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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF B.G., A Minor Child, and)
his Father, H.G., and Mother, S.G.,)
)
H.G.,)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD SERVICES,)
Appellee-Petitioner.)

No. 52A02-1007-JT-854

APPEAL FROM THE MIAMI SUPERIOR COURT II
The Honorable Daniel C. Banina, Judge
Cause No. 52D02-0911-JT-12

February 24, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, H.G. (Father), appeals the trial court's termination of his parental rights to his minor son, B.G.

We affirm.

ISSUE

Father raises one issue on appeal, which we restate as follows: Whether the trial court abused its discretion in denying Father's motion to continue a fact-finding hearing when Father could not attend the hearing.

FACTS AND PROCEDURAL HISTORY

B.G. was removed from the care of his Father and adoptive mother (Mother)¹ at their request on March 11, 2008, when he was ten years old. At the time, B.G. had displayed aggressive and destructive tendencies that posed a risk to himself and others, and Father and Mother thought that they needed additional help with his behavior. Initially, the Indiana Department of Child Services (DCS) focused on B.G.'s treatment, but after several months DCS began to notice that Father did not provide B.G. with the structure and boundaries that he needed. Father regularly drank three to eighteen cans of beer a day and refused to follow the recommendations of two mental health professionals that he seek treatment for substance abuse. Father also refused to follow their recommendations that he seek treatment for post-traumatic stress disorder related to his experiences in the military in Vietnam.

¹ Mother is not a party to this appeal.

DCS found that Father's behaviors had a negative effect on B.G. B.G.'s destructive behavior worsened both before and after talking to Father on the phone. In addition, B.G.'s therapists determined that Father perpetuated B.G.'s destructive behavior by encouraging B.G. to respond to people that made fun of him by "bust[ing] [them] in the mouth." (Transcript p. 170). In contrast, B.G.'s behavior improved when DCS moved him to a structured, secure location. B.G.'s therapists formed the opinion that DCS would never be able to return B.G. to Father's home.

As a result, on November 20, 2009, DCS filed the instant petition for involuntary termination of the parent-child relationship. On April 26, 2010, the trial court held a termination fact-finding hearing. Father was not present at the fact-finding hearing, and Father's counsel (Counsel) did not know why Father was not present. Counsel advised the trial court that Father knew about the hearing and had indicated that he would be present. Counsel requested, though, that the trial court entertain a motion to continue the hearing so that Counsel could locate Father. The trial court denied the motion but recessed so that a court appointed special advocate (CASA) could go to Father's house. The CASA went to Father's house and did not find Father, so the trial court proceeded with the fact-finding hearing.

Over lunch that same day, Counsel discovered that Father had called the Public Defender's office and indicated that he was ill and could not walk due to an injured foot. In his message, Father asked Counsel to request a continuance of the hearing. As a result, Counsel renewed his motion to continue the hearing both after lunch and at the close of

evidence, but the trial court denied his request both times. Subsequently, on July 8, 2010, the trial court issued an order terminating Father's parental rights.

Father now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *C.T. v. Marion County Dept. of Child Servs.*, 896 N.E.2d 571, 576 (Ind. Ct. App. 2008). The decision to grant or deny a motion to continue rests within the sound discretion of the juvenile court. *Id.* at 577. Therefore, we will not disturb the trial court's ruling absent a showing of clear and prejudicial abuse of that discretion. *Id.*

In termination cases, both the private interests of the parents and the countervailing governmental interests that are affected by the proceeding are substantial. *Id.* at 587. In particular, "a termination action affects a parent's interest in the care, custody, and control of his or her child, which has been repeatedly recognized as one of the most valued relationships in our society." *Id.* On the other hand, the State has a compelling interest in protecting the welfare of children. *D.A. v. Monroe County Dept. of Child Servs.*, 869 N.E.2d 501, 510 (Ind. Ct. App. 2007). Delays in the adjudication of a case impose significant costs upon the functions of the government, as well as an intangible cost to the lives of the children involved. *Id.*

In balancing these factors, the court must be cognizant of a parent's right to due process. The Due Process Clause of the United States Constitution prohibits state action that

deprives a person of life, liberty, or property without a fair proceeding. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006). The nature of the process due in a termination of parental rights proceeding turns on the balancing of three 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 the use of the challenged procedure.

Id.

Further, Indiana Code section 31-32-2-3(b) provides that in proceedings to terminate a parent-child relationship, a parent, guardian, or custodian is entitled to: (1) cross-examine witnesses; (2) obtain witnesses or tangible evidence by compulsory process; and (3) introduce evidence on behalf of the parent, guardian, or custodian. *D.A.*, 869 N.E.2d at 510. Similarly, Indiana Code section 31-35-2-6.5 states that a court shall provide a party with an opportunity to be heard at a hearing. This court has held, though, that this provision does not create a constitutional right for a parent to be physically present at a termination hearing. *C.T.*, 896 N.E.2d at 587.

II. *Motion to Continue*

Father argues that the trial court improperly denied his motion to continue and therefore deprived him of the opportunity to present evidence defending his relationship with B.G. in court. We cannot agree with this proposition based on the facts before us. As stated above, a parent has a very substantial interest in a termination hearing. This interest, though, must be balanced with the cost to the State in delaying procedures, the State's interest in the

child's welfare, and the risk of error in denying the procedure. *See In re E.E.*, 853 N.E.2d at 1043.

Here, the State had substantial interests in proceeding with the hearing on its originally scheduled day, April 26, 2010. The State faced increased costs by delaying the hearing, and the trial court noted that by the time Father's Counsel realized Father was not in attendance, all of the witnesses had already gathered to testify at the hearing. It would have been a burden on all parties for the trial court to re-schedule the hearing to another day, and for all of the witnesses to re-appear. In addition, the fact that B.G.'s destructive behavior increased every time he had contact with Father indicated that a delay in the proceedings would have been a substantial burden on B.G. emotionally. DCS indicated that it was waiting on a termination of Father's parental rights to proceed with finding B.G. adoptive parents.

Furthermore, we note that, as stated above, a parent does not have a constitutional right to attend a termination hearing. Father's Counsel adequately represented his interests at the hearing by extensively cross-examining witnesses and by introducing a witness on Father's behalf. Due to these actions, there was a lower risk that the trial court's denial of Counsel's motion substantially prejudiced Father. Counsel's presence also ensured that

Father had an opportunity to be heard. As a result, we cannot conclude that the trial court prejudicially abused its discretion in denying Father's motion to continue.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion by denying Father's motion to continue.

Affirmed.

ROBB, C.J., and BROWN, J., concur.