

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of: A.P., J.P., M.P., and L.P. (Minor Children), and T.P. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child Services,
Appellee-Petitioner.

November 30, 2022

Court of Appeals Case No.
22A-JT-1552

Appeal from the Adams Circuit Court

The Honorable Chad E. Kukelhan,
Judge

Trial Court Cause Nos.
01C01-2201-JT-1
01C01-2201-JT-2
01C01-2201-JT-3
01C01-2201-JT-4

Brown, Judge.

[1] T.P. (“Mother”) appeals the involuntary termination of her parental rights to her children, A.P., J.P., M.P., and L.P. We affirm.

Facts and Procedural History

[2] Mother and B.P. (“Father”) are the parents of A.P., born in 2011, J.P., born in 2013, M.P., born in 2016, and L.P., born in 2019.¹ On December 4, 2020, the Department of Child Services (“DCS”) alleged that the children were in need of services (“CHINS”), Mother had relapsed and left Indiana, Mother reported that her mental health was not stable, Father was using illegal drugs, and there were concerns that utilities to the home had been disconnected. That same day, the court signed an order authorizing DCS to take the children into protective custody.

[3] On December 8, 2020, the court entered an order indicating that a hearing was held on December 7, 2020, Father appeared in person, and Mother was present via telephone. It found that it advised Parents of the material allegations of the petition and their rights, Mother waived counsel freely and voluntarily, and she reported that she intended to hire private counsel prior to the next hearing. The court entered a denial on Mother’s behalf.

[4] On December 17, 2020, and January 5, 2021, the court held hearings at which Mother appeared via telephone and with counsel. The court found that Mother

¹ This Court affirmed the involuntary termination of Father’s parental rights to the children. See *In re A.P.*, No. 22A-JT-1556 (Ind. Ct. App. November 14, 2022).

admitted a number of allegations including that the family had a prior CHINS case with concerns for illegal drug use and home conditions, she was transient between Indiana and Illinois and did not have stable housing, Father submitted to drug screens in November 2020 that tested positive for cocaine, benzoylecgonine, fentanyl, or amphetamine, the family received a disconnect notice of their electricity on December 1, 2020, and the intervention of the court was necessary to ensure the safety and well-being of the children.

[5] On January 21, 2021, the court held a hearing at which Mother appeared via telephone and with counsel. The court ordered Mother to complete certain items including contacting the family case manager every week and notifying the family case manager of any changes in address within five days of any change. On April 12, 2021, the court held a hearing at which Mother appeared via telephone and with counsel. On July 13, 2021, the court held a hearing at which Mother appeared by counsel.

[6] On January 5, 2022, DCS filed petitions for the involuntary termination of the parent-child relationship between Parents and the children. That same day, the court held a hearing at which Mother appeared via telephone. The court noted that Mother requested appointed counsel and appointed Attorney Brad Weber to represent her. On January 6, 2022, the court entered an order scheduling an initial hearing for January 25, 2022, and ordered the Clerk of the Court to issue summonses for Parents. On January 14, 2022, Attorney Weber filed an amended appearance on behalf of Mother.

- [7] On January 25, 2022, the court held a hearing at which Mother appeared in person and with counsel. The court entered an order on March 2, 2022, which referenced the January 25, 2022 hearing and stated that the parties advised that they were exchanging discovery and “would like the matter set for a status hearing and Fact Finding regarding the Petition to Terminate Parental Rights.”² Appellant’s Appendix Volume II at 128. The court scheduled a status hearing for March 9, 2022, and a termination hearing for April 25, 2022.
- [8] On March 9, 2022, the court held a hearing at which Mother appeared via telephone and with counsel. In a March 11, 2022 order, the court found that the parties confirmed the date for the factfinding hearing, Mother was “told to appear in person for Fact Finding,” and that the termination hearing was scheduled for April 25, 2022.³ *Id.* at 130.
- [9] On April 25, 2022, the court held a hearing. At the beginning of the hearing, Mother’s counsel moved for a continuance so that Mother could be present and stated: “I’ve not had any contact with her for about the past, well, she was not at our review hearing last week.” Transcript Volume II at 6. Father’s counsel expressed support for the motion to continue. Counsel for DCS objected to the motion and stated:

² The order states: “So ordered the 25th day of January, 2022 and entered this 2nd day of March, 2022.” Appellant’s Appendix Volume II at 129.

³ The order states: “So ordered the 9th day of March, 2022 and entered this 11th day of March, 2022.” Appellant’s Appendix Volume II at 131.

We have been set in this case for some time. [Mother] was present at the time that we set this matter at the initial hearing and the subsequent status so on January 25th of this year, we set this hearing and we set a status for March 9th. The March 9th hearing, I believe she was present by phone for but she was aware, she also, the Orders from both of those status hearings as well as the initial hearing on the TPR have gone to mother's last known address and so we would ask at this time that the Court allow us to proceed with this case.

Id. at 6-7. Guardian ad litem Megan Close (“GAL Close”) also objected and stated that Mother was present in person on January 25th when the court set the trial dates and was present by phone on March 9th when the dates were confirmed. The court denied the motion to continue. DCS presented the testimony of Father, Family Case Manager Nicole Harrington (“FCM Harrington”), DCS Service Manager Carolyn Darrow, the children’s grandmother, Family Case Manager Shonna Leas, and GAL Close. Father’s counsel cross-examined the witnesses. Mother’s counsel cross-examined FCM Harrington. After DCS rested, Mother’s counsel stated: “Judge, I don’t, my client’s not here so I don’t really have anybody that I would call that I believe I could help her case with at this point so I’ll rest.” *Id.* at 96.

[10] On June 6, 2022, the court entered an order terminating Parents’ parental rights. The court found that the children were initially removed due to concerns of illegal substances and domestic violence. It found that Mother had tested positive for methamphetamine, had multiple criminal charges against her over the prior year in Illinois including possession of methamphetamine, theft, and criminal trespass, had not consistently engaged in virtual or in person

visitation with the children, and had not been able or willing to commit to sobriety or to obtaining an appropriate environment for the children. It found there was a reasonable probability that the conditions that resulted in the children's removal or continued placement outside the home would not be remedied and termination was in the best interests of the children.

Discussion

[11] Mother argues that the trial court violated her procedural due process rights and abused its discretion by denying her counsel's motion for continuance. She contends that her attorney could not adequately prepare to present evidence without her presence. She asserts there was no need to move forward with the matter given that the children were living with their grandparents. She argues that, "[h]ad she been present, her attorney could have explored the line of questioning about whether the grandparents would want both the father and mother to be able to have a relationship with the children." Appellant's Brief at 11. She also cites Ind. Code § 31-35-2-6.5 and argues DCS failed to provide her with proper notice of the termination hearing.⁴

[12] Generally, "[d]ue 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)).

⁴ Ind. Code § 31-35-2-6.5 provides: "At least ten (10) days before a hearing on a petition or motion under this chapter: (1) the person or entity who filed the petition to terminate the parent-child relationship under section 4 of this chapter . . . shall send notice of the review to . . . [t]he child's parent"

The Indiana Supreme Court has held that “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 910, 917 (Ind. 2011)). “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] A trial court’s decision to grant or deny a motion to continue is subject to abuse of discretion review. *In re K.W.*, 12 N.E.3d 241, 244 (Ind. 2014). Ind. Trial Rule 53.5 provides that, “[u]pon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence.” Discretion is a privilege afforded a trial court to act in accord with what is fair and equitable in each circumstance. *J.M. v. Marion Cnty. Off. of Fam. & Child.*, 802 N.E.2d 40, 43 (Ind. Ct. App. 2004), *trans. denied*. A decision on a motion for continuance will be reversed only upon a showing of an abuse of discretion and prejudice resulting from such an abuse. *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,” 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.* An abuse of discretion analysis consists of an “evaluation of facts in relation to legal formulae. In the final analysis, the reviewing court is concerned with the reasonableness of the action in light of the record.” *Id.* at 44 (citing *Tapia v. State*, 753 N.E.2d 581, 585 (Ind. 2001)). Thus, a trial court’s ruling should be set aside only if it is clearly against the logic and effect of the facts and circumstances before the court, and we will not substitute our judgment for that of the trial court. *Id.*

[14] This Court has previously observed that there is a cost in delaying the adjudication of termination cases in that they impose a strain upon the children involved and exact “an intangible cost to their lives.” *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*. While continuances may certainly be necessary to ensure the protection of a parent’s due process rights, courts must also be cognizant of the strain these delays place on a child. *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), *trans. denied*.

[15] To the extent Mother cites Ind. Code § 31-35-2-6.5 and asserts that DCS failed to provide her with proper notice of the termination hearing, we note that Mother’s counsel failed to argue a lack of statutory notice before the trial court. Accordingly, this issue is waived. *See Matter of C.C.*, 170 N.E.3d 669, 676 (Ind. Ct. App. 2021) (“Counsel for Mother failed to argue a lack of statutory notice in the trial court. Accordingly, this issue is waived.”); *In re T.W.*, 831 N.E.2d 1242, 1246 (Ind. Ct. App. 2005) (discussing Ind. Code § 31-35-2-6.5 and holding that “[f]ailure to comply with a statutory notice is a defense that must be asserted”).

[16] With respect to Mother’s other arguments, the record reveals that Mother appeared with counsel at multiple CHINS hearings. Mother appeared via telephone at a hearing on January 5, 2022, the same day DCS filed petitions for the involuntary termination of the parent-child relationships. She appeared in person and with counsel at the January 25, 2022 hearing, at which the court scheduled a status hearing for March 9, 2022, and a termination hearing for April 25, 2022. She appeared via telephone and with counsel at the March 9, 2022 hearing. In its March 11, 2022 order, the court found that the parties confirmed the date for the factfinding hearing, that Mother was “told to appear in person for Fact Finding,” and the termination hearing was scheduled for April 25, 2022. Appellant’s Appendix Volume II at 130. At the April 25, 2022 hearing, after Mother’s counsel requested a continuance, DCS’s counsel objected and asserted that Mother was present at the January 25th and March 9th hearings when the date of the factfinding hearing was discussed and that orders from those hearings were sent to Mother’s last known address.

[17] We also note that Mother was represented by counsel at the factfinding hearing, her counsel was unable to explain Mother’s failure to appear for the hearing, and Mother offers no explanation on appeal. While Mother asserts that, “[h]ad she been present, her attorney could have explored the line of questioning about whether the grandparents would want both the father and mother to be able to have a relationship with the children,” she does not specifically indicate what evidence she would have produced had she been present. Appellant’s Brief at

11. Further, she does not challenge any of the trial court's findings or conclusions resulting in the termination of the parent-child relationship.

[18] Under the circumstances, we cannot say that Mother has shown good cause for a continuance, that the court abused its discretion in denying her motion for a continuance, or that she is entitled to reversal on due process grounds. *See Matter of C.C.*, 170 N.E.3d at 678 (“In balancing [the mother’s] fundamental interest against the State’s own compelling interest and given the minimal risk of error from the trial court’s decision to proceed in [the mother’s] absence, where [she] was represented by counsel, we conclude that the trial court did not violate [her] right to due process in denying her counsel’s motion to continue the fact-finding hearing.”).

[19] For the foregoing reasons, we affirm the termination of Mother’s parental rights.

[20] Affirmed.

Altice, J., and Tavitas, J., concur.