

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of: Aa.M., Ae.M., Ja.M., and Js.M. (Minor Children)

A.M. (Mother) and J.M. (Father),

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

February 15, 2024

Court of Appeals Case No.
23A-JT-1967

Appeal from the Tippecanoe Superior Court

The Honorable Troy M. Hawkins,
Special Judge

Trial Court Cause Nos.
79D03-2303-JT-14
79D03-2303-JT-15
79D03-2303-JT-16
79D03-2303-JT-17

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] A.M. (“Mother”) and J.M. (“Father”) appeal the involuntary termination of their parental rights with respect to their children and assert they were denied due process. We affirm.

Facts and Procedural History

- [2] Mother and Father (together, “Parents”) are the parents of Aa.M., Ae.M., Ja.M., and Js.M. (“Children”). In August 2018, the Department of Child Services (“DCS”) alleged Children were children in need of services (“CHINS”) for reasons including Mother’s substance abuse and unfit living conditions, and in December 2018, Children were adjudicated CHINS after an admission by Mother and placed in foster care and then in relative care for a period of time. In March 2021, DCS again became involved with the family following a report of neglect, Mother was admitted to the hospital for signs of methamphetamine overdose, and Father was found unresponsive after overdosing on methamphetamine and hospitalized. On April 21, 2021, DCS filed a CHINS petition. Parents were offered family preservation services, were not fully cooperative, and screened positive for methamphetamine early in the case.
- [3] On April 28, 2021, Children were removed from Parents and placed in kinship care. In May 2021, Parents completed a Substance Use Disorder Assessment which recommended certain other services including that they attend intensive

outpatient program (“IOP”) services and receive recovery coaching services, and they completed a Substance Abuse/Chemical Dependency Assessment revealing that Mother had been in methadone addiction treatment for about ten years and admitted to ongoing methamphetamine use and that Father admitted to occasional methamphetamine use. Also in May 2021, the court noted Children were drug tested and showed positive results for methamphetamine. In June 2021, the court again adjudicated Children as CHINS.

[4] On July 9, 2021, the court issued a dispositional order which required that Parents: (1) complete a diagnostic evaluation including clinical interview and assessment; (2) complete a Parent Family Functional Assessment; (3) complete a Substance Use Disorder Assessment; (4) participate in family counseling as recommended; (5) participate in home based case management as recommended; (6) participate in individual counseling as recommended; (7) submit to oral drug screens; (8) submit to urine drug screens; (9) submit to hair drug screens; (10) follow all treatment recommendations of the substance use assessment already completed; and (11) follow the standard terms of the parental participation decree. The dispositional order also ordered that parenting time be immediately suspended in the event either Parent tested positive for methamphetamine or fentanyl on any subsequent drug screen.

[5] In July 2021, HGCF started working with the family on home based case management and IOP, and the family was unsuccessfully discharged in September 2021. Meanwhile, in August 2021, Mother participated in a clinical interview and assessment, admitted to self-medicating with methamphetamine,

and reported being diagnosed with ADHD, anxiety, bipolar, and depression, and an accurate mental health diagnosis could not be made because she was not sober. In September 2021, HGCF started working with Mother on therapy, in October 2021 she was suspended because of positive screens for methamphetamine, and in December 2021 she was unsuccessfully discharged because she was not participating in IOP. In October 2021, Bauer Family Resources started working with the family on parenting time, in November 2021, parenting time for Parents was suspended because of positive screens for methamphetamine, and parenting time was transitioned to a virtual platform. In November 2021, Meridian Health Services started working with the family on IOP, and in January 2022 Parents were unsuccessfully discharged for noncompliance. On April 18, 2022, Mother admitted to using methamphetamine within the prior week.

[6] On May 26, 2022, DCS filed a petition to terminate Parents' parental rights. On October 28, 2022, the court held a hearing. On December 29, 2022, the court issued an order denying DCS's termination petition. The court found "[t]here is no disputing that [Parents] did not fully comply with services," there is "a question about how much [Family Case Manager, Debi Pellam] helped/did not help [Parents] during the process," and "[t]he fact that FCM Pellam did not testify only fuels such concerns." Appellants' Appendix Volume II at 66. The court also stated:

[Parents] are cautioned that their lack of effort and lack of progress is not acceptable in CHINS cases, and, in another termination proceeding, may justify granting termination of parental rights. If

[they] hope to avoid such an outcome, it is well beyond the time to fully commit to the cases, services, and substance abuse recovery.

Id. at 67 n.2. On January 23, 2023, the court held a hearing and “ordered a concurrent permanency plan.”¹ *Id.* at 121. On March 13, 2023, the court ordered a permanency plan of adoption.

[7] On March 15, 2023, DCS filed petitions to terminate Parents’ parental rights with respect to Children. The petitions stated that Children had been placed in foster care in August 2018 through March 2019, placed in relative care from June 2019 through June 2020, placed with Parents from June 2020 through April 2021, and again placed in relative care in April 2021 through the date of the filing. On May 5, 2023, Father filed a motion to dismiss the petitions, arguing “that virtually no time has elapsed between the time a previous, identical Petition to Terminate was denied . . . on December 29, 2022.” *Id.* at 109. On that day, the court held a hearing. DCS’s counsel stated that Mother had more positive methamphetamine screens, had been discharged from IOP and home based case management, and under a court’s order was supposed to

¹ At the hearing, when Mother’s counsel asked “Judge, I just want to make sure cause you said this is concurrent, so you actually changed the permanency plan to a concurrent plan of reunification/adoption,” the court stated “its [sic] just concurrent planning,” “[a]ny of those things are open,” and “I don’t want to leave it just adoption today.” Transcript Volume III at 40-41. Father’s counsel asked “you’re gonna make it a concurrent plan of adoption and reunification,” and the court replied: “No, just a concurrent plan. Wide open concurrent planning.” *Id.* at 41. The written Order on Permanency Hearing dated January 23, 2023, stated “[t]he current permanency plan is Adoption.” Appellants’ Appendix Volume II at 98.

have virtual visits because of a positive screen. The court denied Father's motion to dismiss.

[8] On June 2, 2023, the court held a hearing at which it heard testimony from, among others, Court Appointed Special Advocate Oluranti Ladapo ("CASA Ladapo"), Lisa Schumate with HGCF, Mother's aunt, Family Case Manager Mahmoud Gabal ("FCM Gabal"), Father, and Mother. CASA Ladapo recommended that Parents' parental rights be terminated and it was in Children's best interests to be adopted. Schumate testified that she worked with Parents since May 2022 and unsuccessfully discharged Mother in April "due to too many [] cancels and no shows." Transcript Volume II at 58. Mother's aunt testified that Children were first placed with her and her spouse in early 2019, were placed with her again in March 2021, and had been living with them since 2021. She testified regarding Children's health, education, and stability living with her. FCM Gabal testified Mother "completed some group therapy, but she never made it to the individual therapy [] phase." *Id.* at 101. When asked "[d]id either of them complete IOP," he replied "I know that [Mother] attempted to complete IOP" and "she was not consistent in it and [] she was discharged in April from Valley Oaks." *Id.* at 102. He stated Father "did not participate in that." *Id.* He indicated the level of supervision did not drop below fully supervised. He also testified "in my experience here and since October, [] there have been issues with positive screens," "there have been issues with consistency with visits, consistency with certain [] services," "there have been plenty of opportunity here," Children were thriving in their

placement, and it was in Children's best interests to remain in the relative placement. *Id.* at 107.

- [9] On July 26, 2023, the court issued an order terminating the parent-child relationship between Parents and Children. The court made numerous findings of fact regarding DCS's involvement with the family beginning in August 2018, Parents' drug use, and the extent of their participation in services as set forth above. The court further found that, in April 2022, Valley Oaks started working with Mother on IOP, in June 2023 she was facing possible discharge, she had to restart group therapy sessions four separate times due to attendance issues, and she would also fall asleep during sessions. It found Father never completed IOP or inpatient treatment during the case. It found that Mother was referred to drug screens through Cordant, failed to call in 255 times and missed 132 drug screens since May 2021, missed drug screens as recently as April 2023, and had abnormal results as recently as March 2023. It found that Father failed to call 89 times, missed 40 drug screens, and missed screens as recently as April 2023. It found that, in May 2022, HGCF started working with the family on home based case management and parenting education, and in April 2023, Parents were unsuccessfully discharged. It found that, around July 8, 2022, Mother was admitted to Sycamore Springs for methamphetamine use, she checked herself out around July 13, 2022, and she submitted to a psychiatric evaluation at Sycamore Springs and disclosed she continued to use methamphetamine about twice weekly. It found that Sycamore Springs discharged Mother "from PHP due to absences." Appellants' Appendix

Volume II at 121. It found that, in April 2023, Mother's parenting time was again transitioned to a virtual platform because of the court's order suspending parenting time in the event of a positive screen for methamphetamine or fentanyl. It found that, in June 2023, Mother's parenting time remained on a virtual platform and that, throughout the case, parenting time never progressed past fully supervised parenting time. The court's order included the following findings:

52. In April 2023, Counseling Partners started working with the family on parenting time. On April 7, 2023, Mother arrived at an in-home parenting time two (2) hours late. Mother's parenting times were stopped pursuant to court order that directed parenting time was to stop, if either parent tested positive for methamphetamine or fentanyl. Mother's parenting time was transitioned to a virtual platform. Father's parenting time was moved from in-home to in the community.

* * * * *

55. On or around January 23, 2023, in its Order On Permanency Hearing the court ordered a concurrent permanency plan.
56. On or around March 13, 2023, in its Order On Permanency Hearing, the court ordered a permanency plan of adoption.
57. Since the denial, parents have been discharged from Home-Base[d] Case Management and Parenting Education; Mother has been discharged from Valley Oaks, and her parenting time was suspended then transitioned to a virtual platform pursuant to court order; and Father's parenting time was transitioned from in-home in the community. Neither parent has progressed beyond fully supervised parenting time, to semi-supervised parenting time, to drop-in supervision, to overnights, or to a trial home visit.

Id. at 121-122. The court further found Children had special needs which included that two of the Children were diagnosed with ADHD requiring bimonthly doctor visits which the kinship placement family was well-equipped to handle and that Children have formed a bond with the kinship placement who were willing to adopt them. It found CASA Ladapo and FCM Gabal testified that termination of Parents' parental rights was in Children's best interests. It found Children were happy, safe, and wished to remain in their current placement. The court concluded that there was a reasonable probability the conditions resulting in the removal of Children or their placement outside the home would not be remedied, termination of the parent-child relationships was in the best interests of Children, and there was a satisfactory plan for the care and treatment of Children which was adoption.

Discussion

[10] Parents claim they were denied due process. They argue the court's findings in paragraphs 52, 56, and 57 related to "the time frame after December 29, 2022," and that, "[o]ther than those findings, virtually everything submitted was [a] rehash of the first TPR trial." Appellants' Brief at 17-18. They "complain that following the denial of the first TPR petition, that the trial court did not adopt a plan of reunification." *Id.* at 18. They assert that, "[w]hile there is no case on all fours, and no specific statute to govern this exact time table, fundamental fairness would provide the parents at least as much time as required before the

state could bring a TPR petition to a CHINS case.” *Id.* (referring to the six-month period in Ind. Code § 31-35-2-4(b)(2)(A)(i)).²

[11] DCS argues the court ordered “wide open concurrent planning” and “[i]t is unclear how such a concurrent permanency plan could have been prejudicial to Parents.” Appellee’s Brief at 20. It argues “nothing in Indiana Code section 31-35-2-4(b)(A)(i) suggests that if a termination petition is denied, then the six-month timeframe starts again from the denial of a termination petition.” *Id.* at 21. It argues Parents failed to attend parenting time, parenting education, and home based case management consistently which resulted in their discharge from those services, Father did not participate in IOP, and Mother attempted IOPs but was discharged from Valley Oaks due to inconsistent attendance.

[12] As a matter of statutory elements, DCS is not required to provide parents with services prior to seeking termination of the parent-child relationship. *In re T.W.*,

² Ind. Code § 31-35-2-4(b) provides:

The petition [to terminate the parent-child relationship] must meet the following requirements:

* * * * *

(2) The petition must allege:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

(ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made.

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child

135 N.E.3d 607, 612 (Ind. Ct. App. 2019), *trans. denied*. Nevertheless, parents facing termination proceedings are afforded due process protections. *Id.* “Due Process has never been defined, but the phrase embodies a requirement of ‘fundamental fairness.’” *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011) (citations omitted). “Due process requires ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’” *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893 (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 use of the challenged procedure.” *Id.* (citing *In re C.G.*, 954 N.E.2d at 917). “In balancing the three-prong *Mathews* test, we first note that the private interest affected by the proceeding is substantial – a parent’s interest in the care, custody, and control of her child.” *In re C.G.*, 954 N.E.2d at 917. “We also note the countervailing *Mathews* factor, that the State’s *parens patriae* interest in protecting the welfare of a child is also substantial.” *Id.*

- [13] With respect to Parents’ citation to Ind. Code § 31-35-2-4(b)(2)(A)(i), we note the statute does not expressly prohibit DCS from filing a petition to terminate parental rights less than six months after the denial of a previous petition to terminate parental rights. Further, at the January 23, 2023 hearing, the court stated “I don’t want to leave it just adoption today” and it was ordering “just a concurrent plan. Wide open concurrent planning.” Transcript Volume III at

41. Parents do not challenge the trial court's findings of fact, and the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*. The record and the court's order reflect Parents' lengthy struggle with drug use and the extent of their participation in services. While the court denied the petitions to terminate filed in May 2022, which was due in part to the fact FCM Pellam did not testify, the court explained that Parents' lack of effort and progress was unacceptable and may justify termination of their parental rights in another proceeding. DCS's March 15, 2023 petitions to terminate parental rights were filed more than nineteen weeks after the October 28, 2022 hearing and nearly eleven weeks after the court's December 29, 2022 order. The court found Valley Oaks started working with Mother on IOP in April 2022, Mother was facing possible discharge in June 2023, she had to restart group therapy sessions four times due to attendance issues, and Father never completed IOP or inpatient treatment. Parents missed numerous drug screens including as recently as April 2023. It found HGCF unsuccessfully discharged Parents in April 2023. It also found that, in April 2023, Mother's parenting time was transitioned to a virtual platform because of the court's order suspending parenting time in the event of a positive screen for methamphetamine or fentanyl. The court further found Children had been placed with Mother's aunt for more than four years in total and that CASA Ladapo and FCM Gabal testified that termination of Parents' parental rights was in Children's best interests. Parents testified and were represented by counsel at the June 2, 2023

evidentiary hearing, and their counsel cross-examined the witnesses and presented argument. Under these circumstances, and in light of the record and the court's findings, we conclude that reversal on due process grounds is not warranted.

[14] For the foregoing reasons, we affirm.

[15] Affirmed.

Riley, J., and Foley, J., concur.