

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re the Termination of the
Parent-Child Relationship of:
A.L. (Minor Child),

and

A.N. (Mother),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

March 1, 2021

Court of Appeals Case No.
20A-JT-1631

Appeal from the Jay Circuit Court

The Honorable Brian D.
Hutchison, Judge

Trial Court Cause No.
38C01-2004-JT-6

In Re the Termination of the
Parent-Child Relationship of:
G.L. (Minor Child),

and

A.N. (Mother),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

In Re the Termination of the
Parent-Child Relationship of:
R.L. (Minor Child),

and

A.N. (Mother),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

Court of Appeals Case No.
20A-JT-1633

Trial Court Cause No.
38C01-2004-JT-7

Court of Appeals Case No.
20A-JT-1639

Trial Court Cause No.
38C01-2004-JT-5

Weissmann, Judge.

- [1] A.N. (Mother) first lost custody of her three children—A.L., G.L., and R.L. (Children)—when her parents became Children’s legal guardians. When Children later were removed from the “deplorable” conditions of the grandparents’ home, Mother’s ongoing drug use and incarceration prevented her from reassuming custody. Even after Children were placed in foster care, Mother’s pattern of drug use, criminal behavior, and homelessness continued, preventing any healing of her family’s fracture.
- [2] In the three appeals resolved by this opinion, Mother challenges the trial court’s termination of her parental rights as to Children. Mother alleges DCS idleness and trial court errors combined for an unconstitutional or otherwise defective outcome. Concluding Mother’s claims are waived or unsubstantiated or both, we affirm the three judgments.¹

Facts

- [3] For reasons unclear from the record, Mother’s parents (Guardians) served as the legal guardians of Children “for quite some time” prior to 2019. Tr. Vol. II p. 44. After receiving several reports of problems within Guardians’ home, DCS removed Children in January 2019 for reported drug use by Guardians and “deplorable” home conditions. Tr. Vol. III p. 19. Mother was present at

¹ The trial court terminated Mother’s parental rights as to Children in three separate but nearly identical judgments. Mother separately appealed each judgment but raised and argued the same issues in her three nearly identical appellate briefs. Our citations to Mother’s brief and to the transcript are to documents filed in case number 20A-JT-1639.

Guardians' home at the time of removal and was arrested for disorderly conduct. Tr. Vol. II p. 14. One of the Guardians was arrested for possession of a syringe. *Id.* Mother, who was homeless, subsequently admitted using methamphetamine for nearly two decades and to smoking marijuana. Tr. Vol. II, pp. 15-16; Tr. Vol. III p. 19.

[4] DCS petitioned for a finding that Children—then 11, 9, and 4 years old, respectively—were children in need of services (CHINS). DCS alleged Children were placed in foster care because Mother and one of the Guardians had been arrested, Children's fathers were unavailable, and the Guardians' home was "unsafe." Tr. Vol. III p. 19. Mother admitted the factual allegations in the CHINS petition, prompting the trial court to enter a CHINS determination as to each child. Tr. Vol. III, pp. 77, 81. The trial court ordered Mother, among other things, to refrain from illegal drug use, obey the law, undergo random drug screens, maintain suitable housing and income, and complete parenting, drug, and psychological assessments. Tr. Vol. III, pp. 77-79.

[5] Mother failed to comply with the trial court's order. Incarcerated five times throughout this case, Mother pleaded guilty to theft during the CHINS proceedings and to criminal mischief and invasion of privacy three months after DCS petitioned to terminate her parental rights. Based on that criminal behavior and incarceration, as well as Mother's drug use, homelessness, and failure to complete services, the trial court terminated Mother's rights as to all

three Children after an evidentiary hearing. Mother appealed, but the fathers of Children did not.

Discussion and Decision

[6] Mother attacks the trial court’s judgments in three ways. First, she contends the trial court abused its discretion in admitting Petitioner’s Exhibit 1, which contained a total of about 600 pages of certified filings from Children’s CHINS proceedings. Second, Mother alleges DCS violated her right to due process by failing to assist her adequately. Third, she challenges the sufficiency of the evidence supporting the trial court’s judgments. Concluding Mother has waived most of the alleged error and that her claims also fail on their merits, we affirm the terminations of Mother’s parental rights.

I. Abuse of Discretion

[7] Mother first claims the trial court abused its discretion in admitting Petitioner’s Exhibit 1. That exhibit consisted of certified documents, including orders and DCS case reports, filed in the CHINS proceedings. The trial court has discretion to admit evidence and will be reversed only upon an abuse of that discretion. *Matter of A.F.*, 69 N.E.3d 932, 941-42 (Ind. Ct. App. 2020), *trans. denied*. An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before the court. *Id.* at 942.

[8] Mother contends only that DCS did not disclose Petitioner’s Exhibit 1 to her until the afternoon prior to the termination hearing. She appears to categorize DCS’s actions as a “discovery violation.” Mother’s Br. p. 10. Yet, she offers

no factual or legal basis for that assertion. She merely cites the standard of review, mentions that Indiana Trial Rule 26 governs “discovery in matters such as these,” and cites Indiana Code § 31-32-10-3 for the proposition that “the law of discovery for all civil cases” applies to juvenile court proceedings. Mother’s Br. p. 10.

[9] Mother invites us to a destination without providing a map. By failing to provide cogent argument, she has waived her challenge to Petitioner’s Exhibit 1. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring briefs contain cogent argument supported by relevant citations to authority and to the record); *In re A.G.*, 6 N.E.3d 952, 957 (Ind. Ct. App. 2014) (noting appellate courts refuse to make arguments for party).

[10] Even if we were to assume a discovery violation occurred, we find no grounds for reversal. Mother’s counsel represented her throughout the CHINS proceeding and, therefore, should have been familiar with the documents in Petitioner’s Exhibit 1. Tr. Vol. II, pp. 9-10. Also, DCS identified as potential exhibits “any document from” Children’s CHINS cases when it filed its exhibit lists two weeks before the termination hearing. The record reflects no efforts by Mother to obtain those documents or, if they already were in her counsel’s possession, to review them. Further, Mother did not seek a continuance—the normal remedy for a discovery violation where, as here, no allegation of intentional misconduct or bad faith exists. *T.W. v. State*, 953 N.E.2d 1120, 1123-24 (Ind. Ct. App. 2011). Failure to request a continuance where it may be the appropriate remedy results in waiver of any error resulting from the alleged

violation. *In re V.C.*, 867 N.E.2d 167, 177 (Ind. Ct. App. 2007). Mother has failed to establish an abuse of discretion.

II. Due Process Violation

- [11] Mother next contends DCS violated her right to due process by doing too little to reunite her with Children. She notes an involuntary termination of parental rights is a last resort appropriate only when “all other reasonable efforts have failed.” *In re C.G.*, 954 N.E.2d 910, 916 (Ind. 2011).
- [12] Mother has waived this issue in two ways. First, she failed to object on due process grounds in the trial court. *See McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 194-95 (Ind. Ct. App. 2003) (parent waived due process claim by raising it for first time on appeal). Second, she fails to specify any constitutional basis for her due process claim or cite appropriately to the record or to authority. Mother’s Br. p. 14; *see* App. R. 46(A)(8)(a).
- [13] Waiver notwithstanding, Mother’s due process argument fails on the merits. A parent’s right to raise her children is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. U.S. CONST. amend. XIV; *In re A.H.*, 751 N.E.2d 690, 701 (Ind. Ct. App. 2001). When the State seeks to terminate parental rights, it therefore must adhere to the requirements of due process. *C.G.*, 954 N.E.2d at 917. Procedural irregularities in a CHINS proceeding may be so invasive as to deprive a parent of procedural due process in the termination of her parental rights. *A.P. v. Porter County Office of Family and Children*, 734 N.E.2d 1107, 12 (Ind. Ct. App. 2000), *trans. denied*.

- [14] The process due in a termination of parental rights proceeding turns on the balancing of 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 governmental interest supporting use of the challenged procedure. *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). As both the private and State interests are substantial in a termination of parental rights case, the proper focus is on the risk of error created by the actions of DCS and the trial court. *C.G.*, 954 N.E.2d at 918.
- [15] Mother has failed to demonstrate any risk of error. Mother does not specify the services DCS allegedly failed to provide. Instead, she alleges the DCS family case managers (FCMs) who worked with Mother’s family provided “vague and convoluted” testimony that did not detail the services provided to her. Mother’s Br. p. 13.
- [16] The FCMs’ testimony, however, revealed that DCS provided a variety of services to Mother and any failings were her own. For instance, one FCM testified Mother completed the required substance abuse assessment at Second Chance at Life Ministries but was “booted” from the program for failing to follow treatment recommendations. Tr. Vol. II p. 34. At Mother’s behest, DCS later arranged for her to undergo substance abuse treatment at Winchester House. Tr. Vol. II, pp. 34-35, 50. Yet, Mother ultimately refused to participate. *Id.* DCS also provided drug screening services to Mother, but she refused some of the drug screens. Tr. Vol. II p. 31.

[17] The FCMs' testimony further established that DCS arranged for Mother to visit Children. Tr. Vol. II p. 32. However, Mother's attendance was sporadic, and the trial court suspended her visits at the recommendation of Children's therapists and due to Mother's failure to engage in drug treatment. Tr. Vol. II, pp. 32-34. The FCMs had trouble locating Mother at times during the case, although she was required by the dispositional order to contact them regularly. Tr. Vol. II, pp. 35, 37. Mother's five incarcerations during the life of this case complicated communications. The FCMs could not visit her in jail due to COVID-19 restrictions. Tr. Vol. II, pp. 36, 38.

[18] Although one FCM could not identify the services in which Mother failed to participate, the FCMs' testimony, in aggregate, established DCS provided an array of services to Mother and that she generally was non-compliant. Tr. Vol. II, pp. 28-30. In addition, the CHINS documents in Petitioner's Exhibit 1 documented such services. The record contains no evidence that Mother ever sought additional assistance that DCS failed to provide. A parent may not remain silent as to a need or desire for services and then successfully argue she was denied services necessary to improve her parenting. *In re B.D.J.*, 728 N.E.2d 195, 202 (Ind. Ct. App. 2000). Mother was responsible for making positive changes, so the onus was on her to request additional assistance from the court or DCS if needed. *Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007).

[19] Mother has failed to establish any risk of error arising from DCS's actions in this case. We therefore conclude no due process violation occurred. *Cf. C.G.*,

954 N.E.2d at 920 (finding a deficient performance by DCS did not violate due process).

III. Sufficiency of the Evidence

[20] Mother's final claim is that the evidence does not support the trial court's judgment. A petition to terminate parental rights must allege, in relevant part:

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

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).²

² I.C. § 31-35-2-4(b)(2)(B)(iii) is irrelevant because DCS did not attempt to prove that prong and the trial court entered no findings or conclusions relating to it.

[21] A trial court must terminate the parent-child relationship where it finds DCS has proven these allegations by clear and convincing evidence. Ind. Code §§ 31-35-2-8, -37-14-2. When reviewing the termination of parental rights, we do not reweigh evidence or judge witness credibility. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We will set aside the judgment only if it is clearly erroneous. *Id.* A two-tiered standard of review applies: first, we determine whether the evidence supports the findings and second, whether the findings support the judgment. *Id.* As Mother does not challenge any of the trial court’s findings, we accept them as true. *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

[22] Mother challenges only the trial court’s conclusions under Indiana Code § 31-35-2-4(b)(2)(B)(i) (remediating of conditions) and Indiana Code § 31-35-2-4(b)(2)(B)(ii) (continuation of parent-child relationship poses threat). In reaching those conclusions, the trial court expressly relied on its findings that, during the CHINS proceedings, Mother:

- failed to participate meaningfully in any services offered by DCS;
- was arrested multiple times and convicted of at least three new crimes;
- repeatedly tested positive for illegal drugs;
- failed to obtain/maintain stable, appropriate housing;
- did not address appropriately her substance abuse and mental health issues.

[23] Mother first challenges the trial court’s “remediating conditions” conclusion, contending Guardians solely are to blame for the conditions prompting Children’s removal. Yet, Mother’s incarceration and admitted drug abuse led DCS to place Children in foster care after their removal from Guardians’ home.

Children remained in foster care due to Mother’s continuing drug abuse, commission of other criminal offenses and resulting incarceration, lack of stable housing and employment, and non-compliance with court-ordered services.

[24] Mother’s attempts to blame Guardians for her own failings are unavailing. *See In re A.A.C.*, 682 N.E.2d 542, 544–45 (Ind. Ct .App. 1997) (child need not be in parent’s custody when removed for termination to be appropriate, as under such circumstances the focus of the termination inquiry is on conditions which led to child’s retention in foster care).³ The trial court properly concluded the conditions leading to removal and reasons for continued placement outside Mother’s home likely would not be remedied.

[25] For similar reasons, clear and convincing evidence also supported the trial court’s conclusion that continuation of the parent-child relationship posed a threat to the Children’s well-being. Mother had not been Children’s primary caretaker for a lengthy period prior to DCS’s intervention. Tr. Vol. II p. 44. When Mother had the opportunity to remove Children from foster care by proving she was a capable parent, Mother refused to participate in programming that would help her reunite with them. She chose, instead, to

³ Within this argument, Mother contends the evidence of her failed drug tests was inadmissible. She does not specify the evidence, cite to the record where such evidence was admitted, or include the standard of review for admission of this evidence. She merely argues the unspecified drug evidence was hearsay and that DCS did not follow “the necessary protocol” (without revealing that protocol). She provides no citation to authority in support of this argument. She has waived this issue by failing to provide cogent argument and citations to the record and authority. *Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) (ruling a party generally waives a claim on appeal by failing to provide citations to the record and cogent argument); App. R. 46(A)(8)(a). Given the paucity of her argument, we will not attempt to address it.

continue her longtime pattern of using drugs and committing crimes. Although Mother focuses on evidence of her successful visits with Children, her actions outside those visits aptly show that her continuing relationship to Children posed a threat to their well-being. The trial court's challenged conclusions are not clearly erroneous.

[26] The judgment of the trial court is affirmed.

Mathias, J., and Altice, J., concur.