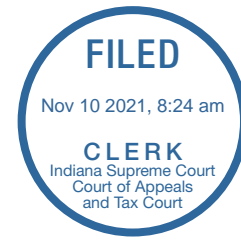


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of:

M.L. (*Minor Child*),

and

H.W. (*Mother*) & K.L. (*Father*),
Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner,

November 10, 2021

Court of Appeals Case No.
21A-JT-731

Appeal from the Clay Circuit
Court

The Honorable Joseph D. Trout,
Judge

Trial Court Cause No.
11C01-2012-JT-277

Robb, Judge.

Case Summary and Issue

[1] K.L. (“Father”) and H.W. (“Mother”) (collectively, “Parents”) are the parents of M.L. (“Child”). In September 2019, Child was found to be a Child in Need of Services (“CHINS”). In December 2020, the Indiana Department of Child Services (“DCS”) filed a petition for the involuntary termination of Parents’ parental rights. At the beginning of the March 2, 2021, fact-finding hearing, Father requested a continuance. The juvenile court denied Father’s motion and proceeded with the hearing. The juvenile court subsequently made findings of fact and conclusions of law and entered an order terminating Parents’ parental rights. Parents now appeal, filing separate briefs, but raising the same issue, which we restate as whether the juvenile court abused its discretion by denying Father’s request for a continuance. Concluding the juvenile court did not abuse its discretion, we affirm the juvenile court’s judgment terminating Parents’ parental rights.¹

Facts and Procedural History

¹ Parents do not challenge the juvenile court’s findings of fact or conclusions of law regarding the termination of their parental rights. Rather, Parents only appeal the denial of Father’s motion for a continuance. As a result, Parents have waived any argument challenging the termination of their parental rights by failing to make a cogent argument. Therefore, we do not address any issues related to the merits of the termination decision. *See Matter of C.C.*, 170 N.E.3d 669, 675 (Ind. Ct. App. 2021) (holding a parent waived her argument that the juvenile court’s termination of her parental rights was clearly erroneous by not specifically challenging the juvenile court’s findings or conclusions).

- [2] Child was born in January 2019. In early June 2019, DCS responded to a report alleging Parents' home was dirty and conditions were inappropriate for Child. DCS visited Parents and found their home unclean and unsafe for Child. In addition to the home conditions, Child exhibited troubling physical conditions including potential genetic abnormalities. Despite these issues, Parents were not consistently taking Child to his doctor's appointments. In early July 2019, DCS entered into an informal adjustment with Parents. As part of the informal adjustment, DCS conducted home visits and began providing home based services to Parents. Parents were required to maintain suitable housing; properly clothe, feed, and supervise Child; meet all Child's medical needs; and provide Child with a safe, nurturing environment.
- [3] Throughout July 2019 and early August 2019, DCS continued to find Parents' home in disarray and Parents continued to fail to meet Child's physical needs. On August 7, 2019, Mother cancelled one of Child's doctor's appointments. As a result, Child was placed in foster care and DCS filed a petition alleging Child to be a CHINS. In September 2019, Parents entered an admission and the juvenile court found Child to be a CHINS. The permanency plan was reunification of Parents and Child.
- [4] In October 2019, a dispositional hearing was held. Parents were ordered to, among other things: (1) remain in contact with the DCS family case manager ("FCM") and allow FCM to make home visits, (2) obtain suitable housing, (3) obtain and maintain a legal source of income, (4) ensure Child is properly fed, clothed, and supervised, (5) meet all medical and mental health needs of

themselves and Child, (6) attend all scheduled visits with Child, (7) refrain from using illegal drugs or alcohol, and (8) provide Child with a safe, secure, and nurturing environment.

[5] Between September 2019 and May 2020, services provided by DCS were individualized to Parents' needs. However, Parents struggled to comply with the juvenile court's orders and DCS' recommendations as home conditions remained unremedied and Parents were unable or unwilling to obtain sufficient employment. Concerns for Parents' ability to meet Child's physical needs also remained. During visits with Child, DCS worked with Parents on caring for and interacting with Child. However, the work had minimal impact as Parents were often "very confused on what to do next, even with the coaching." Transcript of Evidence, Volume II at 58. Court Appointed Special Advocate ("CASA") Rachelle Royer indicated that Parents' parenting skills were not where they needed to be to take care of Child, Volume of Exhibits, Volume III at 110, 139, and that "Parents . . . don't seem to comprehend what a child needs to survive[,]" *id.* at 111, 140. CASA Royer suggested termination of parental rights in April 2020.

[6] On May 5, 2020, a permanency hearing was held. The juvenile court found Parents had not complied with the dispositional order, remedied home conditions, put into practice parenting skills, attended Child's medical appointments, remained in contact with DCS, or obtained stable employment. Parents indicated they would like to voluntarily terminate their parental rights. The juvenile court changed the permanency plan to termination of parental

rights and adoption. It is unclear from the record why, but services for Parents remained in place for several months after this hearing. However, after May 2020, home conditions remained a problem and Parents' participation in the case substantially decreased.

[7] In December 2020, DCS filed a petition for involuntary termination of Parents' parental rights, an initial hearing was held, and a fact-finding hearing was set for March 2, 2021.² At the fact-finding hearing, Father's attorney moved for a continuance, stating that Father "has just started a second job and he's kind of getting into the transition of making strides and would like some additional time to demonstrate that prior to this hearing[.]" Tr., Vol. II at 13. The juvenile court denied the motion and proceeded with the fact-finding hearing.

[8] DCS presented testimony regarding Parents' extensive pattern of noncompliance with DCS recommendations including the continued unclean and unsafe home conditions, inability or unwillingness to obtain employment, inability to apply parenting skills, and lack of comprehension regarding appropriate care of Child. Testimony was also offered regarding Father's failure to participate in services provided by DCS. Testimony indicated that Father failed to fully engage in case management services, cancelled substance abuse treatment despite multiple failed drug tests, and caused DCS to stop individualized fatherhood engagement services focused on gaining

² Parents attended the initial hearing and acknowledged the date of the March fact-finding hearing. See Tr., Vol. II at 10.

employment, improving parenting skills, and addressing substance abuse.

Additionally, neither parent participated fully in Child's medical care. Between June 2019 and May 2020, Mother attended two and Father attended none of a possible fifteen to twenty of Child's doctor's visits.³

[9] Further testimony demonstrated Parents' drastically decreased participation in services and visitations after May 2020. Parents were offered forty-eight visits with Child from June 2020 through December 2020. Mother attended nine visits and Father attended eight. Additionally, Parents did not visit Child or request to visit Child after November 2020. Parents disengaged from DCS, communicating infrequently and not consistently allowing DCS in the home.

[10] Father testified and offered evidence of his changed circumstances. He indicated that after December 2020, he acquired two jobs, is looking at a particular house, and is attempting to buy a car. He noted that he and Mother have been studying parenting skills, although not through any specific educational service. When asked if he could meet all of Child's needs, he indicated he could. However, he also indicated that he did not know Child's diagnosis. *See id.* at 94. He further testified that he arranged to meet with a counselor for mental health issues, although he had not made DCS aware of this. Father did not deny home conditions were unremedied or that Parents

³ Despite Parents' lack of participation, Child's foster mother testified that Child has made significant physical improvements since arriving in her home, although challenges remain. The foster family hoped to adopt Child and has planned for Child's future and has therapists in place if needed. Tr., Vol. II at 81-83.

failed to visit Child, apply parenting skills, or fully engage in services provided throughout the case. Parents presented no other testimony or evidence.

[11] On March 23, 2021, the juvenile court made findings of fact and conclusions of law and entered an order terminating Parents' parental rights. Parents now appeal the juvenile court's denial of Father's request for a continuance of the fact-finding hearing.

Discussion and Decision

I. Standard of Review

[12] The decision to grant or deny a motion for a continuance rests within the sound discretion of the juvenile court. *Rowlett v. Vanderburgh Cnty. Off. of Fam. & Child.*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. Therefore, we will reverse the juvenile court only for an abuse of discretion. *Id.* 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. *Id.* However, if the moving party has not demonstrated that he or she was prejudiced by the denial, then there is no abuse of discretion. *Id.*

II. Denial of Motion for Continuance

[13] Parents contend that they demonstrated good cause for a continuance and as a result, they were prejudiced by the denial of Father's motion for a continuance. In doing so, they attempt to draw a comparison with *Rowlett*, a case in which denial of a continuance was reversible error. 841 N.E.2d 615 at 619-20.

However, we emphasize that there is no mechanical test for good cause. *Matter of M.S.*, 140 N.E.3d 279, 285 (Ind. 2020). Rather, the decision to grant or deny a continuance turns on the circumstances of each case. *Id.*

[14] In *Rowlett*, an incarcerated father was to be released from prison six weeks after the scheduled termination hearing. The father requested a continuance in order to establish himself in the community and participate in services directed at reunification with his children. The juvenile court denied his motion, held the termination hearing, and terminated his parental rights. On appeal, this court held that the juvenile court abused its discretion by denying the father's motion for a continuance. We reversed the denial of a continuance, reasoning that the father was prejudiced by the denial because his ability to care for his children was assessed as of the date of his motion and he had not had the opportunity to participate in services that would demonstrate his fitness as a parent. *Rowlett*, 841 N.E.2d at 619-20. The juvenile court's decision to deny the continuance was deemed harsh when considering that while imprisoned, the father participated in nearly 1,100 hours of services geared toward reunification with his children, secured employment upon release, and had maintained a relationship with his children during his incarceration. We find the present case is distinguishable from *Rowlett*.

[15] Unlike *Rowlett*, Parents were not incarcerated throughout these proceedings or at the time of Father's motion and therefore, were not unable to demonstrate

their parental capacity.⁴ Rather, Parents had approximately nineteen months between Child's removal and the March 2021 fact-finding hearing to engage in services and demonstrate their increased parental ability. Instead, Parents failed to take advantage of the time afforded them to demonstrate their capacity to care for Child. In *Rowlett*, the father was deemed unfit prior to being able to demonstrate his skills, but that is not the case here.

[16] Further, unlike *Rowlett*, Parents failed to utilize the services made available to them. The father in *Rowlett* engaged in approximately 1,100 hours of voluntary services geared towards reunification while incarcerated. Here, DCS made reunification services available in September 2019, but Parents failed to meaningfully engage in those services. Since 2019, the home conditions remained unremedied, Parents were unable to learn parenting skills, Parents were either incapable or unwilling to obtain employment throughout the case, and Father refused substance abuse and fatherhood engagement services. See *Matter of C.C.*, 170 N.E.3d at 678 (reasoning, in part, that the mother was not prejudiced by the failure to grant a continuance because she failed to comply with DCS recommendations and engage service providers). Further, Parents' engagement with services has only worsened since their decision to voluntarily terminate parental rights in May 2020 and thus, this case again differs from *Rowlett*.

⁴ Father was arrested near or around August 2020 and placed on probation in an unrelated matter.

[17] Finally, Parents have not shown a genuine desire to maintain their relationship with Child. In *Rowlett*, the father communicated with his children throughout his incarceration and made efforts to reunify with them. Here, in May 2020, Parents indicated that they wished to voluntarily terminate their parental rights. After May 2020, Parents attended only a fraction of the offered visits with Child. Perhaps most telling, Parents did not visit Child at all after November 2020. Such poor visit attendance is not evidence of an intent to have a parent-child relationship. This court has previously indicated a parent is not prejudiced by the denial of a continuance when there does not appear to be a genuine desire to maintain the parent-child relationship. *In re A.D.W.*, 907 N.E.2d 533, 537 (Ind. Ct. App. 2008). As a result, Parents were not prejudiced like the father in *Rowlett*.

[18] Parents also contend that *Rowlett* stands for the general concept that if a delay will not harm the child, then a motion for continuance should be granted. However, the situation in *Rowlett* is different than the present case in that a delay would harm Child. In *Rowlett*, the children lived with their grandmother for three years and the grandmother was set to adopt the children if the father's parental rights were terminated. The children were deemed to be in a stable situation and a continuance was found to be warranted. Here, although Child is similarly in a stable environment, Child has special needs. His foster family has both met those needs and planned for future needs. Conversely, Parents have failed to demonstrate they can meet any of Child's medical needs. Parents have not actively participated in Child's medical care and Father acknowledged

he did not know Child's diagnosis. *See* Tr., Vol. II at 94. To delay the hearing and create any doubt as to the ability to meet Child's medically related needs is certainly a harm to Child.

[19] Although Father has recently made a few positive strides, we cannot overlook that these strides were made after DCS filed to involuntarily terminate parental rights in December 2020. Since June 2019, Parents had been given countless opportunities to demonstrate parental capacity and yet routinely failed to rise to the occasion. Parents neither deny this nor challenge the evidence presented against them at trial. Further, despite knowing since December 2020 that the fact-finding hearing was set for March 2021, Father did not move for a continuance until the day of the fact-finding hearing. If he was so intent on making the personal strides necessary to demonstrate his parental capacity, he had three months to move for a continuance. Instead, Father delayed until the start of the fact-finding hearing. Still, Father was permitted to testify regarding his personal strides and to challenge, via cross-examination, DCS' evidence. However, the juvenile court determined DCS' evidence was clear and convincing and ordered a termination of parental rights. Under these circumstances, we cannot say Parents were prejudiced by the denial of Father's motion. Parents did not show good cause for continuing the hearing and thus, the juvenile court did not abuse its discretion.

Conclusion

[20] We conclude the juvenile court did not abuse its discretion in denying Father's motion for a continuance. Because Parents do not otherwise challenge the juvenile court's order, we affirm the termination of their parental rights.

[21] Affirmed.

Bradford, C.J., and Altice, J., concur.