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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF M.P. and T.S.,)
MINOR CHILDREN and Their Mother,)
MARY PROBUS,)
)
MARY PROBUS,)
)
Appellant-Respondent,)

vs.)

No. 49A02-0604-JV-322

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner, and)
)
CHILD ADVOCATES, INC.,)
)
Appellee (Guardian ad Litem).)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Deborah Shook, Judge
Cause No. 49D09-0412-JT-359

November 6, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent Mary Probus appeals from the trial court's denial of her motion for a continuance on the day of the hearing on the petition to terminate Probus's parental rights that had been filed by appellee-petitioner Marion County Department of Child Services (DCS). Finding no error, we affirm the judgment of the trial court.

FACTS

Mary Probus has two minor children, M.P. and T.S., and a long history of drug abuse. She began using crack cocaine at the age of fourteen and has had continuous difficulty maintaining steady employment. On September 30, 2003, Probus was arrested for possession of drug paraphernalia and, at that time, police also discovered that she had an outstanding warrant for theft and forgery.

On October 6, 2003, DCS filed a petition alleging that M.P. and T.S. were children in need of services (CHINS) and removed the children from Probus's care because the home was in a state of disarray, there were drugs within the children's reach, Probus was incarcerated, and no one was available to care for the children. On October 23, 2003, Probus was arrested for possession of marijuana.

In November 2003, a social worker conducted a parenting assessment of Probus. After completing the assessment, the social worker formed grave concerns about Probus's parenting abilities. His concerns were based primarily on her ten-year history of crack cocaine use, including her routine use of the substance during the months prior to the

parenting assessment. He rated Probus's prognosis for successful reunification with her children as poor and he recommended, among other things, that she complete substance abuse treatment, including an Intensive Outpatient Program and random drug screening. On December 11, 2003, the trial court ordered Probus to notify her case manager of any changes in address or telephone number and to participate in the recommended rehabilitative programs.

On December 7, 2004, DCS filed a petition to terminate the parent-child relationship between Probus and her two children. Near the end of 2004, Probus was assigned to a new case manager, Janette Altes, who contacted Probus by telephone and mail and through her aunt. As part of her treatment for drug addiction, Probus was to undergo random drug screening, and after a number of her urine tests showed that her body temperature was too low for an accurate reading, she failed to complete the remaining tests in January 2005. Altes referred Probus for home-based counseling, which she never completed. By the end of February 2005, Altes was no longer able to contact Probus. Altes did not hear from Probus again until October 2005, when Probus was transported to a CHINS hearing from Marion County Jail, having been arrested in Florida on outstanding warrants. She did not contact Altes again until November 2005.

In November 2005, Probus had been released from jail and told Altes that she would be living with her aunt at 1306 Chesire Drive in Indianapolis. In December 2005, Probus contacted Altes again and informed her that she was still living with her aunt. Probus also stated that she had found employment but failed to verify that statement.

In mid-February 2006, Altes contacted Probus at her aunt's residence to remind her of an upcoming court hearing on February 22, 2006. Probus failed to attend the hearing. On February 23, 2006, Altes again contacted Probus via telephone at her aunt's residence, informing Probus that her termination hearing was scheduled for March 15, 2006. Following that conversation, Altes made a series of unsuccessful attempts to contact Probus at her aunt's residence, leaving a message with Probus's aunt on one occasion, regarding the hearing scheduled for March 15. On February 24, 2006, DCS mailed a letter to Probus at her aunt's residence—her last known address—notifying her of the termination hearing scheduled for March 15.

Probus failed to appear at the termination hearing on March 15, 2006. Her attorney moved for a continuance based on her absence but the trial court denied the motion and proceeded with the hearing. On March 22, 2006, the trial court entered written findings of fact and conclusions of law terminating the parent-child relationship between Probus and her two children. Probus now appeals from the denial of the motion for continuance.

DISCUSSION AND DECISION

As we consider Probus's contention that the trial court should have continued the termination hearing, we note that a trial court's ruling on a motion for a continuance rests within its sound discretion. Riggin v. Rea Riggin & Sons, Inc., 738 N.E.2d 292, 311 (Ind. Ct. App. 2000). We will only reverse upon finding an abuse of discretion, which requires the movant to establish good cause for granting the motion and prejudice as a result of its denial.

Id.

It is well established that the notice requirement for an involuntary termination of parental rights does not rise to that which is required for service of process. In re A.C., 770 N.E.2d 947, 950 (Ind. Ct. App. 2002). Instead, the notice must comply with Indiana Trial Rule 5, which applies to service of subsequent papers and pleadings. Id. Rule 5 permits service by mail to the last known address of the person being notified. Ind. Trial Rule 5(B); see also Ind. Code § 31-35-2-6.5(b) (requiring DCS to notify the parent(s) at least ten days prior to a scheduled termination hearing).

Here, DCS served Probus's attorney and Probus with notice of the March 15 hearing. Tr. Ex. 2. Notice was mailed to Probus at her last known address—Cheshire Drive in Indianapolis—which complied with Trial Rule 5 and the applicable statute. That Probus may have relocated by that time is of no moment, inasmuch as she had failed to inform DCS—as she was required to do—of any change of address. See In re C.C., 788 N.E.2d 847, 851 (Ind. Ct. App. 2003) (finding that notice of termination hearing is adequate if it was mailed to addressee's last known address even if DCS knew addressee no longer resided there so long as notice complied with Rule 5(B)), trans. denied. Consequently, Probus's argument that she was not properly served with notice of the date of the hearing must fail. Thus, she has not established good cause for the trial court to have granted the motion for a continuance.

Additionally, we note that Probus has failed to establish prejudice as a result of the denial of her motion. Even though Probus did not attend the hearing, she was represented by her attorney. Probus's attorney had the opportunity to—and did—cross-examine the State's witnesses. See In re E.E., 853 N.E.2d 1037, 1043-44 (Ind. Ct. App. 2006) (holding that in a

final termination hearing, if parent's attorney has opportunity to, and does, cross-examine the State's witnesses, the trial court's denial of a continuance does not deny due process even though hearing proceeded in parent's absence); see also C.C., 847 N.E.2d at 853 (holding that a parent does not have a constitutional right to be present at a termination hearing). Additionally, Probus cannot establish prejudice because of the overwhelming evidence presented by DCS in favor of termination, including Probus's history of drug abuse, lack of housing and income to care for her children, and inability or refusal to participate in court-ordered services including drug testing and counseling. Thus, we conclude that the trial court did not abuse its discretion in denying Probus's motion for a continuance.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.