

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.



ATTORNEY FOR APPELLANT

Michael B. Troemel
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

David E. Corey
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent–Child Relationship
of L.D. (Minor Child)

and

M.B. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

December 21, 2021

Court of Appeals Case No.
21A-JT-1534

Appeal from the Tippecanoe
Superior Court

The Honorable Nancy Gettinger,
Senior Judge

Trial Court Cause No.
79D03-2101-JT-9

Bradford, Chief Judge.

Case Summary

[1] M.B. (“Mother”) is the biological mother of L.D. (“Child”). The Department of Child Services (“DCS”) first became involved with Mother and N.D. (“Father”) (collectively, “Parents”) in 2017, after DCS received reports of neglect relating to Child’s older sibling. With regard to Child, DCS again became involved with Parents on April 3, 2020, after receiving a report alleging that Child was the victim of neglect. Child was eventually found to be a child in need of services (“CHINS”). Mother was subsequently ordered to complete certain services, including mental-health and substance-abuse treatment programs, therapy, and home-based services. DCS eventually petitioned to terminate Mother’s¹ parental rights after Mother failed to successfully complete the ordered services. Following an evidentiary hearing, the juvenile court granted DCS’s termination petition. On appeal, Mother contends that DCS failed to present sufficient evidence to support the termination of her parental

¹ DCS also petitioned to terminate Father’s parental rights to Child and the juvenile court granted this petition. Father, however, does not participate in this appeal.

rights and that DCS violated her due process rights by failing to offer her certain services during the underlying CHINS proceedings. We affirm.

Facts and Procedural History

[2] Child was born January 24, 2020, to Mother and Father. On April 2, 2020, DCS received a report alleging that Mother was having suicidal ideations and possibly thoughts of harming Child. DCS responded to, and Mother met DCS at, a location where Child had been taken by a friend of the family. Mother indicated she was upset due to the lack of involvement by Father. She also admitted that she was battling post-partum depression and dealing with withdrawal as she tried to get sober. Although Mother's stepmother and a friend encouraged her to receive in-patient treatment for her post-partum depression, Mother left the treatment facility without checking in and threatened suicide.²

[3] Child was removed from Parents' care in the early morning hours of April 3, 2020. At the time, Mother admitted that she was having a hard time caring for Child. Mother indicated that she had been clean from spice for approximately three days and a drug screen to which she submitted was negative. Mother admitted, however, that she had used spice approximately two weeks before. She did not submit to any subsequent requested drug screens. Mother also

² Mother did eventually check herself into the treatment facility but soon thereafter checked herself out.

indicated that Father was using drugs. Father refused to either complete a drug screen for DCS or allow DCS to check the suitability of the home where he was living.

- [4] On April 6, 2020, DCS filed a petition alleging that Child was a CHINS, based, *inter alia*, on allegations that Mother suffered from mental health issues, was homeless, admitted that she was not currently in a position to care for Child, and had a history with DCS that had resulted in the termination of her parental rights to another child. Mother denied that Child was a CHINS. In finding Child to be a CHINS, the juvenile court found that Mother, who was staying at a homeless shelter and had no income, had admitted that she was “not able to care for [Child] right now as she needs to work on herself before she can care for” Child. Ex. Vol. I p. 35. Mother had also indicated that she did “not want any help from DCS.” Ex. Vol. I p. 35. Mother had not maintained contact with DCS, and DCS had therefore been unable to refer services for Mother. Based on these facts, the juvenile court further found that Child was in need of care, treatment, or rehabilitation that Child was not receiving and that was unlikely to be provided or accepted without coercive intervention of the court.
- [5] Following a dispositional hearing, the juvenile court ordered Mother to participate in home-based case management and follow all recommendations, participate in parenting time, maintain weekly contact with DCS, complete a mental health/psychological evaluation and a parenting assessment and follow recommendations, and sign all necessary consent forms for release of information. The juvenile court further ordered Mother to:

- attend all court hearings, case conferences, visitations, and appointments as scheduled;
- notify DCS of any changes in address, household members, telephone number, or employment within five days;
- obtain and maintain safe and suitable housing and allow DCS, Child’s court-appointed special advocate (“CASA”), or service providers to make announced and unannounced visits to her home;
- refrain from consuming or possessing any alcohol, legend drug, or controlled substance without a prescription;
- submit to requested drugs screens;
- obtain and maintain a legal and stable source of income;
- be honest with DCS, the CASA, service providers, the juvenile court, and any other party involved in the case; and
- obey the law.

Mother subsequently requested, and DCS arranged, a referral for individual therapy. The permanency plan was later changed to adoption due to Mother’s failure to successfully complete the court-ordered and requested services and lack of progress towards reunification.

[6] On January 27, 2021, DCS filed a petition to terminate Parents’ parental rights to Child. The juvenile court conducted an evidentiary hearing on DCS’s

petition on June 14, 2021. On June 21, 2021, the juvenile court entered its order terminating Mother's parental rights to Child.

Discussion and Decision

- [7] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*
- [8] In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the

evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

[9] While Mother frames her argument as a challenge to the sufficiency of the evidence to sustain the juvenile court's conclusion that the conditions leading to Child's removal from her care will not be remedied,³ Mother does not challenge any of the juvenile court's findings or conclusions relating to this factor or provide any argument outlining claimed improvements in the conditions that led to Child's removal. As such, to the extent that Mother argues that the juvenile court's findings or conclusions are clearly erroneous, Mother has waived this issue. *See In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007).

[10] Instead, Mother contends that DCS violated her due process rights by failing to provide adequate services.

Due process protections bar state action that deprives a person of life, liberty, or property without a fair proceeding. It is unequivocal that the termination of a parent-child relationship by the State constitutes the deprivation of an important interest

³ In order to support the termination of Mother's parental rights to Child, DCS was required to prove, *inter alia*, that one 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;

Ind. Code § 31-35-2-4(b)(2)(B).

warranting deference and protection, and therefore when the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process.

In re G.P., 4 N.E.3d 1158, 1165 (Ind. 2014) (internal quotations omitted).

[11] The Indiana Supreme Court has explained that “the process due in a termination of parental rights action turns on balancing three *Mathews*^[4] 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 governmental interest supporting use of the challenged procedure.” *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (citing *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011)). As recognized in *In re C.G.*, in termination cases, both the State and the parent have substantial interests affected by the proceedings. 954 N.E.2d at 917–18. We therefore focus on the risk of error created by DCS’s actions and the juvenile court’s actions. *Id.* at 918.

[12] We have previously concluded that numerous procedural irregularities in a CHINS proceeding can amount to a deprivation of due process. *See In re A.P.*, 734 N.E.2d 1107, 1112–13 (Ind. Ct. App. 2000), *trans. denied*. Mother, however, does not allege that there were procedural irregularities in the instant matter, instead arguing that her due process rights were violated by DCS’s failure to provide services to assist in reunifying the family. “What constitutes

⁴ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

‘reasonable efforts’ will vary by case” and the requirement that DCS make reasonable efforts to reunite a family “does not necessarily always mean that services must be provided to the parents.” *In re T.W.*, 135 N.E.3d 607, 615 (Ind. Ct. App. 2019), *trans. denied*.

[13] In this case, the record provides that Mother was referred to numerous services, including services specifically requested by Mother. Despite being offered services aimed at treating her alleged mental health and substance abuse issues and helping her to obtain safe and stable housing, Mother asserts that DCS violated her due process rights by failing to offer her a free government-issued cellular telephone or assistance with transportation. The juvenile court considered Mother’s assertions, finding as follows:

Parents now assert that they do, in fact, want services, but complain that [they] are unable to participate in services that have been ordered because the DCS has not provided them with transportation or a cell phone to stay in contact with the DCS.

It is only on the day of the TPR fact-finding that these complaints have been lodged or barriers to their ability to participate in services and visit with their child have been alleged.

The complaints or perhaps their excuses for non-compliance are too little too late.

During the life of the CHINS case, there were review hearings and a permanency hearing [during] which the parents [had] the opportunity to request a government provided ... cell phone or to make the Court aware they may need additional services with regard to transportation.

Appellant's App. Vol. II p. 20.

[14] With regard to Mother's access to a telephone, the record indicates that while her telephone number would change with some regularity, Mother appeared able to obtain a working cellular telephone on her own, never asked DCS for a government-issued telephone, and never indicated that she did not have the ability to pay for a telephone. FCM Long testified that he would reach out to Mother via telephone, text, email, and letter. Although Mother would notify FCM Long when she obtained a new telephone number, her communication with him was "nothing consistent." Tr. Vol. II p. 63. When FCM Long would attempt to contact Mother, Mother either "wouldn't respond" or "would get upset ... would cuss [FCM Long] out and hang up the phone." Tr. Vol. II p. 63. When asked by Mother's counsel why DCS did not work to get Mother a government-issued cellular telephone, FCM Long indicated that Mother "would have [telephone] numbers," suggesting that Mother had obtained a cellular telephone on her own without DCS assistance. Tr. Vol. II p. 68. Additionally, Mother appeared at the evidentiary hearing via telephone, which also suggested that Mother had access to a cellular telephone.

[15] With regard to transportation, the record indicates that Mother never requested transportation to or from appointments. FCM Long indicated that he believed Mother had transportation available to her because he knew she had a vehicle and would sometimes sleep in her vehicle. While FCM Long never verified that Mother had a valid driver's license or that her vehicle was working, Mother did not indicate to DCS prior to the final evidentiary hearing that she did not

have a valid driver's license and had never asked DCS for bus passes or transportation to appointments.

[16] Contrary to Mother's claim on appeal, we believe that DCS offered Mother reasonable services aimed at reunification. DCS offered Mother services aimed at helping to treat her alleged mental-health and substance-abuse issues. She was offered visitation, both in person and virtually. She was offered therapy and home-based services. She did not successfully complete any of these services and refused to comply with aspects of the services. Further, the record reveals that despite changing her telephone number with some frequency, Mother was able to communicate with DCS on some occasions, and, when she did communicate with DCS, she would sometimes be hostile towards DCS and service providers. Mother also demonstrated an ability to request specific services, *i.e.*, personal therapy, but did not request that DCS provide her with a cellular telephone or aid her with transportation. Mother failed to make the individual progress, engage with service providers, or consistently participate. Mother has also demonstrated a pattern of willfully failing to work towards improving the circumstances that led to Child's removal from her care. As such, based on the record before us, we conclude that Mother has failed to establish that she was denied due process in relation to the termination of her parental rights to the Child.

[17] The judgment of the juvenile court is affirmed.

Crone, J., and Tavitas, J., concur.