MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary Termination of the Parent-Child Relationship of A.D.P.R. and A.P.L.R. (Minor Children)

and

C.U.R. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner

September 30, 2022

Court of Appeals Case No. 22A-JT-403

Appeal from the Allen Superior Court

The Honorable James R. Heuer, Senior Judge

Trial Court Cause Nos. 02D08-2105-JT-135, -136

Crone, Judge.

Case Summary

[1] C.U.R. (Mother) appeals the involuntary termination of her parental rights to her minor children A.D.P.R. and A.P.L.R. (the Children), claiming that the trial court erred in denying her motion to continue the hearing. We affirm.

Facts and Procedural History

[2] The relevant facts as found by the trial court are undisputed. Mother gave birth to the Children in November 2017.[1] In May 2018, Mother was treated at the hospital and "had been using marijuana and drinking alcohol when the children were in her care and custody." Appealed Order at 3.[2] The next day, the Indiana Department of Child Services (DCS) conducted a home visit. "Mother refused entry. Loud music was blaring. The police were required to enter the residence with an access key provided by the landlord." *Id.* The Children, then six months old, "had a flat affect. One child had a milk bottle containing mashed potatoes. There was no formula in the home[.]" *Id.* DCS removed the Children from Mother's home due to malnutrition and developmental delays, placed them in foster care, and filed a petition alleging that the Children were children in need of services (CHINS). Later that month, the trial court adjudicated the Children as CHINS.

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[1] Mother refused to participate in paternity proceedings. The Children's alleged father consented to the termination of his parental rights at the final hearing.

[2] A scrivener's error in the order states that this occurred in 2021.

[3] In July 2019, Mother was assessed by a clinical psychologist, who diagnosed her with post-traumatic stress disorder, marijuana abuse disorder, personality disorder not otherwise specified, and as a victim of child physical abuse. Mother was granted supervised visitation and "was compliant in her attendance" but "was often unruly and otherwise inappropriate in the presence of the [C]hildren." *Id*. at 4. During one visit, "the supervisor required the assistance of law enforcement to leave [M]other's home with the [C]hildren." *Id*. Mother was "non-compliant with parenting education" and other services. *Id*. She failed to inform the DCS family case manager (FCM) "regarding her employment and maintain appropriate contact with the FCM." *Id*. She was uncooperative with drug screens and once "threw the drug screen on the floor in the rotunda of the Courthouse" where she was attending a hearing. *Id*.

[4] In July 2021, DCS filed petitions to terminate Mother's parental rights. On September 2, 2021, the trial court set the final hearing for Thursday, November 4. On that date, Mother appeared in person and by counsel. Counsel orally requested a continuance on the basis that DCS did not provide a witness list until October 28, three days after the case management deadline; that DCS filed supplemental discovery on November 1, two days after the deadline; and that over 3,000 pages of discovery had been generated. DCS counsel objected, noting that the witnesses would be subject to cross-examination and that the supplemental discovery had been electronically submitted on October 20, which Mother's counsel did not dispute. The trial court denied the motion to continue and proceeded with the hearing.

[5] In January 2022, the court issued an order setting out the foregoing facts and further stating that "[s]ince December of 2020 [M]other has tested positive for marijuana on 5 screens and has 21 missed screens." *Id*. At the hearing, Mother testified that "she last used drugs three years ago." *Id*. But "[t]he lab test results … showed three drug tests taken on February 19, 2021, March 4, 2021 and May 18, 2021. All three results were positive for THC." *Id*. The court found that "Mother was less than credible during her testimony." *Id*. at 5.

[6] The court further found that the court-appointed special advocate recommended termination of Mother's parental rights and had multiple concerns regarding Mother, including that she is unable to meet A.D.P.R.'s special needs;[3] several service providers had "raised concerns about her hostility"; "[s]he has a lack of connection with the [C]hildren" and "is unable or unwilling to comply with parenting education"; the Children "have been in placement for 82% of their lives" and "have never been returned to her for a trial home visit"; and "[h]er supervised visits have been modified and reduced." *Id*. at 4. The court concluded that there is a reasonable probability that the conditions that resulted in the Children's removal and continued placement outside the home will not be remedied and that continuation of the parent-child relationship poses a threat to the Children's well-being; that termination of parental rights is in the Children's best interests; and that there is a satisfactory

[3] The Children's foster mother testified that A.D.P.R. was diagnosed with a "sensory processing disorder" in January 2020. Tr. Vol. 2 at 20. She also testified that both children exhibited "behavioral issues before and after visitation" with Mother. *Id*. at 29.

plan for the Children's care and treatment, that being adoption. Accordingly, the court granted DCS's petitions to terminate Mother's parental rights. Mother now appeals.

Discussion and Decision

[7] "Parents have a fundamental right to raise their children – but this right is not absolute. When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated." *In re Matter of Ma.H.*, 134 N.E.3d 41, 45-46 (Ind. 2019) (citation omitted), *cert. denied* (2020). A petition to terminate a parent-child relationship must allege, among other things:

> 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;
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> (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). DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *In re G.Y.*, 904 N.E.2d 1257, 1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[8] "We have long had a highly deferential standard of review in cases involving the termination of parental rights." *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

> We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court's judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous.

Id. at 92-93 (citations omitted). "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *In re A.G.*, 45 N.E.3d 471, 476 (Ind. Ct. App. 2015), *trans. denied* (2016). We accept unchallenged findings as true. *McMaster v. McMaster*, 681 N.E.2d 744, 747 (Ind. Ct. App. 1997).

[9] Here, Mother does not challenge any of the trial court's findings or conclusions. Instead, she argues that the trial court violated her due process rights by denying her motion to continue, claiming that she was "unable to be 'heard in a

meaningful time and manner.'" Appellant's Br. at 11. Mother did not raise this argument before the trial court, however, and our supreme court has stated that a party "may waive a constitutional claim, including a claimed violation of due process rights, by raising it for the first time on appeal." *In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016). "The rule of waiver in part protects the integrity of the trial court; it cannot be found to have erred as to an issue or argument that it never had an opportunity to consider." *GKC Ind. Theatres, Inc. v. Elk Retail Inv., LLC*, 764 N.E.2d 647, 651 (Ind. Ct. App. 2002). Consequently, we decline to address Mother's due process claim, other than to say that she was able to testify and cross-examine witnesses at the hearing, and she has not established that things would have played out any differently if she had been given more time to prepare.[4]

[10] Mother also contends that the trial court abused its discretion in denying her motion to continue. "Generally speaking, a trial court's decision to grant or deny a motion to continue is subject to abuse of discretion review." *In re C.C.*, 170 N.E.3d 669, 676 (Ind. Ct. App. 2021) (quoting *In re K.W.*, 12 N.E.3d 241, 244 (Ind. 2014)). "An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it." *State ex rel. Hill v. Jones-Elliott*, 141 N.E.3d 1264, 1266 (Ind. Ct. App. 2020). "An abuse of discretion may be found in the denial of a motion for a continuance when the

[4] Mother suggests that the fact that the hearing lasted only four hours, excluding recesses, demonstrates that she was unable to mount a proper defense to DCS's petitions. It is axiomatic that the length of a hearing is not by itself indicative of the quality of the parties' advocacy.

moving party has shown good cause for granting the motion; however, no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial." *C.C.*, 170 N.E.3d at 676.

[11] "A continuance requested for the first time on the morning of trial is not favored[,]" *Lewis v. State*, 512 N.E.2d 1092, 1094 (Ind. 1987), nor is a continuance to "allow more time for preparation[.]" *Downer v. State*, 429 N.E.2d 953, 954 (Ind. 1982). "[A] motion for continuance should be made at the earliest practicable time after knowledge of the necessity for a continuance" is acquired. *Blackford v. Boone Cnty. Area Plan Comm'n*, 43 N.E.3d 655, 664 (Ind. Ct. App. 2015) (citing *Clodfelder v. Walker*, 234 Ind. 219, 222, 125 N.E.2d 799, 800 (1955)). If Mother believed that DCS's pretrial submissions were too voluminous and/or tardy (which the supplemental discovery apparently was not), she should have asked the trial court to continue the hearing at the earliest available opportunity. She did not, and she has not shown good cause for granting her motion to continue. Also, as mentioned above, Mother has not established that things would have turned out any differently if she had been given more time to prepare, and thus she has failed to demonstrate that she was prejudiced by the trial court's ruling. We find no abuse of discretion, and therefore we affirm the trial court's order terminating Mother's parental rights.

[12] Affirmed.

May, J., and Weissmann, J., concur.