

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
C.G. (Minor Child);

R.G. (Father),

Appellant-Respondent

v.

The Indiana Department of
Child Services,

Appellee-Petitioner.

February 28, 2023

Court of Appeals Case No.
22A-JT-2262

Appeal from the Huntington
Circuit Court

The Honorable Amy C. Richison,
Judge

Trial Court Cause No.
35C01-2206-JT-10

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

- [1] R.G. (“Father”) appeals the termination of his parental rights. His sole argument is that the trial court abused its discretion when it denied his motion to continue the termination factfinding hearing. Concluding that the trial court did not abuse its discretion when it denied Father’s motion to continue, we affirm the trial court’s judgment.¹
- [2] We affirm.

Issue

Whether the trial court abused its discretion when it denied Father’s motion to continue the termination factfinding hearing.

Facts

- [3] Father and Mother are the parents of C.G. (“C.G.”), who was born in August 2019. In September 2020, the Department of Child Services (“DCS”) removed C.G. from Mother because she was using illegal drugs, including methamphetamine and heroin, while C.G. was in her care. Father had not established paternity and had had minimal contact with C.G., and Mother did not know how to contact him. DCS briefly placed C.G. with a family member and then with a foster family.

¹ Mother (“Mother”) voluntarily relinquished her parental rights and is not participating in this appeal.

- [4] In September 2020, DCS filed a petition alleging that C.G. was a child in need of services (“CHINS”). After DCS had located Father, he admitted that C.G. was a CHINS. In November 2020, the trial court entered a dispositional order that required Father to: (1) maintain weekly contact with DCS; (2) abstain from the use of illegal drugs; (3) complete a parenting assessment and follow all recommendations; and (4) attend supervised visits with C.G.
- [5] DCS Family Case Manager Aubri Cox (“FCM Cox”) was assigned to C.G.’s case in December 2020. Father, who had not yet engaged in any of the court-ordered services, told FCM Cox that “he did not want to be involved with [C.G.] or with [DCS][]” until he had established his paternity. (Tr. Vol. 2 at 80). FCM Cox reminded him that the trial court had ordered him to participate in services and encouraged him to do so.
- [6] Father established his paternity of C.G. in May 2021 and began supervised visits with C.G. in June 2021. Father regularly visited C.G. until December 2021, when Father voluntarily stopped attending most of the scheduled visits. Father’s last visit with C.G. was in February 2022.
- [7] During the course of the CHINS proceedings, Father never completed a parenting assessment or maintained regular contact with DCS. Father also frequently failed to comply with the court-ordered drug screens and generally tested positive for marijuana when he did comply.
- [8] In February 2022, Father failed to attend a status hearing. FCM Cox regularly attempted to contact Father by text and by telephone from March 2022 until

May 2022. FCM Cox also went to Father's home and left messages with Father's mother. FCM Cox eventually reached Father by telephone in May 2022 and encouraged him to participate in the court-ordered services.

[9] In June 2022, DCS filed a petition to terminate Father's parental rights. Father attended the initial hearing in the termination proceedings. At the hearing, the trial court appointed counsel for Father, reviewed the termination petition, and explained Father's rights.

[10] Father also attended a July 1, 2022, status hearing, denied the allegations in the termination petition, and asked the trial court to schedule a factfinding hearing. At the status hearing, the trial court scheduled a termination pre-trial hearing for August 19, 2022, at 8:30 a.m. and a factfinding hearing for August 25, 2022, at 9:00 a.m.

[11] When Father failed to attend the August 19 pre-trial hearing, the trial court asked Father's counsel if there was a reason for Father's absence. Father's counsel acknowledged that Father had been present when the trial court had scheduled the hearing but could not explain Father's absence.

[12] Father also failed to attend the August 25 factfinding hearing. At the beginning of the hearing, the trial court told the parties that it would take a short break to allow Father additional time to arrive. When the trial court returned to the court room, Father still had not arrived. Father's counsel made an oral motion to continue the hearing. DCS objected to the continuance and pointed out that Father had been present in court when the trial court had scheduled the

factfinding hearing. DCS also told the trial court that it had sent, by certified mail, a ten-day notice of the hearing to Father at his last known address. DCS had not received a return of that certified mail.

[13] The trial court denied Father's motion and explained as follows:

First and foremost, I believe and know that [Father] had actual notice of today's hearing because he was present on July 1, 2022 and informed in open court of that hearing[.] Furthermore, [DCS] has provided the notice required ten days prior to the hearing at the last known address for Father. And so for all of those reasons, I find there is support to believe that Father has knowingly and voluntarily absented himself from today's hearing, and we will proceed in his absence.

(Tr. Vol. 2 at 48). Father's counsel was present during the hearing and actively represented Father's interests by cross-examining witnesses and challenging the admission of evidence. Following the hearing, in September 2022, the trial court issued a detailed twenty-seven-page order that terminated Father's parental relationship with C.G.

[14] Father now appeals.

Decision

[15] At the outset, we note that Father does not challenge any of the trial court's findings or conclusions, and he does not argue that there is insufficient evidence to support the termination of his parental rights. Rather, Father's sole argument is that the trial court abused its discretion when it denied his motion to continue.

[16] Father specifically “concede[s] that he was given notice of the . . . Fact Finding Hearing scheduled on August 25, 2022 as he was present on July 1, 2022 where th[is] . . . court date[] [was] announced by the trial court.” (Father’s Br. 13). However, “[d]espite this [concession], Father argues that the trial court abused its discretion in denying Father’s request for a continuance as the trial court was without certainty as to why Father failed to appear.” (Father’s Br. 13). According to Father, “[h]ad the trial court granted this Motion, no harm would [have] be[en] done to [C.G.] as [C.G.] was safe in [C.G.]’s . . . placement and Father would have had additional time to comply with services and demonstrate his ability to change his ways.” (Father’s Br. 15).

[17] We review a trial court’s decision to grant or deny a motion to continue for an abuse of discretion. *In re K.W.*, 12 N.E.3d 241, 243-44 (Ind. 2014). “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.* (internal quotation marks and citation omitted). There are no “mechanical tests” for determining whether a request for a continuance was made for good cause. *In re M.S.*, 140 N.E.3d 279, 285 (Ind. 2020). Rather, the decision to grant or deny a continuance turns on the circumstances present in a particular case. *Id.* There is, however, a strong presumption that the trial court properly exercised its discretion, and the party seeking the continuance must show that he is free from fault. *In re B.H.*, 44 N.E.3d 745, 748 (Ind. Ct. App. 2015), *trans. denied.*

[18] We further note that a parent does not have a constitutional right to be present at a termination hearing. *In re E.E.*, 853 N.E.2d 1037, 1044 (Ind. Ct. App. 2006), *trans. denied*. In addition, this Court has previously recognized that delays in the adjudication of a case “impose significant costs upon the functions of government as well as an intangible cost to the lives of the children involved.” *In re B.J.*, 879 N.E.2d 7, 17 (Ind. Ct. App. 2008) (citation and internal quotation marks omitted), *trans. denied*.

[19] Here, our review of the evidence reveals that throughout the pendency of the CHINS proceedings, Father demonstrated a pattern of failing to: (1) participate in court-ordered services; (2) maintain communication with DCS; and (3) attend hearings. DCS filed a petition to terminate Father’s parental rights for these very reasons. In addition, on the day of the factfinding hearing, the trial court noted that Father had been present in court when the trial court had scheduled the factfinding hearing. The trial court also noted that DCS had sent a ten-day notice of the hearing to Father at his last known address. DCS had sent the notice by certified mail and had not received a return of that certified mail.

[20] In addition, at the time of the factfinding hearing, three-year-old C.G. had been in foster care for nearly two years. The trial court was not required to put C.G.’s permanency on hold until some potential future time when Father demonstrated his ability to change his ways. We further note that Father has not demonstrated that he was prejudiced by the trial court’s denial of his motion to continue. Based on these facts and circumstances, the trial court did

not abuse its discretion when it denied Father's motion to continue the termination factfinding hearing.

[21] Affirmed.

Altice, C.J., and Riley, J., concur.