



Termination of the Parent-Child Relationship

7/30/21

In A.S. v. Ind. Dep't of Child Servs., 175 N.E.3d 318 (Ind. Ct. App. 2021), the Court concluded that the trial court did not abuse its discretion when it denied Mother's motion to continue, and no error occurred when the successor judge certified the statement of the evidence when the original fact-finding hearing was not properly recorded.

DCS filed a CHINS petition alleging Mother had abandoned Child and her siblings. Mother admitted that Child was a CHINS and the trial court entered a dispositional decree ordering Mother into reunification services. Mother failed to participate in services and DCS filed its first petition to terminate Mother's parental rights. Later, both Mother and Father signed a consent for Child to be adopted. Four months later, Mother rescinded her consent. In response, DCS filed its second petition terminate Mother's parental rights. The trial court held an initial hearing and set a factfinding hearing date. Seven days before the factfinding hearing, Mother filed a motion to continue, but that motion was denied. The trial court held the hearing and Mother failed to appear. The trial court issues findings of fact and conclusions thereon terminating Mother's parental rights to Child. Due to an equipment malfunction, most of the hearing was not recorded. Mother filed a motion to remand the case to the trial court to reconstruct the unavailable part of the record.

The trial court did not deny Mother due process because it did not abuse its discretion in denying Mother's motion to continue. Id. at 323. Mother argued that it was an abuse of discretion for the trial court to deny her motion to continue and conduct the termination hearing in her absence. Id. 321. "It is unequivocal that the termination of a parent-child relationship by the State constitutes the deprivation of an important interest 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 J.K., 30 N.E.3d 695, 699 (Ind. 2015). The due process in a TPR proceeding turns on the balancing of three factors from Matthews v. Eldridge, 424 U.S. 319, 333 (1976): (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 the use of the challenged procedure. Id. The private interest affected by the proceeding, a parent's right to the care, custody and control of their Child, is substantial. Id. at 322. The State's interest in protecting the welfare of a child is also substantial. Id. The Court found that Mother waived this issue because she failed to object on due process grounds before the trial court when her motion to continue was denied. Id. An argument cannot be presented for the first time on appeal. Id. An abuse of discretion cannot be found when the moving party has not demonstrated that he or she was prejudiced by the denial. Id. At the termination hearing, Mother's counsel claimed that Mother could not leave work to attend the Zoom hearing because she was at risk of losing her job if she did. Id. Mother's counsel did not have confirmation from Mother's employer that this was the case. Id. DCS objected on grounds that Mother had more than a month to seek permission from her employer to attend the Zoom hearing. The CASA, Child, and Child's therapist all testified that any further delay in this case's resolution would affect Child's mental health and ongoing contact with Mother would inhibit Child's ability to

heal from her trauma. *Id.* at 323. Further, Child’s foster mother testified that Mother told her she would drag out the “legal case” until Child was “too old” to be adopted. *Id.* For these reasons, the trial court denied Mother’s motion to continue, and the Court found no abuse of discretion.

The trial court’s order certifying the statement of the evidence was not erroneous. *Id.* at 324. Due to an equipment malfunction, most of the hearing was not recorded. Indiana Appellate Rule 31 governs situations when no transcript is available. *Id.* at 323. The procedure calls for a “party or a party’s attorney to prepare a verified statement of the evidence from the best available sources, which may include the party’s or the attorney’s recollections.” *Id.* Once compiled, the statement of the evidence is to be presented in a motion to the trial court for certification. Ind. Appellate Rule 31(A). The opposing party has fifteen days to respond. Ind. Appellate Rule 31(B). Mother argues that the successor judge who certified the statements of the evidence lacked authority and that she is entitled to a retrial. None of the provisions of Indiana Appellate Rule 31 support that a successor judge cannot certify the recreated record. *Id.* at 324. Secondly, had Mother abided by the requirement to complete her response statement within 15 days, the presiding judge who heard the case would have been available to certify the statement of the evidence. *Id.* A party may not take advantage of an error that she invites. *Brewington v. State*, 7 N.E.3d 946, 975 (Ind. 2014). Therefore, the trial court did not err.