MEMORANDUM DECISION

APPELLANT *PRO SE*

Larry P. Prouse III
Carlisle, Indiana

IN THE

COURT OF APPEALS OF INDIANA

Larry P. Prouse III,
Appellant-Respondent,

v.

Miranda Prouse,
Appellee-Petitioner.

October 4, 2022

Court of Appeals Case No. 22A-DR-697

Appeal from the Vigo Superior Court

The Hon. Lakshmi Reddy, Judge

Trial Court Cause No. 84D02-1502-DR-720

Bradford, Chief Judge.

Case Summary

[1] Larry and Miranda Prouse ("Father" and "Mother," respectively) were previously married, and had one child, A.P., born on March 1, 2014 ("Child"), together. Subsequently, Father's and Mother's marriage was dissolved, and Father was convicted of murder, for which he remains incarcerated. In December of 2021, Mother petitioned the trial court for permission to relocate to Texas with Child. Father opposed the request, and the trial court set a hearing on the matter and mailed notice to Father so that he could attend via Zoom. Father, however, only received notice of the hearing on the day of the hearing, leaving him with insufficient time to arrange attendance. The trial court granted Mother's petition, after which it denied Father's motion to reconsider. Father argues that the trial court's denial of his motion to reconsider amounts to a denial of his right to due process. Because we agree, we reverse the judgment of the trial court and remand with instructions to conduct a new hearing.

Facts and Procedural History

[2] During Father and Mother's marriage, they had Child together. In January of 2015, Mother petitioned for dissolution of her marriage to Father, and, on May 10, 2015, the trial court entered a dissolution order. At some point, Father was convicted of murder, "abuse of court[,] altering the scene of a crime[,] and arson[,]" for which he was sentenced to sixty-nine years of incarceration. Tr. Vol. II p. 7. As of January of 2022, Father had been incarcerated for approximately five years. On December 22, 2021, Mother petitioned for

permission to relocate with Child to Texas with her current husband, where she planned to work in her father's HVAC business and study nursing. On January 18, 2022, the trial court, having received Father's letter in opposition to Mother's petition to relocate, issued an order, providing, in part, as follows: "Court receives Father's letter objecting to relocation. The letter is not evidence and Father must testify under oath and Mother must present her case under oath. Hearing remains scheduled for January 25, 2022 at 1:15 p.m. and will now take place via Zoom. Instructions to participate are below." Appellant's App. Vol. II p. 46. A video hearing was held on January 25, 2022, at which Mother was in attendance but Father was not. On January 27, 2022, the trial court granted Mother's motion to relocate to Texas with Child.

[3] On January 30, 2022, Father moved to reconsider, alleging that he had received the trial court's order regarding the hearing the day of the hearing and that the prison litigation office had stated that they had not received any order from the trial court and so could not allow Father to participate. On February 8, 2022, the trial court denied Father's motion to reconsider in an order that provided as follows:

> Court receives Father's Motion to Reconsider. The Court acknowledges that Father indicates that he did not receive the Order with zoom instructions until the day of the hearing. This Court cannot control how long it takes for Father to receive mail while incarcerated and his incarceration is a result of his own actions. Nevertheless, his participation in the hearing would have made no differen[ce]. Father will be incarcerated for many years to come and there is no benefit to preventing Mother and her current husband from relocating with the children to a state where

> they have secured employment. Father's Motion to Reconsider is hereby DENIED.

Appellant's App. Vol. II p. 53.

Discussion and Decision

[4] At the outset, we note that Father has chosen to proceed *pro se*. It is well-settled that *pro se* litigants are held to the same legal standards as licensed attorneys. *Twin Lakes Reg'l Sewer Dist. v. Teumer*, 992 N.E.2d 744, 747 (Ind. Ct. App. 2013). *Pro se* litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). Additionally, we note that Mother has not filed a brief, and we therefore apply a less stringent standard of review and may reverse the trial court if Father can establish *prima facie* error. *State Farm Ins. v. Freeman*, 847 N.E.2d 1047, 1048 (Ind. Ct. App. 2006). "*Prima facie* is defined in this context as at first sight, on first appearance, or on the face of it." *Id.* (internal quotation omitted).

[5] Father argues that the trial court violated his right to due process by denying his motion to reconsider.

> It is well settled that "[t]he Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty or property without a fair proceeding." *Lawson v. Marion Cty. Office of Family & Children*, 835 N.E.2d 577, 579 (Ind. Ct. App. 2005). Due process is essentially "the opportunity to be heard at a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976). We recognize that, "although due process is not dependent on the underlying facts of the particular case, it is

> nevertheless 'flexible and calls for such procedural protections as the particular situation demands.'" *Lawson*, 835 N.E.2d at 580 (quoting *Thompson v. Clark Cty. Div. of Family & Children*, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003), *trans. denied*).

Matter of E.T., 152 N.E.3d 634, 640 (Ind. Ct. App. 2020), *trans. denied*.

[6] Under the unique circumstances of this case, we cannot say that Father received the process due to him. At the outset, we note that the trial court clearly found Father's explanation for his failure to attend the hearing to be credible, just insufficient to excuse his absence. We, however, disagree: Father was essentially denied the meaningful opportunity to be heard because, through no fault of his own, he did not have adequate time to make the necessary arrangements to participate in the January 25, 2022, hearing. It is true that the trial court does not control mail delivery, but neither does Father. Moreover, while it is also true, as the trial court noted, that Father's "incarceration is a result of his own actions[,]" that does not affect his right to due process. "There is no iron curtain drawn between the Constitution and the prisons of this country." *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974). Among other rights, "[p]risoners may also claim the protections of the Due Process Clause." *Id*. at 556 (citations omitted).[1] Father is entitled to a meaningful opportunity to be heard, which we conclude he has not yet been afforded. We therefore

[1] We also wish to express our concern regarding the trial court's statement that Father's participation would have made no difference. As the Indiana Supreme Court has stated, "it would be unacceptable for a judge to even imply that the outcome of a hearing was predetermined." *Barany v. State*, 658 N.E.2d 60, 65 (Ind. 1995).

reverse the trial court's denial of Father's motion to reconsider and remand for the setting of a new hearing on Mother's request to relocate. Whatever the cause of the delay, it is undisputed that the trial court's previous order took one week to reach Father, so we instruct the trial court to set the new hearing for no fewer than thirty days from the date of the new order.

[7] We reverse the judgment of the trial court and remand with instructions.

Robb, J., and Pyle, J., concur.