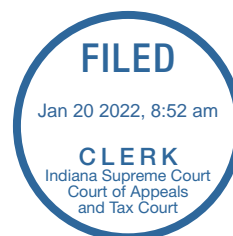


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Roberta L. Renbarger
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Monika Prekopa Talbot
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
A.A. and A.L. (Minor Children);

Ar.A. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

January 20, 2022

Court of Appeals Case No.
21A-JT-1354

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

The Honorable Sherry A. Hartzler,
Magistrate

Trial Court Cause Nos.
02D08-2001-JT-33
02D08-2001-JT-34

Pyle, Judge.

Statement of the Case

[1] Ar.A. (“Father”) appeals the trial court’s order that terminated his parental relationships with his two children (“the Children”). His sole argument is that his due process rights were violated because the trial court did not follow the statutory timeline set forth in INDIANA CODE § 31-35-2-6 regarding the commencement and the completion of a termination factfinding hearing. Concluding that Father’s due process rights were not violated, we affirm the trial court’s termination order.¹

[2] We affirm.

Issue

Whether Father’s due process rights were violated because the trial court did not follow the statutory timeline set forth in INDIANA CODE § 31-35-2-6 regarding the commencement and the completion of a termination factfinding hearing.

Facts

[3] On February 12, 2020, the Department of Child Services (“DCS”) filed a petition to terminate Father’s parental relationships with the Children. The trial court held Father’s initial hearing on the termination petition in July 2020.

¹ The Children’s mother voluntarily relinquished her parental rights and is not a party to this appeal.

Also in July 2020, the trial court scheduled Father's termination hearing for September 22 and 29, 2020.

[4] The termination hearing commenced as scheduled on September 22, 2020. At the beginning of the hearing, Father asked the trial court to continue the hearing because he had not received notice of it. DCS objected to a continuance and presented evidence that Father had been served with notice. The trial court denied Father's request for a continuance, and DCS began presenting evidence. Late that afternoon, DCS asked the trial court to adjourn for the day and to reconvene the hearing, as previously scheduled, on September 29. Both parties agreed to the adjournment.

[5] Because the trial court judge was ill on September 29, the factfinding hearing was continued until December 7, 2020. When the hearing began on December 7, Father argued that he had not received notice of it. After DCS presented evidence that Father had received notice, Father asked the trial court for time to speak to his counsel. The trial court agreed to take a brief recess to allow Father to speak with counsel. After the brief recess, the trial court pointed out there was not enough time to complete the hearing that day and that additional time was necessary. The trial court asked the parties if there were any objections to scheduling additional time for the hearing. Each party affirmatively stated that it had no objection to scheduling the additional time. The trial court stated that it "would then show there was a waiver of [the] statutory [timeline]," and asked the parties if that was correct. (Tr. Vol. 2 at 90). Each party specifically agreed to waive the statutory timeline.

[6] Thereafter, Father, who was represented by a public defender, asked the trial court to continue the hearing so that he could have time to obtain private counsel. The guardian ad litem objected to a continuance because the Children had “been out of the home for the majority of their li[v]es] in licensed foster care and need[ed] to be able to move forward.” (Tr. Vol. 2 at 94-95). DCS also objected to a continuance. The trial court denied Father’s motion for a continuance and told the parties that the hearing would occur that day and that, as previously discussed, additional time would be needed to complete the hearing. After discussing dates, the parties agreed to complete the hearing on February 25, 2021.

[7] The hearing reconvened as scheduled on February 25. At the end of the day, the hearing had not been completed. Both parties agreed to reconvene the hearing on March 4. Father did not appear at the March 4 hearing. However, his counsel was present, and the hearing was completed that day.

[8] During the course of the proceedings, Father neither filed a motion to dismiss the termination petition nor objected that the trial court had failed to follow the statutory timeline regarding the commencement and the completion of the termination factfinding hearing.

[9] In June 2021, the trial court issued a detailed order terminating Father’s parental rights. In its order, the trial court specifically found as follows: “Waivers to the statutory timeframes were given by counsels and approved by the Court and good cause was found for continuance.” (App. Vol. 2 at 30).

[10] Father now appeals the termination of his parental relationships with the Children.

Decision

[11] At the outset, we note that Father does not challenge the sufficiency of the evidence to support the terminations. Rather, his sole argument is that his due process rights were violated because the trial court did not follow the statutory timeline set forth in INDIANA CODE § 31-35-2-6 regarding the commencement and the completion of a termination factfinding hearing.

[12] However, the law is well-established that a party on appeal may waive a constitutional claim. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003). For example, in *In re K.S.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001), this Court determined that a mother had waived her claim that the trial court had violated her due process rights because she had raised the constitutional claim for the first time on appeal. Here, Father did not argue at the termination factfinding hearing that his due process rights had been violated because the trial court had not complied with the statutory timeline set forth in INDIANA CODE § 31-35-2-6 regarding the commencement and the completion of a termination factfinding hearing.

Rather, Father is now raising his due process claim for the first time on appeal. He has therefore waived appellate review of this issue.² See *id.*

[13] Waiver notwithstanding, we find no error. INDIANA CODE § 31-35-2-6 sets forth the timeline for commencing and completing factfinding hearings in parental rights termination proceedings. *Matter of N.C.*, 83 N.E.3d 1265, 1266 (Ind. Ct. App. 2017). The statute specifically provides as follows:

- (a) Except when a hearing is required after June 30, 1999, under section 4.5 of this chapter, the person filing the petition shall request the court to set the petition for a hearing. Whenever a hearing is requested under this chapter, the court shall:
 - (1) commence a hearing on the petition not more than ninety (90) days after a petition is filed under this chapter; and
 - (2) complete a hearing on the petition not more than one hundred eighty (180) days after a petition is filed under this chapter.
- (b) If a hearing is not held within the time set forth in subsection (a), upon filing a motion with the court by a

² An extremely narrow exception to the waiver rule is the fundamental error doctrine, which requires a party to show that an error was so prejudicial as to make a fair trial impossible. *Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014). However, Father’s cursory allegation “that the extension of this matter to completion at the Three Hundred Eighty-Six (386) day mark, was a violation of his procedural due process rights and therefore, a fundamental error requiring reversal of the termination of [his] parental rights[,]” does not include citation to authority or supporting record evidence. (Father’s Br. 14). Father has, therefore, waived appellate review of this issue. See *Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015) (explaining that a party who fails to support his argument with appropriate citation to authority and supporting record evidence waives the argument for appellate review).

party, the court shall dismiss the petition to terminate the parent-child relationship without prejudice.

INDIANA CODE § 31-35-2-6.

[14] Here, the termination factfinding hearing was neither commenced within ninety (90) days nor completed within 180 days of the filing of the termination petition. Rather, the hearing was commenced 223 days and completed 386 days after the filing of the petition to terminate Father’s parental rights. Father now argues that because the trial court failed to follow the statutory timeline, his due process rights were violated and he is entitled to a reversal of the termination of his parental rights.

[15] The interpretation of a statute presents a question of law, which this Court reviews de novo. *N.C.*, 83 N.E.3d at 1267. In construing a statute, our primary goal is to determine and effectuate legislative intent. *Id.* We give words and phrases their ordinary meaning. *Id.*

[16] Subsection (b) of INDIANA CODE § 31-35-2-6 addresses non-compliance with the statutory deadlines. *N.C.*, 83 N.E.3d at 1267. Specifically, that subsection provides that “upon filing a motion with the court by a party, the court shall dismiss the petition[.]” IND. CODE § 31-35-2-6(b). This plain language contemplates the filing of a motion to dismiss with the trial court. Here, Father filed no such motion.

[17] We further note that subsection (b) of the statute also addresses the remedy for non-compliance with the statutory timeline. Specifically, that remedy is

dismissal of the termination petition without prejudice. *See* IND. CODE § 31-35-2-6(b). This plain language does not contemplate that non-compliance with the statutory timeline is a due process violation requiring reversal of a termination of a parent-child relationship.

[18] Moreover, Father invited any alleged error. The invited-error doctrine is based on the doctrine of estoppel and forbids a party from taking advantage of an error that he commits, invites, or which is the natural consequence of his own neglect or misconduct. *Matter of J.C.*, 142 N.E.3d 427, 432 (Ind. 2020). Where a party invites the error, he cannot take advantage of that error. *Id.* In short, invited error is not reversible error. *Id.* Here, Father invited any error when he twice asked the trial court to continue the termination hearing on September 22 and December 7 and affirmatively waived, on the record, the statutory timeline on December 7. *See id.*

[19] Lastly, we note that in *Matter of M.S.*, 140 N.E.3d 279, 284 (Ind. 2020), the Indiana Supreme Court held that, despite a similar timeline in the Child in Need of Services (“CHINS”) statute, Indiana Trial Rule 53.5 allows a court for good cause shown to continue a CHINS hearing beyond those deadlines. Here, the trial court found in its termination order that both counsels had given waivers to the statutory timeline and that good cause had been found for the continuances. Father argues that “[t]he ‘good cause’ exception to the extension of the deadline for completion of a cause of action, allowed under Trial Rule

53.5 does not apply in this matter, because no hearing was held to determine if there was ‘good cause’ to extend the deadline.” (Father’s Br. 14).

[20] Trial Rule 53.5 specifically provides that, “[u]pon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence.” This trial rule clearly does not require a hearing for a good cause determination. Further, Father has directed us to no additional authority in support of his cursory allegation that it does.

[21] Based on the foregoing, Father’s due process rights were not violated when the trial court did not follow the statutory timeline set forth in INDIANA CODE § 31-35-2-6 regarding the commencement and the completion of a termination factfinding hearing. We, therefore, affirm the trial court’s termination of Father’s parental relationships with the Children.

[22] Affirmed.

May, J., and Brown, J., concur.