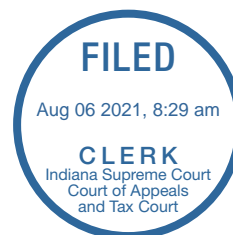


MEMORANDUM DECISION

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 re the Termination of the
Parent-Child Relationship of
Ja.V. and S.V. (Minor Children)
and J.V. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

August 6, 2021

Court of Appeals Case No.
21A-JT-423

Appeal from the Spencer Circuit
Court

The Honorable Jon A. Dartt,
Judge

The Honorable Karen A. Werner,
Judge Pro Tempore

Trial Court Cause Nos.
74C01-2008-JT-220, 74C01-2008-
JT-221

Mathias, Judge.

[1] The Spencer Circuit Court issued an order terminating J.V.’s (“Mother”) parental rights to her two children Ja.V. and S.V. Mother’s sole argument on appeal is that the trial court erred when it denied counsel’s oral motion to continue the termination hearing, at which Mother did not appear. Finding no error, we affirm.

Facts and Procedural History

[2] Mother and A.V. (“Father”)¹ have two children: Ja.V., born on January 4, 2018; and S.V., born on January 16, 2019 (collectively “Children”). Days after being born, each child was diagnosed with “an unspecified feeding problem,” and there were concerns with “weight loss.” Ex. Vol. I at 138. Additionally, Ja.V. spent time “in the ER for trouble breathing,” and S.V. was diagnosed with “cardiac arrhythmia.” *Id.* Unfortunately, concerns for the Children’s well-being only worsened.

[3] When one-month-old S.V. missed a February 2019 cardiologist appointment, Mother’s sister contacted family services in Kentucky—where the family lived at the time—and reported that Mother “doesn’t feed or tend to the babies.” *Id.* at 176, 178. Local authorities responded to the allegation and “established a Prevention Plan with [] Mother” in which she agreed to allow her sister “to be the primary caregiver during the investigation.” *Id.* at 130, 181–82; Tr. p. 9. But rather than abide by the plan, parents and the Children traveled across the Ohio

¹ Father’s parental rights were also terminated, but he does not participate in this appeal.

River to Rockport, Indiana where they moved in with Mother's mother and stepfather. Ex. Vol. I at 168; Tr. p. 9.

[4] Not long after the relocation, on April 24, law enforcement found fifteen-month-old Ja.V. "in a ditch" across the street from the home. Ex. Vol. I at 167. Law enforcement secured the child, returned to the house, and then "beat on the door" before Mother finally answered; she had been asleep on the couch with S.V. *Id.* Later that day, an Indiana Department of Child Services ("DCS") family case manager ("FCM") "completed a home check," finding it "in complete disarray." *Id.* The FCM "observed trash and dirty dishes throughout the home," and noticed that each child had a diaper rash. *Id.* Mother also took a random drug screen and tested positive for methamphetamine. Tr. p. 9. Based on these circumstances, DCS removed the Children from the home and placed them into foster care.²

[5] DCS subsequently filed petitions alleging that Ja.V. and S.V. were children in need of services ("CHINS"). At the fact-finding hearing on those petitions, Mother admitted to "needing substance abuse and parenting services." Ex. Vol. I at 102. She further acknowledged that "the family would not get the services on their own" and that the Children "would be endangered without these services." *Id.* The trial court adjudicated the Children as CHINS. Then, after a dispositional hearing, the court ordered Mother to, among other things,

² After spending about a week with one foster family, the Children were placed with a second family on May 2 and have remained there since removal.

maintain weekly contact with the FCM, notify the FCM of any changes in contact information, keep appointments with service providers, secure suitable housing and employment, submit to random drug screens, take a parenting assessment and a substance abuse assessment and successfully complete resulting recommendations, and attend scheduled visitations. *Id.* at 76–78.

[6] Over the next several months, to assist Mother in complying with the court-ordered requirements, DCS provided her with a parent aid, weekly supervised visitation, weekly phone calls, drug screens, parenting assessments, psychological evaluations, substance abuse assessments, and both in-person and virtual therapy. Mother, however, demonstrated an unwillingness to consistently participate in any of these services.

[7] Mother routinely missed appointments with the FCM and her service providers, all of whom had difficulty maintaining contact with her. *Id.* at 33, 51, 113, 203–04, 206, 208, 213–16, 218, 226; Tr. p. 12. Mother also consistently missed visitations and rarely called to speak with the Children. Ex. Vol. I at 46, 52, 58, 113, 122, 125, 159, 201, 203–04, 215–16, 227; Tr. pp. 11–12. Though Mother showed up for several drug screens, she did not “comply with the days she [was] supposed to screen.” Ex. Vol. I at 203. And she did not maintain stable employment or housing. *Id.* at 47, 53, 59, 211; Tr. pp. 12–13, 15, 17. At different times, Mother reported living with her mother, her grandmother, her brother, her uncle, and in a home that she rented with Father. Ex. Vol. I at 123–24, 168, 226. As to the rental property specifically, the owner indicated that police were called to the house “multiple times for fights, verbal and physical

altercations and thefts,” and the home was “trashed to the point you cannot walk on the floors.” *Id.* at 218. Parents were eventually evicted. Despite all these circumstances, the trial court, on multiple occasions, granted parents’ requests for continuances and denied DCS’s requests to decrease visitations. *Id.* at 70, 106, 198.

[8] Meanwhile, the Children thrived with their foster family. The Children’s court appointed special advocate noted that the family “love[s] the [C]hildren as their own and have shown them nothing but love and respect since the moment the [C]hildren arrived.” *Id.* at 60; *see also* Tr. pp. 17–18. Each child is “very much bonded” with the foster family, referring to the wife and husband as “mommy and daddy.” Ex. Vol. I at 54, 223. And the family expressed a desire to adopt the Children and be their “safe forever.” *Id.* at 48; *see also* Tr. p. 14.

[9] Ultimately, in August 2020, Mother stopped participating in any services, including visitation. Tr. p. 12. And so, on August 26, DCS filed a petition to terminate Mother’s parental rights. On Mother’s counsel’s motion, the trial court continued the initial hearing on the petition to September 21. DCS sent Mother notice of the rescheduled hearing to an address in Owensboro, Kentucky. Ex. Vol. I at 27–30. Mother subsequently confirmed in a handwritten document that she was aware of the September hearing date and also provided an updated address. Appellant’s App. p. 103. Though Mother appeared for the initial hearing, it was continued by one week “due to [Father] failing to appear.” Ex. Vol. I at 5, 243. A week later, however, neither Mother nor Father were present. *Id.* at 200. Instead, they showed up “at the Court office

after the hearing” where they were given “the next hearing date and time.” *Id.* at 202. Mother subsequently filed a motion for continuance “due to sickness with possible COVID-19 symptoms.” Appellant’s App. pp. 122–23. The court granted the motion and provided a rescheduled date of February 8, 2021, for the termination hearing. *Id.* at 124. A few weeks later, on January 21, DCS sent Mother notice of the hearing to the address she had previously provided. *Id.* at 131–32.

[10] But on February 8, Mother did not show up for the termination hearing. At the outset of the proceeding, noticing neither parent was present, the trial court asked the respective attorneys if either “had any contact with [their] clients?” Tr. p. 5. Father’s counsel responded no and requested “a continuance on his behalf.” *Id.* Mother’s counsel similarly responded, “I’ve had no contact and would join in that request.” *Id.* DCS objected, remarking that there had already been “multiple continuances in this matter” and that the “case has been going on for some time.” *Id.* The court denied the continuance request and heard the matter on the merits. At the conclusion of the hearing, the court first found “[t]hat both parents failed to appear” despite “good service on both of them.” *Id.* at 20. The trial court then orally terminated Mother’s and Father’s parental rights; about one month later, the court issued an order to the same effect. Mother now appeals.

Discussion and Decision

[11] On appeal, Mother does not challenge any of the trial court’s findings or conclusions supporting its order to involuntarily terminate her parental rights to the Children. Instead, Mother’s only argument is that the trial court erred when it denied counsel’s oral request for a continuance. We disagree.

[12] It is well settled that “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, 243–44 (Ind. 2014) (citing *Rowlett v. Vanderburgh Cnty. Off. of Fam. & Child.*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*).³ One way a trial court may abuse its discretion in denying a continuance is when the moving party has shown good cause for granting the request. *Id.*; *see also* Ind. Trial Rule 53.5. But even when that showing is made, we will not find an abuse of discretion unless the moving party has also demonstrated prejudice from the denial. *Rowlett*, 841 N.E.2d at 619. Here, Mother has not only failed to show good cause for continuing the termination hearing, but she has also failed to demonstrate prejudice.

³ Mother asserts that *K. W.* “is the most applicable preceden[t] concerning continuances of termination hearings,” and applies the eleven factors laid out in that decision to this case. Appellant’s Br. at 5–7. But because Mother was not incarcerated, her reliance on those factors is misplaced. The *K. W.* Court noted that the eleven-factor test “applies to consideration of a motion to *transport* an incarcerated parent to a [termination] hearing.” 12 N.E.3d at 244. Nevertheless, the court found “a number of those eleven factors to be helpful” in reviewing “a motion to continue the [termination] hearing until the parent is no longer incarcerated.” *Id.* at 244–45. Unlike the incarcerated parent in *K. W.*, here, Mother had the opportunity to attend the hearing and demonstrate her ability and desire to parent the Children—she chose not to do so.

[13] We initially observe that the record is silent as to why Mother was not present at the termination hearing. And in orally joining in Father’s counsel’s request for a continuance at the beginning of that hearing, Mother’s counsel neither articulated good cause for the continuance nor asserted that Mother would be prejudiced by a denial. *Cf. Blackford v. Boone Cnty. Area Plan Comm’n*, 43 N.E.3d 655, 666 (Ind. Ct. App. 2015) (finding no abuse of discretion in denying an oral continuance request when the movant “did not articulate any good cause for the continuance or show that he would be prejudiced”). Instead, counsel stated, “I’ve had no contact [with Mother],” Tr. p. 5, and proceeded to represent her interests. For these reasons alone, we find no basis for concluding that the trial court abused its discretion in denying Mother’s counsel’s oral continuance request. Nevertheless, a review of Mother’s conduct throughout the underlying proceedings further confirms that she has not shown good cause or prejudice.

[14] Mother maintains that “her absence was understandable” because DCS “had no contact” with her for the five months preceding the hearing. Appellant’s Br. at 5. This claim fails—Mother bore the responsibility to maintain consistent contact with DCS, not the other way around. Indeed, Mother’s dispositional order required her to “[c]ontact the Family Case Manager every week.” Ex. Vol. I at 77. And, in June 2020, the court addressed Mother’s repeated lack of communication by specifically ordering her to “immediately notify DCS of any change in her . . . contact information.” *Id.* at 198. To the extent Mother claims her absence was due to lack of notice, this claim also fails. DCS sent Mother’s termination-hearing notices to an address that she had recently provided. *See*

Appellant's App. pp. 103, 112. And in the order granting Mother's request to continue the first termination hearing date, the court provided the rescheduled date and time. *Id.* at 124, 131. That updated information was also listed on the CCS about five weeks before the termination hearing. *Id.* at 15.

[15] In addition, Mother's absence from the termination hearing was consistent with her conduct since the Children's removal. This was not the first hearing Mother failed to attend. *See* Ex. Vol. I at 72, 106. And not only did she consistently miss scheduled visitations and calls with the Children, at the time of the termination hearing Mother had not seen them in nearly six months. Further, over the course of these proceedings, Mother routinely failed to respond to service providers, regularly skipped scheduled drug screens, and habitually did not show up for appointments with her therapist or parent aid. *Cf. In re J.E.*, 45 N.E.3d 1243, 1247 (Ind. Ct. App. 2015) (recognizing that a court considering a continuance request may consider a parent's patterns with respect to attendance, communication, and participation in services), *trans. denied.*

[16] Finally, even though Mother was absent from the termination hearing, her attorney was not. And Mother's counsel had the opportunity to cross-examine witnesses and present evidence on her behalf. But considering DCS's documentation of Mother's nearly two-year failure to consistently engage in services aimed at reunification with her Children, it is difficult to imagine how Mother's presence at the hearing could have, as she asserts, "strengthen[ed] the probability of success." Appellant's Br. at 7. To that end, Mother has not explained how her presence would have better assisted counsel in presenting

her case or what substantive evidence she would have offered had a continuance been granted.

- [17] In short, Mother has failed to show that there was good cause for continuing the termination hearing or that she was prejudiced by the court's denial of counsel's request. Mother has therefore failed to show that the trial court erred in denying a continuance.

Conclusion

- [18] The trial court did not abuse its discretion in denying Mother's counsel's oral request to continue the termination hearing.

- [19] Affirmed.

Tavitas, J., and Weissmann, J., concur.