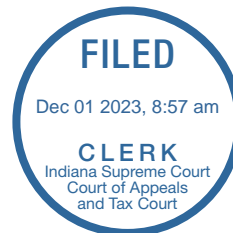


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of:

L.S. (Minor Child),

And

J.C. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

December 1, 2023

Court of Appeals Case No.
23A-JT-1176

Appeal from the Vanderburgh
Superior Court

The Honorable Brett T. Niemeier,
Judge

The Honorable Beverly Corn,
Referee

Trial Court Cause No.
82D04-2205-JT-736

Memorandum Decision by Judge Riley
Judges Crone and Mathias concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, J.C. (Father), appeals the trial court’s termination of his parental rights to the minor child, L.S. (Child).

[2] We affirm.

ISSUES

[3] Father presents this court with three issues on appeal, which we consolidate and restate as:

- (1) Whether the trial court abused its discretion when it denied Father’s motion for a continuance of the termination of parental rights’ fact-finding hearing until this court decided Father’s appeal regarding Child’s placement; and
- (2) Whether the trial court violated Father’s due process rights during the Child in Need of Services (CHINS) proceeding.

FACTS AND PROCEDURAL HISTORY

[4] K.S. is the biological mother¹ (Mother) of Child, born on May 31, 2020. On January 26, 2021, the trial court adjudicated Child to be a CHINS as to Mother and removed him from Mother's care after an incident on December 21, 2020, when another minor half-sibling in Mother's care needed emergency medical care. The half-sibling required the administration of Narcan at the hospital and Mother tested positive for both benzodiazepine and THC. Child's father was unknown at that time and Mother initially provided the Department of Child Services (DCS) with the name of another man as Child's putative father. During Child's early life, Father was itinerant, and it was not until December 2021, after his location was determined to be the Vanderburgh County Jail, that he attempted to establish his paternity to Child. Father was subsequently convicted of and sentenced on eight felonies ranging from bigamy to domestic battery to handgun possession to possession of narcotics. Father's earliest possible release date is September 8, 2038, by which time Child will be eighteen years old.

[5] In March 2021, Mother commenced a paternity action, but it is unclear from the record that Father was properly served. Mother advised Father of the CHINS proceeding in November 2021 and informed him that DCS would request a DNA test. However, by December 2021, when DCS requested the

¹ Mother voluntarily terminated her parental rights on February 14, 2023, and is not a party to this appeal.

DNA swab, Father had already pursued DNA testing through the prosecutor's office, which officially established him to be Child's biological father by early February 2022. On February 3, 2022, DCS filed an amended CHINS petition, naming Father as Child's biological parent, and on February 22, 2022, the trial court adjudicated Child to be a CHINS as to Father. On May 6, 2022, the trial court issued a dispositional order as to Father, which—due to his anticipated long-term incarceration—only required him to contact DCS within twenty-four hours of his release from prison.

[6] Since July 2021, Child has been in a pre-adoptive home with foster parents, where two of his half-siblings were also placed. That same month, Mother requested DCS to place Child with her friend, J.S., who lived in Kentucky. In September 2021, DCS opened an Interstate Compact on the Placement of Children (ICPC) for Child and one of his half-siblings with Kentucky. DCS attempted to commence visitations of Child with J.S., but due to J.S.'s scheduled vacation, only one visit occurred, which coincided with Child's birthday party. On June 14, 2022, J.S. advised the trial court that Kentucky had lost the paperwork on her background check for the ICPC, "so they had to rerun them." (Transcript Vol. II, p. 19). At a subsequent hearing on June 28, 2022, Mother's attorney represented that Kentucky had lost J.S.'s paperwork, and by July 2022, J.S. decided that she no longer wanted to pursue placement of Child and half-sibling.

[7] Upon Father's involvement in the CHINS proceedings, he pursued placement of Child with "one of his wives" or with Paternal Grandmother, due to Child's

“cultural needs” as Child and half-siblings are bi-racial. (Tr. Vol. II, p. 225). Paternal Grandmother had previously adopted five children, one of which was Father, who was adopted when he was eight years old. Paternal Grandmother, who was unaware of Child’s existence until February 2022, requested placement in April 2022.

[8] In investigating placement with Paternal Grandmother—who was willing to adopt Child—DCS uncovered that there had been a substantiation against her for physical abuse with a belt in 2014, which had resulted in the revocation of her foster license. In August 2022, after completing a waiver for Paternal Grandmother due to the 2014 substantiation, DCS commenced visitation of Child and half-sibling with Paternal Grandmother. DCS deemed Paternal Grandmother’s residence to be appropriate and the department did not have safety concerns as Paternal Grandmother acted appropriately with Child and half-sibling.

[9] On July 13, 2022, foster parents intervened in the CHINS proceedings. On September 29, October 24, and October 27, 2022, the trial court conducted a change of placement hearing. DCS’s Family Case Manager (FCM) testified that Paternal Grandmother had previously informed her that she was only interested in serving as a placement for Child and not for half-sibling, as that would be too much responsibility. However, at the hearing, Paternal Grandmother denied ever having made that statement and reiterated her interest in serving as placement for both children. FCM advised the trial court that it was in Child’s best interest to remain with foster parents. Child’s CASA

also opposed the placement with Paternal Grandmother as Child had spent half of his young life with foster parents in a safe and stable environment, where he was bonded with his foster parents and half-siblings. On October 28, 2022, the trial court denied Father's request to change Child's placement and concluded that it was in Child's best interest to remain with foster parents because of Paternal Grandmother's substantiated DCS case which had resulted in the revocation of her foster care license, three of Paternal Grandmother's adopted children are currently in prison, Child has a close bond with foster parents and no bond with Paternal Grandmother, Child was placed in a home with two of his half-siblings and was thriving, and Paternal Grandmother was in poor health which raised a concern for her long term ability to keep up with young children. On November 23, 2022, Father filed a notice of appeal of the trial court's placement decision and on February 7, 2023, he orally moved to stay the termination proceedings until the appellate court decided his placement appeal. The trial court denied the motion.

[10] Child has a strong bond with his foster parents. The foster parents have included Paternal Grandmother in the family's life to ensure that Child remains in contact with his culture, and they are addressing the needs of the bi-racial children in the household. Child's CASA advised that Child has strong emotional ties to foster parents and removal would be detrimental to him. FCM opined that reunification with Father was not an option because Father would not be able to care for Child even when placed on work release.

[11] Prior to the termination of parental rights' fact-finding hearing, the foster parents filed petitions to adopt Child and half-sibling.² These petitions were supported by DCS and CASA as being in the best interest of Child. On February 16, 2023, the trial court conducted a fact-finding hearing on DCS's petition to terminate Father's parental rights. On May 3, 2023, the trial court entered its Order, terminating Father's parental rights to Child, concluding that there was a reasonable probability that the conditions that resulted in Child's removal and placement outside the home would not be remedied and that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to Child's wellbeing. The trial court further concluded that termination was in Child's best interests.

[12] Father now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Motion for Continuance

[13] Father contends that the trial court abused its discretion when it denied his motion for a continuance in the termination of parental rights proceeding until the appellate court could address his appeal of the trial court's denial of his request for placement of Child with Paternal Grandmother. A trial court's decision to grant or deny a motion to continue is subject to an abuse of

² It is unclear from the record if foster parents also filed a petition to adopt Child's other half-sibling who also resided in the household.

discretion. *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. “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,” but “no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial.” *Id.* The party seeking a continuance must show that he or she is free from fault. *In re B.H.*, 44 N.E.3d 745, 748 (Ind. Ct. App. 2015), *trans. denied*.

[14] Here, Father advances that argument that there was good cause for a continuance or stay in this case as the outcome of the pending appeal in the CHINS case would have been pivotal to the termination of parental rights proceeding. Father explains that affirming the trial court’s placement decision on appeal would have had “little effect” on the permanency plan or the outcome of the termination proceeding, while, on the other hand, a reversal of the placement decision would change the course of the termination proceedings. (Appellant’s Br. p. 32). However, we cannot find that Father showed good cause to support his requested continuance. Ordinarily—and by definition—placement orders by the juvenile court in CHINS proceedings are not final judgments. *See, e.g., In re D.W.*, 52 N.E.3d 839, 841 (Ind. Ct. App. 2016) (juvenile court’s order which, *inter alia*, denied a motion for placement modification was not a final appealable order); *In re K.F.*, 797 N.E.2d 310, 314-15 (Ind. Ct. App. 2003) (holding that a permanency plan in a CHINS action is not a final judgment). The juvenile court has the statutory authority to remove

a child that has been adjudicated a CHINS from his or her home and place the child in the home of another or in a shelter care facility. Ind. Code § 31-34-20-1(a)(3). Placement decisions are necessarily continuing (rather than final) in nature, which is why they are reviewed every six months. I.C. § 31-34-21-2. Therefore, the trial court’s decision not to change Child’s placement was interlocutory, not final, and Father did not seek a certification for interlocutory appeal. Even if Father had filed for interlocutory appeal, “an interlocutory appeal of a change in the permanency plan is generally premature.” *Matter of A.Q.*, 104 N.E.3d 628, 633 (Ind. Ct. App. 2018), *trans. denied*.

- [15] Accordingly, as there was no final appealable order, the appealed order did not fall within the limited circumstances under which an interlocutory appeal of right may be taken, and Father did not take the necessary steps to perfect a discretionary interlocutory appeal pursuant to Indiana Appellate Rule 14(B), the trial court did not abuse its discretion as it was likely that the appellate court would dismiss the appeal. Indeed, on June 22, 2023, we dismissed Father’s appeal regarding Child’s placement, concluding that we did not have appellate jurisdiction because the placement order was not a final appealable order. *Matter of L.S.*, 212 N.E.3d 708, 711 (Ind. Ct. App. 2023), *trans. denied, sub. nom. J.C. v. Ind. Dep’t of Child Servs.*, 2023 WL 6377740 (Sept. 21, 2023).

II. *Due Process Rights*

- [16] Father contends that the termination order cannot stand because his due process rights were violated when DCS failed to make reasonable efforts to

notify him of the CHINS case, DCS failed to participate in the ICPC, and DCS failed to place Child with Paternal Grandmother. A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. *Bester v. Lake Cnty Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Hence, "[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A case involving the State's authority to permanently sever a parent-child bond therefore demands the close consideration the Supreme Court has long required when a family association so undeniably important is at stake. *M.L.B. v. S.L.J.*, 519 U.S. 102, 103, 117 S.Ct. 555, 556-57, 136 L.Ed.2d 473 (1996). In addition, the involuntary termination of parental rights is an extreme measure that is designed to be used only as a last resort, when all other reasonable efforts have failed. *In re B.D.J.*, 728 N.E.2d 195, 199 (Ind. Ct. App. 2000).

[17] The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits action that deprives a person of life, liberty, or property without a fair proceeding. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*. 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 requires "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47

L.Ed.2d 18 (1976). The process due in a termination of parental rights action turns on balancing 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 the use of the challenged procedure. *In re C.G.*, 954 N.E.2d at 917. When confronted with a due process challenge in a termination of parental rights proceeding, this court often focuses on the risk of error created by the State's actions in the case. *Id.* at 918. Our supreme court applied these same factors to a due process analysis of a CHINS adjudication. *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012).

[18] Our legislature has enacted an interlocking statutory scheme governing CHINS and involuntary termination of parental rights proceedings designed to protect the rights of parents in raising their children while allowing the State to effect its legitimate interest in protecting children from harm. *In re A.P.*, 734 N.E.2d 1107, 1112-13 (Ind. Ct. App. 2000). The CHINS and involuntary termination statutes are not independent of each other. *Id.* As such, procedural irregularities in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to the termination of his or her parental rights. *Id.*

[19] In termination cases, both the private interests of the parent and the countervailing governmental interests that are affected by the proceeding are substantial. In particular, this termination action concerns Father's interest in the care, custody, and control of his child, which has been repeatedly recognized as one of the most valued relationships in our society. *In re E.D.*,

902 N.E.2d 316, 321 (Ind. Ct. App. 2009), *trans. denied*. As such, Father’s interest in the accuracy and fairness of the termination hearing is “a commanding one.” *Id.*

[20] The State’s *parens patriae* interest in protecting the health and welfare of children, on the other hand, is also significant. “Although the State does not gain when it separates children from the custody of fit parents, the State has a compelling interest in protecting the welfare of the child by intervening in the parent-child relationship when parental neglect, abuse, or abandonment are at issue.” *Tillotson v. Clay Cnty Dep’t of Family & Children*, 777 N.E.2d 741, 745 (Ind. Ct. App. 2002), *trans. denied*. Furthermore, delays in the adjudication of a termination case impose significant costs upon the functions of government as well as an intangible cost to the lives of the children involved. *E.D.*, 902 N.E.2d at 322.

[21] When balancing these competing interests between a parent and the State, we must consider the risk of error created by the challenged procedure. *See C.G.*, 954 N.E.2d at 918. Here, Father has identified three potential areas of error, which we will discuss in turn.

1. *Notification of CHINS proceeding*

[22] Father first claims that DCS failed to make reasonable efforts to notify and include Father in the CHINS proceeding even though DCS knew that Father was likely the putative father of Child by March 2021, when Mother prepared a paternity petition. Father maintains that even though his paternity was

established by December 2021, he was not made a party in the CHINS proceedings until February 2022, almost a year after DCS learned he might be the putative father.

[23] In support of his argument, Father refers to *In re J.S.O.*, 938 N.E.2d 271 (Ind. Ct. App. 2010). Upon commencement of the CHINS proceedings in *J.S.O.*, mother provided DCS with the father's name, advised that he was the child's biological father, and explained that he was incarcerated in Lake County Jail. *Id.* at 272. Despite this information, DCS did not name father in the CHINS action but did include father in the termination proceedings. *Id.* We reversed the trial court's termination of father's parental rights, concluding that DCS's decision to refrain from naming father as a party to the case while continuing with the underlying CHINS proceedings in father's absence, and despite DCS's actual knowledge of father's name and whereabouts, coupled with DCS's and the trial court's disregard of statutory law mandating that father be provided with notice of all CHINS hearings and copies of all CHINS orders and case plans, resulted in a violation of father's right to due process. *Id.* at 277.

[24] We find Father's reliance on *In re J.S.O.* to be without merit. Unlike *J.S.O.*, where mother provided DCS with father's name immediately upon the commencement of the CHINS proceeding, here, when DCS first became involved with Child, Mother provided DCS with the name of another man as Child's putative father. Although Mother commenced a paternity action in March 2021, it is unclear from the record that Father was properly served. It was not until November 2021 that Mother advised Father of the CHINS

proceeding. Yet, despite Father’s knowledge that he “had no doubts” that he was Child’s Father since Child’s birth, he did not pursue paternity proceedings until December 2021, after the CHINS proceeding had commenced. (Tr. Vol. II, p. 52). Around the same time, DCS also requested Father to take a DNA test. As soon as paternity was officially established in early February 2022, DCS immediately filed an amended CHINS petition on February 3, 2022, which listed Father as Child’s biological parent. Accordingly, based on the facts before us, DCS made reasonable efforts to include Father in the CHINS proceedings upon establishing paternity and no risk of error was created that impacted Father’s due process rights.

2. *Participation in ICPC*

[25] Next, Father claims that DCS failed to make reasonable efforts to timely complete the ICPC. An ICPC is “an agreement between two or more states, entered into for the purpose of dealing with a problem that transcends state lines.” *Bester*, 839 N.E.2d 143, 153 (Ind. 2005) (quoting P. Hardy, *Interstate Compacts: The Ties that Bind* 2 (1982)). All fifty states are now participating members in the ICPC. *Id.* The broad purpose of the ICPC is to facilitate “cooperation between states in the placement and monitoring of dependent children.” *Id.* Our Indiana Supreme Court has observed that “[a]mong the most important safeguards for children, whom it is contemplated will be sent to live with adoptive parents in another state, is the [ICPC].” *In re Adoption of Infants H.*, 904 N.E.2d 203, 207 (Ind. 2009). The conditions for placement required by the ICPC “are designed to provide complete and accurate

information regarding children and potential adoptive parents from a sending state to a receiving state and to involve public authorities in the process in order to ensure children have the opportunity to be placed in a suitable environment.” *Id.* at 208.

[26] Under the ICPC, before an interstate placement may occur, the sending agency must provide the appropriate agency of the receiving state information about the child and the home in which the child will be placed. *Matter of C.B.*, 616 N.E.2d 763, 767-68 (Ind. Ct. App. 1993). The placement may not occur until the receiving state has notified the sending agency in writing “that the proposed placement does not appear to be contrary to the best interest of the child.” *Id.*

[27] In September 2021, at Mother’s request, DCS opened an ICPC for Child and his half-sibling with Kentucky. Contrary to Father’s contention that Indiana lost the paperwork for the ICPC, the record reflects that on June 14, 2022, J.S. advised the trial court that Kentucky had lost the paperwork on her background check for the ICPC, “so they had to rerun them.” (Tr. Vol. II, p. 19). At a subsequent hearing on June 28, 2022, Mother’s attorney again represented that Kentucky had lost J.S.’s paperwork and by July 2022, J.S. decided that she no longer wanted to pursue placement of the Child, thereby negating the need for the ICPC. Accordingly, the evidence establishes that no risk of error occurred in DCS’s participation in ICPC. DCS participated as required by statute and did not violate Father’s due process rights.

3. *Placement with Paternal Grandmother*

[28] Lastly, Father asserts that his due process rights were violated when DCS refused to place Child with Paternal Grandmother after DCS “determined that she was an appropriate and suitable placement.” (Appellant’s Br. p. 17). Although the record reflects that DCS made initial efforts to place Child with Paternal Grandmother, ultimately DCS determined, and the trial court affirmed, that it was in Child’s best interest to remain in his pre-adoptive placement.

[29] When Paternal Grandmother, who was unaware of Child’s existence until February 2022, requested placement in April 2022, DCS immediately included her in child family team meetings. DCS executed a waiver for Paternal Grandmother, which was necessitated by a substantiated finding of physical abuse and revocation of her foster care license in 2014. DCS also learned that Paternal Grandmother had previously adopted five children, including Father, three of whom served time in prison. Yet, in August 2022, Child and half-sibling commenced visitation with Paternal Grandmother. Even though DCS wanted to place Child and half-sibling together, at the change of placement hearing, FCM testified that Paternal Grandmother had advised her that she only wanted to serve as placement for Child and not as placement for half-sibling. Both FCM and CASA testified that it would be in Child’s best interests to remain with foster parents, where Child had already spent half his life and where two of his half-siblings were residing. Although Father argues that a placement with foster parents would sever Child’s cultural roots, we note that the record reflects that foster parents have adopted another child with similar

cultural roots as Child and foster parents have included Paternal Grandmother in the family's life to ensure Child could learn and have access to his culture. Accordingly, based on these facts before us, Father's due process rights were not violated by the trial court's refusal to place Child with Paternal Grandmother.

CONCLUSION

[30] Based on the foregoing, we conclude that the trial court did not abuse its discretion when it denied Father's motion for a continuance of the termination of parental rights' fact-finding hearing and Father's due process rights were not violated during the CHINS proceeding.

[31] Affirmed.

[32] Crone, J. and Mathias, J. concur