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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of R.A.M.O.,
Child in Need of Services,
D.F., Mother,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

June 10, 2022

Court of Appeals Case No.
21A-JC-1873

Appeal from the
Johnson Circuit Court

The Honorable
Michael T. Bohn, Magistrate

Trial Court Cause No.
41C01-2102-JC-13

Molter, Judge.

[1] D.F. (“Mother”) appeals the juvenile court’s determination that her minor child, R.A.M.O., is a child in need of services. Mother argues the juvenile court abused its discretion in continuing her factfinding hearing beyond the 120-day timeframe set forth in Indiana Code section 31-34-11-1(b). She also asserts that the trial court’s decision to continue the matter violated her due process rights. Because we disagree, we affirm.

Facts and Procedural History

[2] C.O. (“Father”) and Mother are the parents of R.A.M.O. (“Child”), who was born on September 4, 2020. Soon after Child was born, DCS opened an informal adjustment, which is a lesser intervention than a child in need of services (“CHINS”) case, due to Mother’s untreated mental health issues and inability to care for Child. A couple of months later, while the informal adjustment was ongoing, DCS received a report alleging neglect of Child. Child was an inpatient at Riley Hospital for Children, and hospital staff reported that Mother did not engage with Child and refused to feed Child. The staff also reported that they were concerned by Child’s weight and that Child could become malnourished or ultimately die due to her feeding issues.

[3] When Family Case Manager (“FCM”) Demi Eckles visited the hospital to investigate the report, she noticed that Child had been left in her hospital room unattended. She also observed that Child, who was roughly six months old, needed assistance to sit upright and that she had a recognizable flat spot on her head. At the time, Mother reported to FCM Eckles that there was domestic violence within their household.

- [4] DCS removed Child from Mother’s care and filed a petition alleging that Child was a CHINS. It also closed the informal adjustment because it had failed. The juvenile court then set a factfinding date of April 22, 2021, but the factfinding date was later reset to June 21, 2021, upon the parties’ request. Specifically, the parties asked that this matter be continued and reset for additional facilitation because they were unable to resolve their issues. Further, the parties agreed to waive the sixty-day statutory timeframe set forth in Indiana Code section 31-34-11-1(a) that requires a factfinding hearing to be completed no later than sixty days after the CHINS petition is filed.
- [5] On the date of the factfinding, DCS requested a continuance, which the trial court granted, because Mother’s psychological examination revealed that she was mentally incompetent and needed the appointment of a guardian. Mother’s counsel then requested that the juvenile court set the factfinding hearing within 120 days of the filing of the CHINS petition,¹ and the factfinding date was reset to June 25, 2021. Then, the day before this new factfinding date, DCS filed a motion for continuance. The DCS attorney for this matter was admitted to the hospital for labor induction and was unable to find a substitute because all DCS attorneys in the region were at a mandatory training out of town. The juvenile court held a hearing on DCS’s motion on June 25, 2021. It

¹ Indiana Code section 31-34-11-1(b) allows for an additional sixty-day extension if agreed upon by the parties.

ultimately granted DCS’s motion over Mother’s objection, and the factfinding date was reset to a day within the 120-day statutory deadline—June 28, 2021.

[6] After the hearing on June 25, 2021, DCS filed another motion for continuance, asserting that two of its “essential witnesses” were unable to testify on June 28, 2021. Appellant’s App. Vol. 2 at 84. Both witnesses performed neuropsychological evaluations on Mother, which were relevant to Mother’s ability to understand the underlying proceedings and to parent Child. Also, both witnesses were out of their offices until after the 120-day statutory deadline expired. After holding a hearing on DCS’s second motion for continuance, the juvenile court granted the motion over Mother’s objection, found that there was good cause to set the hearing past the 120-day statutory deadline, and reset the factfinding date to July 14, 2021.

[7] The juvenile court held the factfinding hearing on July 14, 2021.² Rachel Boes, who was assigned to offer supervised visitation and home-based casework to Mother through DCS, testified that Mother’s home was an unsafe environment for Child. Particularly, the home contained clutter, overflowing trash, trash on the floor, tools, lighters, loose tobacco, and rotting food. There were also firearms scattered throughout the home. Thus, because Child was a mobile infant, she would have been physically endangered living in the home.

² During the proceedings, Father admitted that Child is a CHINS.

- [8] Also, Mother continued to disclose to DCS instances of domestic violence between her and Father. She stated that she was afraid to clean her home because she would have to move Father's possessions and feared doing so. Relatedly, Boes observed bruises on Mother's neck, which were consistent with strangulation marks. Further, Boes testified that Mother would "zone out" during visits and would not pay adequate attention to Child. Tr. at 87.
- [9] During the factfinding hearing, Dr. Barbara Gelder testified that Mother had severe functioning limitations that negatively impacted her ability to care for herself and Child. Some of these limitations included a limited ability to understand abstract concepts and common situations. Dr. Gelder also concluded that Mother's social and emotional functioning was rated at roughly a three-year-old level, while her adaptive functioning was consistent with that of a three- to four-year-old child.
- [10] In August 2021, the juvenile court entered its order determining that Child was a CHINS, and, among other facts, found that:

[Child's] physical condition is seriously impaired as a result of [Mother's] inability to provide [Child] with adequate care. [Mother's] current home conditions constitute a clear danger to [Child], a mobile infant. Mother has shown that she is unable to protect [Child] from Domestic Violence, which is ongoing within the home. [Mother's] inattentive parenting has already impacted [Child] with a flat spot on [her] head. Due to [Mother's] inability to properly supervise [Child], [Child] would be in grave danger in [Mother's] care.

Appellant's App. Vol. 2 at 6.

[11] Shortly after, the juvenile court held a dispositional hearing and issued its dispositional order, which stated that it was in Child’s best interests to be removed from the home. The order also directed Mother to participate in various services. Mother now appeals.

Discussion and Decision

[12] Mother does not challenge the juvenile court’s findings of fact and conclusions, or the evidence supporting the court’s findings. Instead, she argues the juvenile court abused its discretion in continuing the factfinding hearing beyond the 120-day timeframe set forth in Indiana Code section 31-34-11-1(b), which she argues also violated her right to due process. Lastly, because counsel failed to preserve Mother’s timeliness objection by filing a motion to dismiss, Mother contends she received ineffective assistance from counsel.

I. Continuance of the Factfinding Hearing

[13] “Indiana law provides that a [juvenile] court must dismiss a [CHINS petition] . . . if the court does not conclude a factfinding hearing within 120 days of the filing of the petition by the State.” *In re M.S.*, 140 N.E.3d 279, 280 (Ind. 2020) (citing Ind. Code § 31-34-11-1(d)). However, the “Indiana Rules of Trial Procedure . . . allow a party to move for a continuance if that party can show ‘good cause’ for why a continuance is necessary in a particular case.” *Id.* at 280–81 (citing Ind. Trial Rule 53.5). “Because our trial rules trump statutes on matters of procedure, Rule 53.5 allows extension of the 120-day deadline in

Indiana Code section 31-34-11-1(b) provided a party can show ‘good cause.’”
Id. at 284.

[14] “[T]he purpose of a CHINS adjudication is to protect children, not punish parents.” *Id.* Thus, juvenile “courts are afforded considerable discretion in ruling on motions for continuances, including determining whether the moving parties have shown good cause for requesting a continuance.” *Id.* at 285. “We will reverse the [juvenile] court only for an abuse of that discretion.” *In re K.W.*, 178 N.E.3d 1199, 1206 (Ind. Ct. App. 2021) (quotation marks omitted). A juvenile court abuses its discretion when it reaches a conclusion that is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable and probable inferences drawn therefrom. *Id.* “There are no ‘mechanical tests’ for determining whether a request for a continuance was made for good cause.” *M.S.*, 140 N.E.3d at 285. Instead, “the decision to grant or deny a continuance turns on the circumstances present in a particular case.” *K.W.*, 178 N.E.3d at 1206.

[15] Here, DCS filed its CHINS petition on March 1, 2021. Appellant’s App. Vol. 2 at 26. The matter was set for factfinding on April 22, 2021, and the sixty-day deadline was set to expire on April 30, 2021. Upon the parties’ request, the April factfinding date was later reset to June 21, 2021. The parties agreed to waive the sixty-day statutory timeframe set forth in Indiana Code section 31-34-11-1(a) and expand the factfinding date to 120 days pursuant to Indiana Code section 31-34-11-1(b). The record reflects that the 120th day was June 29, 2021.

Tr. at 7–8. The juvenile court ultimately held the factfinding hearing outside the 120-day timeframe on July 14, 2021.

[16] We initially note that if a hearing is not held within the 120-day timeframe, Indiana Code section 31-34-11-1 provides a mechanism for an aggrieved party to enforce her rights—a motion to dismiss. *See In re J.S.*, 133 N.E.3d 707, 713 (Ind. Ct. App. 2019) (explaining that although the CHINS statutory scheme provides mandatory deadlines and includes enforcement mechanism, a party must preserve the right of expediency by filing a written motion to dismiss before the merits of a petition are litigated). Mother concedes she did not file a motion with the trial court under Indiana Code section 31-34-11-1(d). Appellant’s Br. at 15–16. Because Mother failed to file a motion to dismiss, her argument is waived. *See In re N.C.*, 83 N.E.3d 1265, 1267 (Ind. Ct. App. 2017) (holding that the father “waived his right to challenge the setting of [the parental termination] factfinding hearing date, although it fell outside the statutory 180 days”); *see also Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013) (explaining that “waiver” connotes an “intentional relinquishment or abandonment of a known right”). Regardless, we will address Mother’s argument that the juvenile court abused its discretion in continuing the factfinding hearing beyond the 120-day timeframe.

[17] Mother asserts that the juvenile court abused its discretion when it granted DCS’s requests for continuances on June 21 (resetting the factfinding date to June 25), June 25 (resetting the factfinding date to June 28), and June 28 (resetting the factfinding date to July 14). Generally, as to each request, Mother

argues that the juvenile court erred in continuing the factfinding hearing beyond the 120-day timeframe set forth in Indiana Code section 31-34-11-1(b). But the record reflects that the 120-day statutory deadline was set to expire on June 29, 2021 and that the juvenile court did not continue the factfinding hearing beyond the deadline until June 28—when it reset the factfinding date to July 14.

Regardless, Mother argues that the juvenile court abused its discretion when it granted all of DCS's requests for continuances because each request ultimately delayed her factfinding hearing.

[18] Here, the juvenile court made specific findings, on the record, of the good cause for granting each of DCS's requests for continuances. First, as to the June 21 request, the juvenile court acknowledged that DCS sought a continuance to assess Mother's mental capacity. Tr. at 4. A psychological evaluation of Mother from April 2021 revealed that she was mentally incompetent and needed the appointment of a guardian. *Id.* at 4, 5–6. To confirm whether this was true, Mother was scheduled to meet with a psychiatrist on June 23. *Id.* at 8; Appellant's App. Vol. 2 at 113. Next, as to the June 25 request, the juvenile court explained that the DCS attorney for this matter had been admitted to the hospital for labor induction. Tr. at 12. The court also explained that the attorney was unable to find a substitute because all DCS attorneys in the region were at a mandatory training out of town. *Id.* After granting the June 21 and June 25 requests for continuances, the juvenile court purposefully reset the factfinding hearing to a date within the 120-day timeframe. *Id.* at 8–9, 13.

[19] As discussed above, the juvenile court did not continue the factfinding hearing beyond the 120-day statutory deadline until June 28. In doing so, the court found that there was good cause for continuing the factfinding hearing past the deadline. Specifically, during the June 28 hearing, the juvenile court discussed how two of DCS’s essential witnesses were unavailable to testify on June 28, as well as how it only gave DCS a weekend to procure the witnesses after it granted DCS’s second request for a continuance on June 25. Tr. at 23. The court also acknowledged that DCS likely did not have enough time to serve subpoenas on the witnesses—both physicians—during that time and that the court did not consider the physicians’ busy schedules. *Id.* Thus, the court explained that it found good cause to reset the factfinding date to July 14, 2021, and that the date—only two weeks past the 120-day statutory deadline—would not prejudice Mother “all that much.” *Id.* at 23–24. The juvenile court then repeated these findings in its written factfinding order, stating:

There is good cause to continue the fact finding. The Court cannot determine the issue of CHINS without testimony from the essential witnesses described in the request filed by the Department. The Court and parties would be prejudiced if the Fact finding goes forward as scheduled. A witness will become available on July 6, 2021, which is only a short time beyond the statutory deadline of 120 days. The parties will still have a swift resolution to the issues before the Court with the short continuance, and will be able to fully present the case. Due to these factors, good cause exists for the Court to continue the Fact Finding Hearing to a later date.

Appellant’s App. Vol. 2 at 117.

[20] Ultimately, we conclude the juvenile court did not abuse its discretion when it reset the factfinding hearing beyond the 120-day timeframe. DCS showed good cause when requesting additional time to procure its two essential witnesses, whose testimonies were directly related to Mother's ability to comprehend the underlying proceedings, care for herself, and care for Child. As the juvenile court noted, the court and parties would have been prejudiced without testimony from the two physicians. And Mother has not shown or even asserted that she was prejudiced by the continuance.³ *Hinds v. McNair*, 413 N.E.2d 586, 609 (Ind. Ct. App. 1980) (explaining that we will not disturb a trial court's granting or refusing of a continuance absent a showing of clear and prejudicial abuse of discretion). Relatedly, DCS showed good cause when it requested additional time to assess Mother's mental capacity on June 21 and to procure an available attorney to represent DCS in this matter on June 25. Thus, because DCS showed good cause, the juvenile court did not err in granting DCS's requests for continuances, continuing the factfinding hearing past the 120-day statutory deadline.

³ Because Mother has not shown prejudice, we need not address her argument regarding the actual unavailability of the witnesses. Appellant's Br. at 15. Also, to the extent that Mother challenges the exhibit supporting DCS's June 28 request by arguing it does not comply with Trial Rule 53.5, her objection in the juvenile court was not based on Rule 53.5, Tr. at 21 (objecting to the exhibit's relevance), and she cannot make a different argument now on appeal. *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015) (explaining that an argument cannot be presented for the first time on appeal).

II. Due Process Rights

[21] Along with arguing that the juvenile court abused its discretion in continuing the factfinding hearing beyond the 120-day timeframe set forth in Indiana Code section 31-34-11-1(b), Mother argues the court’s decision to continue the matter violated her right to due process. Generally, an argument cannot be presented for the first time on appeal. *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015). “[A]ppellate review presupposes that a litigant’s arguments have been raised and considered in the trial court.” *Plank*, 981 N.E.2d at 53. Because Mother did not present her due process argument to the juvenile court, this argument is waived for purposes of appeal. *See id.* Waiver notwithstanding, we briefly address her claim below.

[22] The Due Process Clause of the United States Constitution prohibits state action that “deprives a person of life, liberty or property without a fair proceeding.” *In re E.T.*, 152 N.E.3d 634, 640 (Ind. Ct. App. 2020), *trans. denied*. Due 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 *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976)). Although due process “is not dependent on the underlying facts of the particular case, it is nevertheless flexible and calls for such procedural protections as the particular situation demands.” *E.T.*, 152 N.E.3d at 640.

[23] Mother has not shown how the factfinding hearing, although delayed, was unfair or how she was denied the opportunity to be heard at a meaningful time.

Moreover, while she argues she was denied the effective assistance of counsel because counsel failed to file a motion to dismiss to preserve her timeliness argument, that omission made no difference because, as discussed above, her timeliness argument fails even if it had been properly preserved. In any event, at the July 14, 2021 hearing, Mother's counsel objected to the admission of evidence, cross-examined witnesses, and vigorously advocated for his client. Thus, we reject Mother's claims that the juvenile court's decision to continue the matter violated her right to due process and that she was denied the effective assistance of counsel.

[24] In sum, we hold that the juvenile court did not abuse its discretion when it continued the factfinding hearing beyond the 120-day timeframe and Mother has failed to show a violation of her due process rights.

[25] Affirmed.

Mathias, J., and Brown, J., concur.