

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Alexander W. Robbins
Law Office of Alex Robbins
Bedford, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General
Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
Hai. H., Hu. H., and Hay. H.,
(minor children) and T.H.
(mother),

T.H. (mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

May 18, 2021

Court of Appeals Case No.
21A-JT-93

Appeal from the
Morgan Circuit Court

The Honorable
Matthew G. Hanson, Judge

Trial Court Cause Nos.
55C01-2007-JT-214
55C01-2007-JT-215
55C01-2007-JT-216

Vaidik, Judge.

Case Summary

- [1] T.H. appeals the termination of her parental rights to her three children. We affirm.

Facts and Procedural History

- [2] T.H. (“Mother”) and R.H. (“Father”) are the biological parents of three children, all with the initials H.H., born in 2005, 2008, and 2012 (“the Children”). In September 2018, the Department of Child Services (DCS) filed a petition alleging the Children were children in need of services (CHINS) because of Mother and Father’s drug use and general instability. Mother and Father waived appointed counsel but denied the allegations, and the trial court set a fact-finding hearing for October 19. On that day, Mother and Father did not appear, so the court found them in default and scheduled the dispositional hearing for November 29. On November 13, the court issued a written Order on Fact Finding Hearing confirming its entry of default and the setting of the dispositional hearing.
- [3] The dispositional hearing was held as scheduled on November 29. Mother and Father were both present. The trial court issued its dispositional decree in January 2019, ordering Mother and Father to, among other things, complete a parenting assessment, complete a substance-abuse assessment and follow through with recommended treatment, remain sober, and provide a safe and secure environment for the Children.

[4] Mother and Father did not comply with the dispositional decree, and in July 2020 DCS petitioned to terminate their parental rights. The termination hearing was held over three days: October 15, November 13, and December 23. After the first day, Father consented to the termination of his rights and the adoption of the Children. On the second day, Mother moved to have the termination cases dismissed, arguing that the CHINS dispositional hearing was held over thirty days after the court found the Children to be CHINS, in violation of Indiana Code section 31-34-19-1(a). The court took the motion under advisement and continued with the termination hearing. On January 2 of this year, the court issued an order denying Mother's motion to dismiss and terminating Mother and Father's parental rights.¹

[5] Mother now appeals.

Discussion and Decision

[6] Mother does not contest the sufficiency of the evidence supporting the termination of her rights. She challenges only the trial court's denial of her motion to dismiss. Because the relevant facts are undisputed, we review the motion de novo. *See GKN Co. v. Magness*, 744 N.E.2d 397, 401 (Ind. 2001).

¹ Mother also moved to have the underlying CHINS cases dismissed, and the trial court also denied that motion.

[7] Mother moved to dismiss the termination cases on the ground that the CHINS cases should have been dismissed under Indiana Code section 31-34-19-1, which provides, in pertinent part:

(a) The juvenile court shall complete a dispositional hearing not more than thirty (30) days after the date the court finds that a child is a child in need of services

(b) If the dispositional hearing is not completed in the time set forth in subsection (a), upon a filing of a motion with the court, the court shall dismiss the case without prejudice.

Mother contends the trial court found the Children to be CHINS at the fact-finding hearing on October 19, 2018, and was therefore required to hold the dispositional hearing within thirty days but did not do so until forty-one days later, on November 29, 2018. DCS, on the other hand, argues the trial court found the Children to be CHINS on November 13, 2018—sixteen days before the dispositional hearing—when it issued its written Order on Fact Finding Hearing. Mother seems to have the better of this argument. The fact the trial court scheduled the dispositional hearing during the October 19 fact-finding hearing indicates it found the Children to be CHINS that day, and the November 13 written order was a mere formality. Moreover, DCS’s termination petitions allege as to each child, “The juvenile court adjudicated the child a child in need of services on October 19, 2018.” Appellant’s App. Vol. II p. 10.

[8] However, we need not resolve this issue of statutory interpretation, because we agree with DCS’s alternative argument that Mother waited too long to raise this issue. Upon receiving notice that the dispositional hearing was to be held over thirty days after the fact-finding hearing, she said nothing. At the dispositional hearing itself, she said nothing. Between the dispositional hearing and the entry of the dispositional decree in January 2019, she said nothing. During the **eighteen months** between the dispositional decree and the filing of the termination petition in July 2020, she said nothing. During the first four months of the termination case, she said nothing. It was not until November 13, 2020—when the termination hearing was almost complete—that Mother objected to the timeliness of the November 2018 CHINS dispositional hearing. By that point, the CHINS disposition was a distant memory and an accepted fact in the case. As we have explained, the dismissal sanctions in the CHINS statutes are not self-executing, and a party cannot “stand idly by until an adverse determination has been made.” *In re J.S.*, 133 N.E.3d 707, 713 (Ind. Ct. App. 2019). “A party must preserve the right of expediency by filing a written motion to dismiss before the merits of a petition are litigated.” *Id.* Because Mother waited approximately two years to challenge the timeliness of the CHINS dispositional hearing, the trial court did not err by denying her motion to dismiss. *See In re J.S.*, 130 N.E.3d 109 (Ind. Ct. App. 2019) (affirming denial of motion to dismiss CHINS case where motion was filed eight months after disposition).

[9] Affirmed.

Bradford, C.J., and Brown, J., concur.