affirm on this basis alone.

[17] In any event, we find there is sufficient evidence to support the trial court's conclusion that continuation of the relationship poses a threat to Child's well-being. Throughout the CHINS proceedings, Mother has shown no ability to provide Child with a safe environment. When DCS became involved, Mother and Child were living in a broken-down car in cold weather. Child did not have suitable clothing and was not enrolled in school. Throughout the CHINS proceedings, Mother showed no progress on providing a safe home for Child. For most of the CHINS proceedings, Mother was homeless, incarcerated, or her whereabouts were unknown. At the time of the termination hearing, Mother was incarcerated and testified her plan after being released was to reside in a homeless shelter. Nor has Mother shown even a willingness to improve these conditions. She utterly failed to participate at all in the CHINS proceedings, including visitation with Child and DCS services to address her housing and substance-abuse issues. Mother's general instability, coupled with her disinterest in remedying these issues, poses a threat to Child's well-being.

[18] Mother has failed to show there is insufficient evidence to terminate the parent-child relationship.

[19] Affirmed.

Riley, J., and Bailey, J., concur.