MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Lisa Diane Manning
Plainfield, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

David E. Corey
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

M.P. *(Minor Child)*,

and

J.P. *(Father),*

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

July 13, 2022

Court of Appeals Case No. 21A-JT-2886

Appeal from the Vigo Circuit Court

The Honorable Daniel Kelly, Magistrate

Trial Court Cause No. 84C01-2105-JT-605

Robb, Judge.

Case Summary and Issue

[1] The juvenile court terminated the parental rights of J.P. ("Father") to his son, M.P. ("Child"). Father appeared at neither the initial hearing on the termination petition nor at the fact-finding hearing, although he was represented by counsel at the latter. J.P. appeals the termination, raising several issues that we consolidate and restate as one: whether his due process rights were violated in the termination proceeding. Concluding Father has waived this issue but that even if it was not waived, he has shown no due process violation, we affirm.

Facts and Procedural History[1]

[2] Child was born on October 21, 2016, to J.M. ("Mother") and Father. Mother and Father were not married at the time, but Father signed a paternity affidavit at Child's birth. On May 18, 2018, the Indiana Department of Child Services

[1] As will be discussed further below, Father does not challenge the juvenile court's termination order on the merits; therefore, we have limited the facts to those pertinent only to the issues he raises.

("DCS") filed a petition alleging Child was a child in need of services ("CHINS") and Child was so adjudicated in September 2018.

[3] On May 28, 2021, DCS filed a petition for the involuntary termination of Mother's and Father's parental rights and issued a TPR Summons and Notice of Hearing and Notice of Possible Default Judgment ("TPR Summons") to Father at an address on 8th Avenue in Terre Haute.[2] The TPR Summons advised Father a petition for the involuntary termination of his parental rights, "a copy of which is attached hereto," had been filed and an initial hearing on the petition was scheduled for June 15. Appellant's Appendix, Volume 2 at 21. DCS designated the manner of service to be personal service by process server. *See id*. On June 13, DCS filed with the juvenile court an affidavit of service on Father, showing Father signed the admission of service portion of the TPR Summons attesting he received a copy of the document on June 3, 2021.[3] *Id.* at 31. The process server likewise affirmed by their signature under penalties of perjury that they served the document to the "within named party" on June 3, 2021, at 4:15 pm. *Id.* at 31-32.

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[2] Mother signed a consent to Child's adoption prior to the termination fact-finding hearing, was not present at the fact-finding hearing, and does not participate in this appeal. We have therefore omitted facts relating to Mother.

[3] The juvenile court also issued notice of the June 15 hearing to Father at the 8th Avenue address by first class mail that was returned marked "Return to Sender[;] No Mail Receptacle[;] Unable to Forward[.]" Appellant's App., Vol. 2 at 3-4, 25.

[4] Nonetheless, Father did not attend the initial hearing. *See* Transcript, Volume II at 4. Counsel for DCS informed the juvenile court that "we . . . did get both parents served on this case and . . . it's our understanding that they both have knowledge that today was their initial hearing for TPR (Termination of Parental Rights)[.]" *Id.* The juvenile court issued an order following the initial hearing noting Father failed to appear but had been "properly served and given notice of this hearing." Appellant's App., Vol. 2 at 46. The juvenile court also appointed counsel for Father and scheduled a fact-finding hearing for September 13. Counsel promptly filed an appearance and requested discovery. Shortly before the scheduled fact-finding hearing, counsel requested a continuance because Father was residing at a recovery center and had contracted COVID-19 and was unable to leave the facility. The fact-finding hearing was re-scheduled to November 22. On October 25, notice of the re-scheduled fact-finding hearing was sent to Father at the 8th Avenue address previously used as well as an address on 9th Street in Terre Haute. *See id.* at 73.

[5] Father's counsel appeared at the fact-finding hearing on November 22, but Father did not. Counsel registered no objection to holding the hearing as scheduled. Nor did counsel object when DCS moved to introduce Exhibit 3, the admission of service of the TPR Summons. *See* Tr., Vol. II at 10. DCS presented the testimony of two family case managers, Robyn Morton and Chloie Marks, who, in addition to testifying about Father's noncompliance with the CHINS case plan, also testified about Father's knowledge of the fact-finding hearing. Morton testified she and Marks met with Father at "the house

that . . . he's living at right now" approximately one month prior to the fact-finding hearing when Morton passed the case to Marks, and she had "no doubt at all" that Father was aware of the hearing date. *Id.* at 44. Marks likewise testified she was positive Father knew about the fact-finding hearing because when she and Morton met with Father "face to face" at the case passing meeting, "we definitely discussed this hearing[.]" *Id.* at 61. Marks testified the 9th Street address shown on the notice of hearing was where Father was currently living, and she had met with him there. *See id.* at 59-60.

[6] Following the fact-finding hearing, the juvenile court issued an order stating: "[Father] failed to appear after being duly served with notice of the hearing and discussing the hearing date with Family Case Managers. [Father's] attorney . . . appears on his behalf." Appealed Order at 1. Concluding DCS proved the allegations of its termination petition by clear and convincing evidence, the juvenile court terminated Father's parental rights to Child. Father now appeals.

Discussion and Decision

[7] Father argues his due process rights were violated when the juvenile court terminated his parental rights "after he was not properly served with notice of the initial pleadings, the initial hearing, or notice of the fact-finding hearing." Brief of Appellant at 7.

[8] The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits state action that deprives a person of life, liberty, or

property without a fair proceeding. *D.T. v. Ind. Dep't of Child Servs.*, 981 N.E.2d 1221, 1224 (Ind. Ct. App. 2013). Natural parents have a fundamental liberty interest in the care and custody of their children, and therefore, when the State seeks to terminate the parent-child relationship, it must do so in a manner that satisfies due process requirements. *C.G. v. Marion Cnty. Dep't of Child Servs.*, 954 N.E.2d 910, 917 (Ind. 2011). Due process in parental-rights cases involves balancing three 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 government interest supporting the use of the challenged procedure. *Id.* Because both the parent and the State have substantial interests affected by the proceeding, we focus on the risk of error created by DCS's and the juvenile court's actions in determining the process due. *Id*. at 917-18.

[9] Although procedural irregularities during CHINS and termination proceedings may be of such significance that they deprive a parent of procedural due process, the parent may waive a due process claim by raising it for the first time on appeal. *S.L. v. Ind. Dep't of Child Servs.*, 997 N.E.2d 1114, 1120 (Ind. Ct. App. 2013); *see also In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016) (holding that a constitutional claim, including a claimed violation of due process rights, may be waived when it is raised for the first time on appeal). "[A] party must show that it gave the trial court a bona fide opportunity to pass upon the merits of the claim before seeking an opinion on appeal." *Endres v. Ind. State Police*, 809 N.E.2d 320, 322 (Ind. 2004). Here, counsel was appointed for Father at the initial hearing and promptly filed an appearance. In his representation of

Father, counsel sought discovery, requested a continuance of the fact-finding hearing, was present when the fact-finding hearing was ultimately held, and cross-examined DCS's witnesses. But counsel did not raise concerns about the juvenile court's jurisdiction over Father or argue that Father lacked notice of the fact-finding hearing. Thus, Father has waived this issue for our consideration. *See In re Paternity of T.M.Y.*, 725 N.E.2d 997, 1005 (Ind. Ct. App. 2000) (holding putative father waived personal jurisdiction argument on appeal because he did not first present it to the trial court), *trans. denied*.

[10] Waiver notwithstanding, we will briefly address Father's claims. Father argues he was not served with notice of the proceedings and the initial hearing in a manner that complied with Trial Rule 4.1(A), which deprived the juvenile court of personal jurisdiction over him. "Ineffective service of process prohibits a trial court from having personal jurisdiction over a respondent [and a] judgment rendered without personal jurisdiction . . . violates due process and is void." *In re J.H.*, 898 N.E.2d 1265, 1268 (Ind. Ct. App. 2009), *trans. denied*. Whether process was sufficient to permit a juvenile court to exercise jurisdiction over a party involves both compliance with the Indiana Trial Rules regarding service and that such attempts at service comport with the Due Process Clause. *Id.* The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *C.G.*, 954 N.E.2d at 917.

[11] DCS had a copy of the TPR Summons delivered to Father personally, as attested by his signature and the signature of the process server. *See* Appellant's App., Vol. 2 at 30-32. Trial Rule 4.1(A)(2) allows service to be made by, *inter*

alia, delivering a copy of the summons and complaint to an individual personally. Thus, DCS's chosen procedure for serving Father with notice of the proceedings and of the time and date set for an initial hearing met the requirements of Trial Rule 4.1(A) for obtaining personal jurisdiction over Father. However, Father contends it is not his signature on the TPR Summons, apparently directing us to compare it with his signature on a 2017 informal adjustment agreement admitted at the fact-finding hearing. *See* Br. of Appellant at 10 (stating "that signature was not Father's signature" and citing Exhibits, Volume III at 40 (informal adjudgment agreement) and Appellant's App., Vol. 2 at 31 (admission of service)). Again, Father has waived the opportunity to challenge the signature as his by failing to raise it in the juvenile court, but (acknowledging we are not handwriting experts) we note that other documents in the record signed by Father, including the paternity affidavit, Ex., Vol. III at 4, and numerous drug testing consent forms, *see e.g.*, Ex., Vol. IV at 205, Ex. Vol. V at 2, more closely match the signature on the TPR Summons than that on the informal adjustment agreement. Even had this been raised to the juvenile court, the juvenile court's determination in the initial hearing order that Father was properly served and given notice of the hearing was not clearly erroneous. *See In re J.H.*, 898 N.E.2d at 1268 (noting although the existence of personal jurisdiction is a matter of law subject to de novo review, findings of fact regarding personal jurisdiction are reviewed for clear error).

[12] With regard to the notice of the fact-finding hearing, Father argues that "[t]hough the notice of initial hearing mailed by the court had returned as

undeliverable to Father's address at . . . 8th Avenue, DCS nevertheless sent notice of the fact-finding hearing to this same address." Br. of Appellant at 13. As such, Father contends his due process rights were violated because the juvenile court did not give him the opportunity to be heard at the fact-finding hearing. *See id.* at 14. Father conveniently ignores that DCS *also* sent notice of the fact-finding hearing to the 9th Street address and that testimony elicited at the fact-finding hearing showed he was living at that address as recently as one month prior to the hearing and that he had actual knowledge of the hearing date and time. *See In re C.C.*, 788 N.E.2d 847, 856 (Ind. Ct. App. 2003) (noting that compliance with Indiana Trial Rule 5(B) which allows service of subsequent papers and pleadings to be served by mailing a copy to the party's last known address meets the requirements of Indiana Code section 31-35-2-6.5 for providing notice of a fact-finding hearing), *trans. denied*. Father *had* the opportunity to be heard in person, he just did not take advantage of it. Instead, he was represented by counsel at the hearing, which has been held to satisfy the requirements of due process. *See id.* at 853 (concluding father's procedural due process rights were not violated when the termination fact-finding hearing was held in his absence because he did not have a constitutional right to be personally present and he was represented by counsel).

[13] On a final note, Father has not specifically challenged any of the juvenile court's findings of fact or conclusions thereon regarding termination of his parental rights. *See generally* Br. of Appellant at 7-14. Accordingly, Father has waived any arguments related to those findings by failing to make a cogent

argument. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007), *trans. denied*. Further, by failing to challenge the juvenile court's conclusions, he has effectively conceded that DCS proved the allegations of its petition by clear and convincing evidence.

Conclusion

[14] We conclude Father waived his due process arguments on appeal for failure to raise them to the juvenile court and we further conclude that, even in the absence of waiver, Father's due process rights were not violated by DCS's or the juvenile court's actions in this case. We therefore affirm the juvenile court's termination of Father's parental rights to Child.

[15] Affirmed.

Pyle, J., and Weissmann, J., concur.