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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.M., minor child,	)	
JERRELL COVINGTON, natural father,	)	
Appellant-Respondent,	)	No. 49A02-0609-JV-830
vs.	)	
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro-Tempore
Cause No. 49D09-0603-JT-013310

April 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Jerrell Covington appeals from the involuntary termination of his parental rights to his minor child, M.M., in an action initiated by the Marion County Department of Child Services (the DCS). Specifically, Covington argues that he did not receive actual or constructive notice of the termination hearing, which resulted in a violation of his due process rights. Finding no error, we affirm the judgment of the trial court.

FACTS

M.M. was born on August 22, 2005. On August 26, 2005, the DCS filed a child in need of services (CHINS) petition, alleging that M.M. was a CHINS because Covington[1] had not complied with the DCS in previous cases and that "he has not successfully demonstrated to DCS the ability or willingness to appropriately parent the child." Ex. 6. A fact-finding hearing was held on January 4, 2006, after which the trial court declared M.M. to be a CHINS and removed her from Covington's care.

On March 29, 2006, the DCS filed a petition to involuntarily terminate Covington's parental rights with regard to M.M. The DCS mailed a summons to Covington at his last known address and also left a copy at the residence on April 28, 2006. On May 18, 2006, Covington and his attorney attended an initial hearing on the termination petition, and the DCS case manager personally served Covington with the summons at the hearing. The trial court held a facilitation hearing on June 12, 2006, and Covington stated that he was "living in Illinois" and requested that he be served at an address in Illinois. Ex. 3.

[1] The CHINS petition also alleged that M.M.'s mother had recently been released from prison, was homeless, and had previously had her parental rights terminated with respect to her four older children. M.M.'s mother is not a party to this appeal.

On August 30, 2006, the DCS sent Covington notice of the termination hearing at his Illinois address. Covington failed to appear at the termination hearing on September 11, 2006; however, he was represented by counsel. His counsel requested a continuance, but the trial court denied that request after analyzing the notice that Covington had received. After the hearing, the trial court granted the DCS's involuntary termination petition. Covington now appeals.

DISCUSSION AND DECISION

I. Standard of Review

In addressing Covington's claims, we first note that we will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). We neither reweigh the evidence nor judge the credibility of witnesses. Id. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., D.S., and A.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

We acknowledge that the involuntary termination of parental rights is the most extreme sanction that a court can impose because termination severs all rights of a parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental

rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing that

> (A) one (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> >
> > (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
> >
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> >
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 35-2-4(b)(2).

II. Notice

Covington's sole contention on appeal is that we should remand this case to the trial court for a new termination hearing because the State failed to give him proper notice of the

hearing date and its potential impact on his relationship with M.M. Specifically, Covington argues that the State improperly served him, violating his due process rights.

The State must satisfy the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution when it seeks to terminate the parent-child relationship. In re S.P.H., 806 N.E.2d 874, 878 (Ind. Ct. App. 2004). "Due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses." In re M.L.K., 751 N.E.2d 293, 295-96 (Ind. Ct. App. 2001). Before an action affecting a party's interest proceeds, "the State, at a minimum, must provide notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Id. at 296.

Presumably because of the great interests at stake in termination proceedings, our legislature has enacted an additional notice requirement. Indiana Code section 31-35-2-6.5(b) requires, in relevant part, that the person or entity that filed the petition to terminate the parent-child relationship send notice of the termination hearing to the parent at least ten days prior to the hearing date. The notice required by section 31-35-2-6.5 is a statutory procedural requirement that does not rise to a constitutional dimension. In re A.C., 770 N.E.2d at 950.

The gravamen of Covington's argument[2] is that there is no evidence that he had actual notice of the September 11, 2006, termination hearing and that he was unaware that his

[2] Covington also argues that the DCS's initial service of the summons was improper because the DCS served him at an address in Indiana. However, the Indiana address was Covington's last known address, and he clearly received the summons because he was present at the initial hearing on May 18, 2006. Furthermore, to

parental rights could be terminated on that date. We first note that Covington signed a court facilitation status report on June 12, 2006, which listed the trial date as "9-11-06 @ 1:00."[3] Ex. 3. And, in compliance with section 31-35-2-6.5, the DCS sent Covington a letter on August 30, 2006, which read as follows:

> You are notified that there will be a hearing on the [DCS] petition to terminate the Parent Child Relationship with [M.M.] on September 11, 2006 at 1 P.M. in the Marion County Superior Court . . . . If you do not come to this hearing, the Court can hold the trial without you and issue an order ending your relationship with your child. If the Court ends your parent-child relationship, you will lose the right to have custody of your children or to visit. This also means the child can be adopted without your consent.

Ex. 4. This notice was sent to Covington at his Illinois address pursuant to his request at the facilitation hearing.

Covington had a duty to notify the caseworker within five days of any address change, ex. 10, and he has presented no evidence that any such notification occurred. Thus, we fail to see how he was denied due process when the DCS complied with the statutory requirements and he personally signed a status report that listed the termination hearing date. The State's notice was reasonably calculated to provide Covington with notice of the termination hearing and afford him an opportunity to present his objections. Therefore, Covington's due process argument fails.

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ensure that Covington had properly been served, the DCS served him another copy of the summons while he was at the initial hearing and his signature appears on that copy. Appellant's App. p. 12.

[3] Covington argues that the facilitation hearing focused on Covington's potential reunification with M.M.; therefore, he did not realize that the September 11, 2006, hearing could result in the termination of his parental rights. However, there is no evidence that a suspension of the termination proceedings was discussed at the facilitation hearing, and the plain language of the status report—which Covington signed—clearly lists the termination trial date.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.