

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.



ATTORNEYS FOR APPELLANT

Valerie K. Boots
Indianapolis, Indiana

Steven J. Halbert
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Director, Child Services Appeals
Unit
Supervising Deputy Attorney
General
Indianapolis, Indiana

Katherine Meger Kelsey
Chief Legal Counsel
Kids' Voice of Indiana
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of Parent-
Child Relationship of:

P.B. (Minor Child),

and

R.O. (Father),

Appellant-Respondent,

November 23, 2022

Court of Appeals Case No.
22A-JT-640

Appeal from the Marion Superior
Court

The Honorable Geoffrey Gaither,
Judge

v. Indiana Department of Child Service, <i>Appellee-Petitioner</i> AND Kids' Voice of Indiana, <i>Appellee-Guardian Al Litem.</i>	The Honorable Scott B. Stowers, Magistrate Trial Court Cause No. 49D09-2011-JT-765
---	---

Altice, Judge.

Case Summary

[1] R.O. (Father) appeals the involuntary termination of his parental rights to his daughter, P.B. (Child), born in June 2015.¹ Father contends that the evidence was not sufficient to support the termination and that he was not afforded due process before his parental rights were terminated.

[2] We affirm.

Facts & Procedural History

[3] On May 20, 2019, Child was removed from Mother's care on reports that Mother was homeless and unable to care for Child, and Child was placed with

¹ Child's biological mother, S.B. (Mother), consented to adoption of Child and does not participate in this appeal.

a maternal aunt, W.B. The Indiana Department of Child Services (DCS) filed a Child in Need of Services (CHINS) petition as to Child alleging, in summary, that Mother had untreated mental health issues that hindered her ability to care for Child and that, despite being offered services through a prior CHINS action, Mother continued to demonstrate an inability to provide Child with a safe, stable home. The allegations as to Father were that he “has not successfully demonstrated an ability and willingness to appropriately parent the child, and he is unable to ensure the child’s safety and well being while in the care and custody of [Mother]” and that his whereabouts were unknown to DCS. *Exhibits Vol.* at 60. It was later learned that Father had been arrested for selling methamphetamine and was incarcerated.

[4] At a June 28, 2019 hearing, DCS reported that it had located Father in a county jail in Kentucky and that a U.S. Marshal was needed to complete service on Father “since [he] is on a federal hold.” *Id.* at 69. DCS requested and received a continuance of the initial hearing as to Father. By a July 12, 2019 hearing, counsel had been appointed for Father, and he thereafter appeared by counsel only at all CHINS proceedings.

[5] In July 2019, DCS family case manager (FCM) Patrick Wilburn was assigned to the case. Once Father was located, FCM Wilburn “sent incarcerated parent letters to him once,” which included FCM Wilburn’s contact information, and “just continued to try to communicate through whatever means that was [sic] available.” *Transcript* at 48. For instance, FCM Wilburn gave his contact information to Mother’s mother (Maternal Grandmother), who indicated she

had been in contact with Father. *Id.* at 49. FCM Wilburn never heard from Father.

- [6] In July or August 2019, a guardian ad litem (GAL) was appointed for Child. At an August 23, 2019 hearing, Father’s counsel reported that Father was currently in federal custody but was being transferred to the Hamilton County, Indiana jail and, at counsel’s request, the court ordered that Father be made available to speak with his counsel.
- [7] At a September 12, 2019 hearing, Mother admitted that she needed DCS’s assistance with mental health treatment and maintaining a safe and stable home for Child and that the coercive intervention of the court was necessary. Father, by counsel, waived fact-finding, and the court adjudicated Child a CHINS. Pursuant to DCS’s request, the court authorized a change of placement to another aunt, T.T. (Aunt), upon positive outcome of DCS’s checks on the proposed placement.
- [8] By the next hearing on October 11, Child was in placement with Aunt, where she has remained throughout the duration of the proceedings. The court issued a dispositional decree that day and, with regard to Father, noted that “[the] parties have not provided information as to the relationship/contact between [Child] and . . . [Father].” *Exhibits Vol.* at 53. In the court’s parental participation order issued that day, Father was ordered to work with the local prosecutor to establish paternity and furnish proof thereof to FCM Wilburn. In addition, the court issued a separate “Order Regarding Identity and to Establish

Paternity by DNA Swab,” requiring Father to provide a DNA buccal swab and ordering him to appear for a review hearing on January 17, 2020. *Id.* at 57.

[9] Father did not appear in person at the January hearing, and Father’s counsel reported “having difficulty locating [F]ather in the federal prison system.” *Id.* at 73. DCS reported that Father had yet to establish paternity of Child. At the July 31, 2020 permanency hearing, counsel for Father reported that he “has not been able to locate Father.” *Id.* at 78. DCS advised the court that it was trying to do so and would advise counsel for Father if successful. DCS requested that the permanency plan remain reunification, but the GAL requested that the plan change to adoption. Aunt stated that she was in agreement with adoption or guardianship of Child. The court ordered that the permanency plan remain reunification.

[10] Another permanency hearing was held on October 30, 2020. Counsel for Father reported that Father was in federal custody in Kentucky and had submitted a guilty plea and was facing a sentence of up to twenty years. DCS requested that the permanency plan be changed to adoption, and the GAL agreed. The court changed the permanency plan to adoption.

[11] On November 4, 2020, DCS filed a petition to terminate Father’s parental rights. The November 13 initial hearing was continued to allow time for DCS to perfect service on both parents. Father received service of process on December 9, 2020, at the Oldham County Jail in LaGrange, Kentucky.

[12] On March 1, 2021, the matter was unsuccessfully mediated. On March 23, 2021, Father pled guilty in an Indiana federal district court to possession with intent to distribute methamphetamine and was sentenced to fifty-eight months of incarceration. On March 24, 2021, Mother consented to Child's adoption.

[13] The court held a termination fact-finding hearing over the course of several days, December 16, 2021, and January 10 and 31, 2022. DCS presented the testimony of Father, the two GALs, FCM Wilburn, and Aunt.

[14] On direct examination, FCM Wilburn addressed how DCS handles incarcerated parents:

Q: As a DCS case manager, when one of the parents is incarcerated, what steps do you take to make contact with that person?

A: We send out incarcerated parent letters, try to communicate with family members to get information to them and I send my contact information to the parent in those incarcerated parent letters so they can make contact with me.

Q: And did you do that for [Father]?

A: Yes, I did.

Q: Okay, and what efforts – did you receive communication back from [Father]?

A: I never received any contact back from [Father].

Transcript at 55. When asked to confirm that DCS “did not facilitate any services” for Father, FCM Wilburn explained, “I was unable to – I never received a response from [Father] pertaining to wanting to participate in the services.” *Id.* at 57.

[15] FCM Wilburn opined that it was his “[f]irm position [] that adoption is in the best interest of [Child].” *Id.* at 52. When asked, “How would you infer that [Father] was not able or at least willing to parent his child just from the idea that he’s incarcerated?”, FCM Wilburn responded, “Because he didn’t reach out to try to establish any communication or work towards trying to show the ability to parent.” *Id.* at 56.

[16] GAL Autumn James testified that the GAL’s duty is to advocate for the best interest of children who are in the child welfare system, and, in so doing, the typical procedure is to read the case history and providers’ reports, reach out to the child’s current placement, the providers, and the FCM, and to visit with the child. GAL James explained, “it’s not my practice to reach out to parents” in order to facilitate contact or services, as that is not the GAL’s role. *Id.* at 14. GAL James had observed Child in placement with Aunt, had no concerns with that placement, and viewed Child as thriving socially and academically and bonded with Aunt. GAL James had “not seen any evidence of participation [by Father] in services, ability, or willingness to parent [Child]” and opined that it was in Child’s best interest for Father’s parental rights to be terminated, recommending adoption by Aunt. *Id.* at 12. GAL James acknowledged having had no contact with Father but explained that, typically, the GAL has

interaction with a parent when the parent is the Child's placement or is involved in the child and family team meetings (CFTM). GAL James did not agree that Father should be afforded additional time.

[17] GAL Elizabeth Davids, a predecessor to GAL James, testified similarly. In her opinion, Aunt was capable of providing long-term stability and permanency for Child. GAL Davids acknowledged that she had never met Father but explained that if the permanency plan was adoption, and the parent "had not been involve[ed] . . . in the case or in meetings or with the child[,] then [she] would not communicate with the parents." *Id.* at 43.

[18] Aunt testified that she had never met Father in person. With regard to any attempts by Father to reach out to Child, she said that on one occasion she overheard Maternal Grandmother speaking on the phone to a man, who she discovered was Father, and that he wanted to talk to Child but that Child did not want to talk to him. Aunt intervened and told Father and Maternal Grandmother that the phone call was "not acceptable" as Aunt had not approved of it, and further, Father was attempting to have a "totally [] inappropriate" conversation with Child about a family member. *Id.* at 62, 63. Aunt testified that she "can meet and exceed all of [Child's] needs" and described that Child had become "part of our family." *Id.* at 64. Aunt stated that Child needed a stable and loving environment "because of what she's been through and jumping from house to house, family member to family member" and that, in her home, Child had consistency and structure and was doing well academically and socially. *Id.* at 68.

[19] Father testified in his own case-in-chief and presented the testimony of Maternal Grandmother. Father testified that he had a good relationship with Child before his incarceration in early 2019, that he saw her on a “daily basis,” did “normal things” like ride bikes, play games, and watch movies, and that he spent holidays with her. *Id.* at 85, 88. He referred to a prior CHINS action and testified that DCS and the prior providers “absolutely” did not have any issues with his parenting. *Id.* at 97.

[20] Father testified that he had prior misdemeanor convictions only and had never been incarcerated before the current offense. He recounted, “I’ve been at about ten different facilities during my incarceration that’s why it’s always been so hard to even schedule a court date let alone have any communication with any of you guys.” *Id.* at 21. Father relayed that he had participated in ten programs while incarcerated, including National Parenting Time program and Inside Out Dad program, as well as vocational and other programs available to him in prison. Father testified to having housing and employment available to him after his release and that he was willing and prepared to participate in any services offered by DCS upon his release.

[21] On cross examination, DCS questioned Father about any attempts to contact DCS and any attempted communication with Child. Father confirmed that he received “the original packet for this case” but did not know if it included contact information for DCS. *Id.* at 113-14, 127. DCS then asked Father whether he received other correspondence from DCS, including incarcerated parent letters:

Q: [] So, just to be clear for the record, you are saying you never received any incarcerated parent letters, you never received any ten-day letters warning you about this case or giving...

A: I'm con – I'm confused. Can – can you help me with something here. Were they certified? Wouldn't you know that if they were sent to me or not or – I'm confused.

Q: I'm sorry. Can you answer my question?

A: I'm trying to – I don't understand. Can you help me under – were – were the letters certified to me?

Q: [Father]...

A: So you'd know that they came to me. I'm just wondering 'cause I answered already that I received nothing. If you certify a letter you would have knew I had it, so I'm just wondering.

Q: Okay. So, you're not going to answer that question.

[Counsel for Father]: Judge, objection...

[Father]: You didn't answer my [sic] either.

[Counsel for Father]: ...I – I think he did answer the question that he's not received it.

THE COURT: But he sort of answered it with another question. Do you want to move on [Counsel for DCS] or do you want to...

DCS: Yeah, I think I'll just move on at this point.

THE COURT: Alright.

Id. at 114-15. Father stated that he had asked Maternal Grandmother for FCM Wilburn's or DCS's contact information but that she told him he would need to talk to his attorney, who Father said he had not spoken to very often. The following exchange followed:

Q: But you have been represented throughout this case, is that correct?

A: Allegedly, I only spoke to the guy once or twice. I don't even remember his name. So, I mean hypothetically I was – what do you define as representation? Can you – can you answer that for me 'cause I don't know.

DCS: I'm not going to answer questions from you.

THE COURT: Lawyers ask the questions, you answer them.

[Father]: Yes, sir. I'm just confused, I'm sorry.

THE COURT: Aren't we all.

Id. at 116. Father later testified that his efforts to contact DCS were (1) calling a DCS employee from a prior CHINS case, who Father said “had no information” for the current FCM, and (2) asking his two attorneys “but no one had any information.” *Id.* at 128. Father testified that he also had family members and his federal lawyer try to get information but “they wouldn't give [] any information . . . 'cause they weren't involved.” *Id.* at 127.

[22] DCS asked Father about his ability to mail correspondence while incarcerated:

Q: . . . [D]id you have access to the US mail system?

A: No.

Q: You were not allowed to send mail during . . .

A: No.

Q: . . . your incarceration?

A: No, I was not, a lot of times I wasn't. Sometimes, yes.

Id. at 119-20.

[23] Maternal Grandmother stated that she had seen Father interact with Child on some occasions and described him as “a caring dad, nothing out of order.” *Id.* at 145. It was her opinion that it would be in Child’s best interest to be in Father’s care.

[24] In rebuttal, DCS presented the testimony of W.B., who was an aunt and godmother to Child and had placement of Child before Aunt. She testified that Child lived with her “on and off” from about three months to four years of age. *Id.* at 160. During that time span, W.B. stated that Father “would show up with [Mother] every now and then.” *Id.* She described that Father bought clothes for Child once, “didn’t come around” for holidays or birthdays, and “took [Child] to the doctor one time and it was a disaster.” *Id.* at 160, 161.

W.B. opined that “[w]henver he comes around it’s a disaster.” *Id.* at 161. When asked to explain, W.B. shared an example of when she and Child were attending a church service, and Father “showed up,” interrupted, and wanted Child to come to the front of the church and sit with him but Child “didn’t want to” because “she don’t know him like that.” *Id.* at 162. In W.B.’s view, Father “didn’t know nothing about raising a child.” *Id.* at 163. Father testified in rebuttal, stating that W.B. was untruthful, that he spent more time with Child than W.B. represented, and that he paid for everything, including clothes, food, shelter, any time that Child was around him.

[25] On February 24, 2022, the court issued an order terminating Father’s parental rights to Child. Summarized, the court found, among other things:

Father was ordered to but has not established paternity;

He is currently incarcerated in a federal facility in North Carolina;

He “has been incarcerated in approximately ten different facilities in Indiana, Kentucky, Mississippi, Oklahoma, and North Carolina” during the course of the proceedings;

He was sentenced on March 23, 2021, to fifty-eight months in the United States Bureau of Prisons and his current release date is April 11, 2023;

He “has completed a number of programs” while in federal incarceration including the Inside Out Dads program, a leadership program, and a creative writing program.

He “has not seen [Child] in person in over three years” and “has sent no cards or letters to [Child] during his incarceration”.

Appellant’s Appendix at 20. The court concluded that the conditions that led to Child’s removal and continued placement outside the home will not be remedied, observing:

[Father] has been incarcerated for nearly the child’s entire life. He has made no progress towards reunification. He has a lengthy pattern of criminal behavior which absences himself from the child’s life for years at a time.

Id. The court also concluded that continuation of the relationship poses a threat to Child’s well-being, that termination is in Child’s best interests, and there exists a satisfactory plan for the future care and treatment of Child, namely adoption by Aunt. Father now appeals.

Discussion & Decision

[26] Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). The purpose of terminating parental rights is not to punish the parents, but to protect their children. *Id.*

[27] We review termination of parental rights with great deference. *Matter of G.M.*, 71 N.E.3d 898, 902 (Ind. Ct. App. 2017). We consider the evidence in the light most favorable to the prevailing party, and we will not reweigh the evidence or judge the credibility of the witnesses. *Matter of M.I.*, 127 N.E.3d 1168, 1170 (Ind. 2019). To prevail, the challenging party must show that the court's decision is contrary to law, meaning that the probative evidence and reasonable inferences point unerringly to the opposite conclusion. *Id.*

[28] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, among other things:

(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)(B), (C), (D); Ind. Code § 31-37-14-2.

[29] On appeal, Father asserts that DCS failed to present clear and convincing evidence that the conditions resulting in Child's removal or the reasons for placement outside his home would not be remedied or that continuation of the parent-child relationship poses a threat to Child. Father also claims that he was not afforded due process before his parental rights were terminated.

Conditions Not Remedied

[30] In determining whether the conditions resulting in a child's removal will not be remedied, the trial court engages in a two-step analysis. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231-32 (Ind. 2013). First, we must ascertain what conditions led to their placement and retention in foster care. *Id.* Second, we "determine whether there is a reasonable probability that those conditions will not be remedied." *Id.* In making these decisions, "the trial court must consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008). Moreover, DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *Id.*

[31] When the CHINS petition was filed in May 2019, Father was in jail stemming from a late 2018 or early 2019 arrest for selling methamphetamine, and he acknowledges that he has had “no contact with his daughter” since Christmastime 2018. *Appellant’s Brief* at 6; *Transcript* at 31. Father places responsibility for this lack of contact on DCS, arguing that DCS never arranged or facilitated phone calls or video visitation, he did not receive case plans and was not included in CFTMs, and “DCS did not keep track of his new locations.” *Appellant’s Brief* at 6. The gist of Father’s argument is that DCS “ignored” him, focusing efforts exclusively on Mother, and that “[t]he termination was based solely on Father’s incarceration.” *Id.* at 8, 9.

[32] FCM Wilburn testified that once Father’s whereabouts were determined, he sent incarcerated parent letters to Father. At the termination hearing, Father was asked, but never directly answered, whether he received that correspondence. In other efforts to reach Father, FCM Wilburn testified that he gave his contact information to Maternal Grandmother, as FCM Wilburn understood that they communicated, but Father testified that he “asked [her] about it but she said that [Father] would have to go through [his] attorney.” *Transcript* at 115. According to Father, on one occasion, he telephoned a DCS worker from a prior CHINS case but that person was of no assistance. Father was represented by counsel throughout the CHINS and termination proceedings but, according to Father, his attorneys were unhelpful and did not know anything about how to reach the FCM or DCS. The trial court was not required to believe Father’s testimony that he “would have loved to been in

contact with” some of the FCMs and he tried to email his attorneys “about the situation” but “no one had any information[.]” *Id.* at 129. The evidence favorable to the judgment establishes that Father did not respond to DCS or otherwise reach out to advise DCS of his whereabouts at any time or inquire about services that might be available to him.

[33] While Father argues that he “made diligent efforts to communicate with [Child]”, the record reflects that, at best, his efforts consisted of speaking to his attorneys, staying in touch with Maternal Grandmother, and trying on one occasion to talk to Child via Maternal Grandmother at Aunt’s home. *Appellant’s Brief* at 13. Assuming he did so, that is not the equivalent of diligent efforts to communicate with Child. Father had access to U.S. Mail, at least sometimes during his thirty-three months of incarceration. He was asked if he ever sent any cards or letters to Child:

A: I don’t have a direct address to send her anything.

* * *

Q: Okay. Have you sent letters to DCS to give to [Child]?

A: I spoke to DCS about it, they told me I couldn’t. I spoke to [Aunt] about the exact thing you’re asking me about and she told me to go through you guys, so I don’t – I don’t know. . . .

Transcript at 32-33. If Father “spoke to DCS,” it is not known who he spoke to, as FCM Wilburn never heard from Father. Again, the trial court was not

required to believe that DCS informed Father that he “couldn’t” send cards or letters to Child. *Id.* at 33.

[34] We observed that the evidence was conflicting as to Father’s relationship with Child prior to his incarceration – with Father testifying that he and Child had a bonded relationship, and FCM Wilburn testifying that Child “doesn’t really know much about her father” and W.B. testifying that Child did not have a close relationship with him. *Id.* at 52. The evidence was also conflicting as to whether, prior to incarceration, he maintained a stable home – with W.B. testifying that Child primarily resided with her while Father lived in hotels and never had a stable place of residence, and Father stating that he had a leased apartment. It was the trial court’s position to weigh that evidence and assess witness credibility. *M.I.*, 127 N.E.3d at 1170. Finally, the evidence is undisputed that Father was ordered to establish paternity but never did so.

[35] FCM Wilburn’s “[f]irm position” recommended termination of Father’s parental rights, and he was opposed to giving Father “more time” to maintain a parental relationship. *Transcript* at 52, 53. GAL James likewise testified that termination of Father’s parental rights was in Child’s best interest, rejecting the idea that Father “should be afforded additional time” to complete services to reunify with Child. *Id.* at 12.

[36] We recognize that Father was “shipped” from one facility to another – being placed at ten locations in thirty-three months, some federal and some state-run – which may have placed additional hurdles upon Father’s ability to

communicate with DCS and/or Child or engage in services. *Id.* at 21.

However, it is well-settled that individuals who pursue criminal activity run the risk of being denied the opportunity to develop a positive and meaningful relationship with their children. *K.T.K.*, 989 N.E.2d at 1235-36. Based on the record before us, where DCS never heard from Father and Father never communicated with Child in almost three years, we cannot say that the trial court's conclusion that the conditions that led to Child's removal and continued placement outside the home would not be remedied was clearly erroneous.²

Due Process

[37] Father asserts that he was not afforded due process before his parental rights were terminated. Because Father did not raise this issue in the juvenile court, Father has waived this issue on appeal. *See In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016) (“[A] party on appeal may waive a constitutional claim, including a claimed violation of due process rights, by raising it for the first time on appeal.”). However, “we have discretion to address such [due process] claims,” and proceed to consider whether Father's rights were violated. *In re. T.W.*, 135 N.E.3d 607, 612 (Ind. Ct. App. 2019), *trans. denied*.

[38] When the State seeks the termination of a parent-child relationship, it must do so in a manner that meets the requirements of the Due Process Clause. *In re*

² As I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive, we need not reach the court's conclusion that continuation of the parent-child relationship posed a threat to Child.

S.L., 997 N.E.2d 1114, 1120 (Ind. Ct. App. 2013); *In re H.L.*, 915 N.E.2d 145, 147 (Ind. Ct. App. 2009). Due process in parental rights cases involves 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 government interest supporting the use of the challenged procedure. *H.L.*, 915 N.E.2d at 147. This Court has described those interests in the context of termination proceedings as follows:

The private interest affected by the proceeding is substantial – a parent’s interest in the care, custody, and control of his or her child. And the State’s interest in protecting the welfare of a child is also substantial. Because the State and the parent have substantial interests affected by the proceeding, we focus on the risk of error created by DCS’s actions and the trial court’s actions.

S.L., 997 N.E.2d at 1120 (internal citations omitted).

[39] “[F]or a parent’s due process rights to be protected in the context of termination proceedings, DCS must have made reasonable efforts to preserve and/or reunify the family unit in the CHINS case,” which “does not necessarily [] mean that services must be provided to the parents.” *T.W.*, 135 N.E.3d at 615; *see also* Ind. Code § 31-34-21-5.5 (stating DCS is generally required to make reasonable efforts to preserve and reunify family during CHINS proceedings).³

³ “[A]lthough ‘[t]he DCS is generally required to make reasonable efforts to preserve and reunify families during the CHINS proceedings,’ that requirement under our CHINS statutes ‘is not a requisite element of our parental rights termination statute, and a failure to provide services does not serve as a basis on which to

Father argues that DCS violated his due process rights “by refusing to provide visits, failing to communicate with him or make any efforts that would aid in his reunification with his daughter.” *Appellant’s Brief* at 9. He maintains that “[t]hese failures were intentional and pervasive and led to a termination that was not supported by the evidence and was an outrageous deprivation of Father’s due process rights.” *Id.* at 16.

[40] Initially, we address Father’s assertion that “it is the official policy of Kid’s Voice of Indiana for their [GALs] to have no contact with incarcerated parents.” *Id.* at 8. This misrepresents the testimony. There was no evidence presented about any official policy. GAL James testified that a GAL’s statutory duties include researching, examining, advocating, facilitating, and monitoring the child’s situation. *See* Ind. Code § 31-9-2-50(b)(2). GAL James testified that, in fulfilling that duty, they reached out to Aunt, the FCMs, attended court, attended CFTMs, met with Child, and reviewed historical provider reports. In GAL James’s view, it was not the GAL’s role to reach out to incarcerated parents or arrange services for that person. GAL Davids’s testimony was similar and explained that if the permanency plan is adoption, as it was when she was appointed, and if the parent had not been involved in services or team meetings, as Father had not been, then it was not her practice to contact the incarcerated parent. We cannot say that the evidence established

directly attack a termination order as contrary to law.” *In re J.W., Jr.*, 27 N.E.3d 1185, 1190 (Ind. Ct. App. 2015) (*quoting H.L.*, 915 N.E.2d at 148 n.3), *trans. denied.*

that it was the official policy of Kid’s Voice of Indiana for their GALs to never have contact with incarcerated parents.

[41] Turning to Father, he was incarcerated before and throughout the CHINS proceedings, and he does not dispute that he received notice of the CHINS proceedings and of the termination proceedings. FCM Wilburn reached out to Father directly by DCS’s incarcerated parent letters and indirectly by providing his contact information to Maternal Grandmother, who FCM Wilburn understood talked to Father. For reasons not clear in the record, Father was incarcerated in ten facilities, a combination of federal and state, over the span of thirty-three months. As a result, DCS and, at times, Father’s attorneys had a hard time finding him. FCM Wilburn testified that DCS “would have put in services if they would have been allowed” by the jail or facility⁴ but FCM Wilburn “never received a response from [Father] pertaining to wanting to participate in the services.” *Transcript* at 57. Father at no time reached out to FCM Wilburn to advise of his whereabouts or to request services, nor did his counsel at any time indicate that Father was seeking to become involved in the proceedings.

[42] On the record before us, we conclude that DCS’s efforts were “reasonable” and that Father has not established that he was denied due process. *See In re S.K.*, 124 N.E.3d 1225, 1233 (Ind. Ct. App. 2019) (where Father was incarcerated for

⁴ FCM Wilburn testified that DCS was not “able to provide services in federal facilities in differing states.” *Transcript* at 48.

killing mother, “DCS was unable to offer services to Father or to evaluate him to determine what services might benefit him” and “DCS’s failure to offer reunification services to Father does not constitute a deprivation of his due process rights), *trans. denied; In re H.L.*, 915 N.E.2d at 148 (finding no denial of due process where Father had been incarcerated in several counties, which may not have provided reunification services, and “the absence of services was due to Father’s incarceration and he does not point to any evidence that he specifically requested visitation or other services”).

[43] Judgment affirmed.

Brown, J. and Tavitas, J., concur.