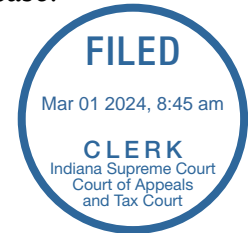


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE  
**Court of Appeals of Indiana**

In re the Involuntary Termination of the Parent-Child  
Relationship of B.R. (Minor Child) and

L.R. (Mother),

*Appellant-Respondent*

v.

Indiana Department of Child Services,

*Appellee-Petitioner*

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March 1, 2024

Court of Appeals Case No.

23A-JT-1885

Appeal from the Sullivan Circuit Court

The Honorable Robert E. Hunley, II, Judge

Trial Court Cause No.

77C01-2301-JT-1

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**Memorandum Decision by Judge Crone**

Judges Bailey and Pyle concur.

**Crone, Judge.**

## **Case Summary**

- [1] L.R. (Mother) appeals the involuntary termination of her parental rights to her minor child, B.R. (Child). We affirm.

## **Facts and Procedural History**

- [2] Child was born to Mother and P.H. (Father) on January 26, 2020. In August 2021, Mother was charged with class C misdemeanor operating a motor vehicle without ever having received a license. Then, on September 28, 2021, Mother was pulled over and found in possession of methamphetamine while Child was in the car. Mother was arrested and charged with level 6 felony possession of methamphetamine as well as other crimes. The Indiana Department of Child Services (DCS) became involved and filed a petition alleging that Child was a child in need of services (CHINS). DCS removed Child from Mother's care and placed her in a foster home. Mother admitted Child was a CHINS on October 27, 2021, and the trial court adjudicated Child a CHINS on December 29, 2021, after Father, who was incarcerated, also admitted Child was a CHINS. The trial court entered a dispositional order directing Mother and Father to participate in reunification services, including home-based case management and substance abuse assessments and recommendations.

- [3] Mother pled guilty to the felony possession charge and was incarcerated from October 2021 to mid December 2021, after which she was released to go to House of Hope for substance use treatment as part of her felony sentence. Mother left House of Hope after only one day, and a warrant was issued for her arrest. Mother was arrested on May 7, 2022. From December 2021 to May 2022, Mother had no contact with Child and minimal contact with DCS. She refused to meet in person with DCS and refused to participate in any services.
- [4] After her May 2022 arrest, Mother remained incarcerated until November 2022. Upon her release, Mother was referred for a substance use assessment, which she failed to complete until January 4, 2023. The assessment recommended that Mother complete substance use and relapse prevention through the Hamilton Center. Mother did not complete that service because she was incarcerated on a probation violation on January 27, 2023. Mother was released on May 27, 2023, and twice informed DCS that she intended to go to a sober living facility. DCS was unable to confirm that Mother ever went to such facility. In short, Mother was overall noncompliant with both home-based case management and substance abuse services and ultimately did not benefit from services.
- [5] DCS filed a petition to terminate Mother's and Father's parental rights on January 12, 2023. The trial court subsequently dismissed the termination petition as to Father because he consented to Child's adoption by her foster

parents.<sup>1</sup> Following a factfinding hearing held in June and July 2023, the trial court entered its findings of fact, conclusions thereon, and order terminating Mother’s parental rights. This appeal ensued.

## **Discussion and Decision**

[6] We observe that Mother does not challenge any of the trial court’s findings of fact or conclusions thereon, nor does she challenge the sufficiency of the evidence to support the termination of her parental rights. Rather, her sole assertion on appeal is that “the juvenile court erred by failing to notify the parties that it had received a letter from [Child’s] foster parents and failing to give the parties an opportunity to respond[.]” Appellant’s Br. at 4. She claims that this violated her due process rights. We find that Mother has waived this issue because she failed to raise it below.

[7] It is well understood that 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 v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013). This includes due process claims. *See In re K.S.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001) (explaining that mother waived

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<sup>1</sup> Accordingly, Father does not participate in this appeal.

constitutional claim that the trial court violated her due process rights because she raised claim for first time on appeal).

[8] As noted in the chronological case summary, the letter from Child’s foster parents was filed with the trial court on March 23, 2023, more than three months before the factfinding hearing. Thus, Mother’s counsel had ample opportunity to seek to review the letter and take whatever steps she deemed appropriate to address it. She failed to do so. “It is the duty of an attorney to keep apprised of the status of pending matters before the court” and “to exercise due diligence by regularly checking court records to ascertain the status of pending cases and a failure by an attorney to perform this duty falls within the category of neglect.” *Indiana Ins. Co. v. Ins. Co. of N. Am.*, 734 N.E.2d 276, 280 (Ind. Ct. App. 2000) (citation omitted). Because Mother did not present her due process argument to the trial court, this argument is waived for purposes of appeal.

[9] Waiver notwithstanding, we find no due process violation. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), *trans. denied*. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. *Id.* “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 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Our supreme court has held that “the

process due in a termination of parental rights action turns on balancing three *Mathews* 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." *Id.* (citation omitted). Because both a parent's and the State's countervailing interests are substantial, when faced with a claim of denial of due process in a termination-of-parental-rights case, we focus on the second factor, the risk of error created by the chosen procedure. *In re C.G.*, 954 N.E.2d 910, 917-18 (Ind. 2011).

[10] Based upon the record before us, we conclude that any error in the trial court's failure to notify the parties of the foster parents' letter to the court did not substantially increase the risk of error in the termination proceeding so as to rise to the level of depriving Mother of due process. Significantly, Mother points to nothing in the record that would indicate that the trial court even read the letter or relied upon it in any way. Indeed, the trial court's findings of fact, conclusions thereon, and termination order do not reference the letter or any information that is specific to the letter. Moreover, the substance of the letter about which Mother complains, particularly its reference to Child's diagnosis of reactive attachment disorder, the foster parents' efforts to provide Child with therapy, and Child's bond with foster parents is cumulative of other unchallenged testimony and evidence properly before the court.<sup>2</sup> Mother has

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<sup>2</sup> Specifically, Child's therapist Christina Hall testified regarding Child's reactive attachment disorder diagnosis and the progress that he had made in therapy since being removed from Mother's care. Moreover, as noted by DCS, the information in the letter mirrors information provided to the trial court and the parties

not demonstrated that she was deprived of due process. The trial court's termination order is affirmed.

[11] Affirmed.

Bailey, J., and Pyle, J., concur.

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through DCS's filing of the "Indiana Relative/Kinship/Foster Placement Reporting Form." Appellant's App. Vol. 2 at 77-83. Mother does not challenge this filing or assert that she was not given notice of its contents.