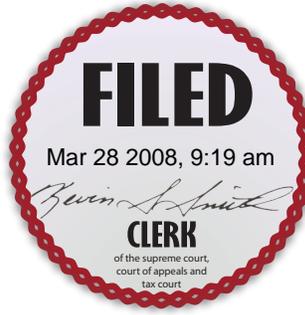


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANTS:

ATTORNEY FOR APPELLEE:

BRENT R. DECHERT
Kokomo, Indiana

REBECCA R. VENT
McIntyre Hilligoss Vent & Welke
Kokomo, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CAROLETTA H. and STEPHEN T.,)
)
Appellants-Respondents,)
)
vs.)
)
HOWARD COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 34A04-0712-JV-690

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0702-JT-2 & 34C01-0702-JT-3

March 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Caroletta H. (“Mother”) and Stephen T. (“Father”) appeal the involuntary termination, in Howard Circuit Court, of their parental rights to their children, D.H. and G.T. The parents raise several issues on appeal, which we consolidate and restate as:

- I. Whether the trial court’s judgment terminating Mother’s and Father’s parental rights to D.H. and G.T. was supported by clear and convincing evidence; and,
- II. Whether the parents were denied their constitutional right to due process during the underlying CHINS and termination proceedings.

We affirm.

The evidence most favorable to the trial court’s judgment reveals that on November 3, 2005, the Kokomo Police Department arrested Kimmie W. on an outstanding warrant for Maintaining a Common Nuisance, a class D felony, and for Possession of Marijuana, a class A misdemeanor. At the time of Kimmie’s arrest, the police contacted the Howard County Department of Child Services (“HCDCS”) because there were several children in Kimmie’s care and custody, including two of her own children, as well as her two grandsons, G.T. and D.H. At the time the children were removed from Kimmie’s home, Father, Kimmie’s son, was incarcerated on pending charges of Dealing in Cocaine, a class A felony. Mother’s whereabouts were unknown. All of the children in Kimmie’s home at the time of her arrest were taken into protective custody and placed in foster care.

On December 1, 2005, the HCDCS filed petitions alleging that D.H. and G.T. were children in need of services (“CHINS”). At a hearing held on April 3, 2005, both parents, who were still incarcerated, appeared with counsel and admitted to the

allegations in the CHINS petitions. Pursuant to a Dispositional Decree issued on May 1, 2006, the parents were ordered to participate in various services in order to achieve reunification with their children. These services included, among other things, individual counseling, family counseling, random drug screens, supervised visitation, and family educator services. The parents were also ordered to obtain and maintain suitable housing and employment.

Father, who eventually pleaded guilty to two counts of Possession of Cocaine as class B felonies, remained incarcerated throughout the entire CHINS and termination proceedings. As of the time of the termination hearing, Father's release date was projected for sometime in 2013. Mother, who was arrested on an outstanding warrant on November 4, 2005, the day following the children's removal from Kimmie's home, remained incarcerated for several months until May 30, 2006.

Initially, upon her release from jail, Mother began participating in services and showed progress toward reunification with her children. Mother began exercising regular supervised visitation and was eventually allowed unsupervised visitation. Mother also began to participate in a substance abuse program for women at The Gilead House. However, in August 2006, Mother began missing scheduled visitations with her sons and stopped all communication with the HCDCS. Additionally, Mother still had not obtained employment or housing, dropped out of the local substance abuse program, and refused to submit to random drug testing. In October 2006, Mother ceased all visitation with the children.

On November 11, 2006, Mother was re-arrested and remained incarcerated until November 28. She was arrested and incarcerated again from January 22 to February 15, 2007, and was arrested a third time on March 8, 2007. At the time of the termination hearing on August 14, 2007, Mother remained incarcerated and was awaiting trial on three counts of Theft and one count of Conversion.

On February 23, 2007, the HCDCS filed separate petitions for the involuntary termination of both Mother's and Father's parental rights to D.H. and G.T. The causes were later consolidated. A termination hearing on the petitions was commenced on June 26, 2007, and concluded on August 14, 2007. On September 4, 2007, the trial court issued its judgment terminating both parents' rights to D.H. and G.T.

I.

Mother and Father assert that the trial court's judgment terminating their respective parental rights is not supported by clear and convincing evidence. This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the trial court's judgment, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id.

Here, the trial court made specific findings in ordering the termination of Mother's and Father's parental rights. Where the trial court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence

supports the findings, and second, we determine whether the findings support the judgment. Bester v. Lake County Office of Family of Children, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied; see also Bester, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment thereon. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

“The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. K.S., 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

(A) [o]ne (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * * * *

- (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 § 31-35-2-4(b)(2) (1998 & Supp. 2007). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother and Father do not challenge the fact that both children were removed from their care for the requisite amount of time pursuant to the statute, or that the HCDCS had a satisfactory plan for the care and treatment of the children, namely, adoption. The parents do, however, challenge the evidence supporting the remaining factors set forth above. In so doing, Mother and Father first assert that the HCDCS failed to prove by clear and convincing evidence that the conditions that resulted in the children's removal and continued placement outside of their care will not be remedied and that continuation of the parent-child relationship poses a threat to the children's well-being. Specifically, they claim that "the children were doing fine prior to their removal and that [M]other, [F]ather and [Kimmie] were sufficiently caring for them." Appellant's Br. at 10.

Initially, we note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, it requires the trial court to find only one of the two requirements of subsection (B) by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Accordingly, we shall first review whether the trial court's finding that the conditions that resulted in the children's removal and continued placement outside the home of the parents will not be remedied is supported by clear and convincing evidence.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children *at the time of the termination hearing*, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. (Emphasis added.) Additionally, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also properly consider the services offered to a parent, and the parent's response to those services as evidence of whether conditions will be remedied. Id. Moreover, the HCDCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability that the parents' behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining that there was a reasonable probability that the conditions resulting in the children's removal and continued placement outside the parents' home would not be remedied, the trial court made the following pertinent findings:

* * * * *

15. At the time of the dispositional hearing on May 1, 2006, [Mother] had been incarcerated continuously since November 4, 2005. On May 30, 2006, [Mother] was released from jail, and she began to participate in family services, a drug treatment program, and to visit the children.
16. During the months [of] June, July, August, and September 2006, [Mother] visited with the children consistently. At the July 31, 2006 review hearing, the court authorized the visits to be unsupervised. Visits did not include overnights, however, as [Mother] was not able to establish suitable housing to exercise such visitation. On July 17, 2006, [Mother] advised the [HCDCS] that she was living with Roy [D.] a boyfriend, and the home itself was deemed appropriate; however, upon investigation, it was determined that [Roy D.] had an extensive criminal history and [Mother] was not truly residing there.
17. Although [Mother] maintained consistent and appropriate visits with the children during the summer in 2006, she did not consistently comply with court orders. She attended four (4) drug treatment meetings at the Gilead House in June 2006, but did not attend thereafter. The family educator arranged for her to attend a drug treatment program at the Howard Behavioral Health Center and transported her to the first session, but [Mother] chose not to attend. [Mother] refused to submit to random drug tests when requested by the [HCDCS] case manager Barbara Gainer and the family educator Vickie Clifford. [Mother] never secured employment or stable housing. For periods [of] time, neither the [HCDCS] nor family educator knew where [Mother] was residing or could be located.
18. In October 2006, [Mother] missed several scheduled visits with the children. She was not participating in family services, counseling, or drug treatment, and she was not cooperating with the [HCDCS] or family educator. At the twelve (12) month review hearing held October 30, 2006, [Mother] did not appear and her whereabouts

were unknown. She visited with the children last on November 9, 2006.

* * * * *

20. As of the fact[-]finding hearing August 14, 2007, [Mother] had been incarcerated continuously since March 8, 2007. She testified that she expects to enter into a plea agreement on pending theft charges and to be released within a few weeks; however, there was no other evidence submitted to substantiate that [Mother] would be released from incarceration in the near future. As of the fact[-]finding hearing on August 14, 2007, [Mother] had four (4) pending charges involving theft and/or conversion. While she has been incarcerated this time, she has participated in drug counseling at the jail and had written the children letters on two (2) occasions.
21. Prior to the children's removal in November 2005, [Mother] had an extensive criminal history. In the late 1980's and early 1990's, she was incarcerated in the Indiana Department of Corrections for four and a half (4 1/2) years on cocaine charges. According to Kokomo Police Department records attached to CASA's report filed April 13, 2007 in these causes, she was arrested twenty-six (26) times from 2002 to October 2006. Prior to the children's removal on November 3, 2005, [Mother] had been incarcerated twenty-eight (28) days during the month of October 2005. Since the children's removal in November 2005, she has been incarcerated for thirteen (13) of the twenty-one (21) months the children have been in foster care.

* * * * *

23. Prior to [D.H.'s] and [G.T.'s] births, [Mother] had three (3) children. Her first child was removed and deemed a CHINS upon her arrest and incarceration on cocaine charges approximately fifteen (15) years ago. Her second and third children, now ages ten (10) and nine (9) years of age are and have been in the care of their paternal grandfather in Indianapolis, pursuant to a guardianship.
24. Prior to the children's removal, their father . . . was arrested and incarcerated in September 2005 on cocaine dealing charges. [Father] was charged with nine (9) counts, including multiple dealing in cocaine charges. [Father] pled guilty to two (2) of the dealing charges in exchange for the other charges being dismissed. On August 16, 2006, [Father] was sentenced to the Indiana

Department of Corrections for twenty (20) years, five (5) years suspended. His earliest release date . . . is April 5, 2013. [Father] has a prior conviction for domestic battery in which [Mother] was the victim.

* * * * *

27. The [HCDCS] case plans in these cases have the stated goal of reunification with their mother To that end the court has ordered and the [HCDCS] offered family educator services, counseling, assistance with drug counseling, housing and employment, and arranged and supervised visitations. However, [Mother] has not been available to participate in such services during the periods she has been incarcerated, and aggregate period of thirteen (13) months of the past twenty-one (21) months. [Father] has never been available to participate in family or reunification services, he having been incarcerated continuously since before the children's removal.

* * * * *

31. In the twenty-one (21) months since the children have been removed from their parents' care, the parents have not shown the ability to provide a consistent stable, safe and nurturing environment necessary to provide care and custody to their children. Due to their incarceration, each parent has been unavailable to provide care and custody for their children. During the periods when she was not incarcerated since the removal, [Mother] did not maintain stable housing, obtain employment, or consistently cooperate in offered counseling, drug treatment, and family services.

* * * * *

33. In the judgment of the court, neither [Mother] nor [Father] is unlikely (sic) to ever adequately care and provide for [D.H.] and [G.T.] consistently as a custodial parent.

* * * * *

37. The court finds it is reasonably probable that the conditions, namely [M]other's inability to properly care for the children and provide them with a suitable environment, will not be remedied to the degree that she will be able to provide the children with the nurturing, stable, and appropriate care and environment that they require on a

long-term basis. The court further finds that it is reasonably probable that [F]ather's inability to provide care and custody for the children will be remedied.

Appellant's Appendix at 47-56.

Our review of the record leaves this Court convinced that ample evidence supports the trial court's findings set forth above. Although Mother initially engaged in services offered by the HCDCS after her release from prison in May 2006, HCDCS Case Manager Barbara Gainer testified that after approximately three months, Mother began missing scheduled visitations with her children and had not visited with them at all "since November of 06." Transcript at 31. The failure to exercise the right to visit one's child demonstrates a lack of commitment to complete the actions necessary to preserve the parent-child relationship. Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied.

Gainer also testified that Mother refused to submit to random drug screens, never obtained independent housing, never obtained employment, and never regularly participated in counseling. Most significant, however, is the fact that in addition to failing to participate in court-ordered services, Mother, who has a lengthy criminal history dating back to the late 1980s and who spent approximately thirteen of the twenty-one months the children were in foster care incarcerated, was back in jail at the time of the termination hearing with four pending charges involving theft and conversion. Consequently, at the time of the termination hearing, Mother was unavailable to care for and have custody of her children, and any future availability was unknown.

Similarly, Gainer testified that Father had been “continuously incarcerated from the time of [the children’s] removal in November ’05 until we sit here today, which is June 25th of ’07.” Transcript at 29. Father therefore had never even attempted to participate in the court-ordered services designed for reunification of the family. Additionally, Father’s most current projected release date was not until April 2013.

“[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” Lang, 861 N.E.2d at 372. Since the time of the children’s removal, approximately two years had passed, and still the parents were unavailable to care for their children due to their pursuit of criminal activity and resulting incarceration. Based on the foregoing, we conclude that the trial court’s finding that there was a reasonable probability that the conditions resulting in the children’s removal from the care and custody of their parents would not be remedied is supported by clear and convincing evidence.¹ It is unfair to ask D.H. and G.T. to continue to wait until Mother and Father are willing and able to get, and benefit from, the help that they need. See In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children “on a shelf” until their mother was capable of caring for them).

¹ Having determined that the trial court’s finding regarding the remedy of conditions is supported by clear and convincing evidence, we need not address the issue of whether the HCDCS failed to prove that the continuation of the parent-child relationship posed a threat to the children’s well-being. See L.S., 717 N.E.2d at 209 (explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive).

Next, we address the parents' claim that termination of their parental rights to D.H. and G.T. is not in the children's best interests. The purpose of terminating parental rights is not to punish the parents but to protect the children involved. K.S., 750 N.E.2d at 836. However, in determining the best interests of the children, the trial court must subordinate the interests of the parents to those of the children. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Additionally, we are mindful that in determining what is in the best interests of the children, the court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. Id. at 203.

In addition to its Findings 27 and 33 set forth previously, see supra at I., the trial court made the following pertinent findings in determining whether termination of Mother's and Father's parental rights was in the best interests of the children:

* * * * *

26. When the children were removed in November 2005, [D.H.] was two (2) years of age and [G.T.] was one (1) year of age. The children were found to have speech and developmental delays. While in foster care (same home), the boys participated in First Steps. They are happy and healthy children, and now developmentally on target. The boys are now four (4) and three (3) years of age, respectively.

* * * * *

32. As children at three (3) and four (4) years of age, [G.T. and D.H.] each requires the security of a safe, nurturing environment and routine providing them with stability. Most importantly, [D.H. and G.T.] need permanency in their lives.

* * * * *

34. The court recognizes that [Mother] has made efforts to gain certain stability in her life. While incarcerated this past time, she has participated in drug treatment programs as available at the jail and she has remained drug free. [Mother] testified that she expects to be released from incarceration within a few weeks, and that she is highly motivated to establish the necessary stability to provide a home for her children. But, [Mother] asks and expects the court and her children to delay for an indefinite time consideration of the children's dire need for permanency. [Mother's] desires are subservient to [D.H.'s] and [G.T.'s] best interest.
35. [Father] . . . also asks and expects the court and his children to delay consideration of the children's need for permanency. His current and earliest release date from prison is in April 2013, more than five (5) years from now. Even if he successfully completes certain educational programs as he intends while in the Department of Corrections, he will not be eligible for release and available to care for his children for several years.

* * * * *

38. The Court further finds by clear and convincing evidence that the continuation of the parent-child relationships between [Mother and Father] and [D.H.], and [Mother and Father] and [G.T.] pose a threat to the well-being of each child. A termination of the parent-child relationships is in the best interest of said children because [D.H.] and [G.T.] need permanency with caregivers who can provide each with a nurturing environment that is secure and free of neglect and meets each child's needs until each reaches the age of majority. Neither parent has demonstrated a past or current ability to provide [D.H.] or [G.T.] permanency. . . .
39. The court further finds by clear and convincing evidence that termination of the parent-child relationships of [Mother and Father] and [D.H.], and [Mother and Father] and [G.T.], is in the best interests of each child, in that further efforts to reunite the parent and either child are unlikely to succeed. The failure to terminate the relationship will deny each child the stability and permanency to which he is entitled, and has too long been denied. It is in [D.H.'s] and [G.T.'s] best interest to have permanency, not perpetual foster care and uncertainty in their lives.

At the termination hearing, both the HCDCS caseworker and the children's court-appointed special advocate ("CASA") testified that they believed termination of Mother's and Father's parental rights was in the children's best interests. Specifically, when questioned as to what Mother had done to maintain the parent-child bond with her children, Caseworker Gainer responded, "I don't think she's done a lot." Id. at 45. Gainer further stated that Mother had not visited with the children since early November 2006, and that Mother's last attempt to communicate with the children was early 2007. Additionally, when questioned whether she had "seen any long-term improvements" in Mother's "ability to care for herself or the boys on a regular basis[,]" Gainer responded "No." Id. at 40.

With regard to Father, Gainer testified that Father had failed to maintain any contact with his children, that he did not write or call the children, even on birthdays or other holidays, and that he had never called to inquire as to the children's well-being. When questioned whether either of the parents had been capable of "providing their children with any permanency [or] security since they were removed in November 2005[,]" Gainer responded, "No[.]" Id.

Gainer's ultimate conclusion was that she felt termination of Mother's and Father's parental rights to D.H. and G.T. was in the children's best interests was echoed by the CASA, Shawna Pierson, as well. Pierson testified that she felt termination of parental rights would be in the children's best interests because the children were "young and they're healthy and they deserve a chance at permanency and having a family and a life that they can grow up in a positive environment." Id. at 90.

The record also reveals that D.H., who is now four years old, and G.T., who is three years old, have lived in foster care for approximately two years and are thriving. When the children were initially removed from their parents, they were observed as having both “speech” and “physical delays.” Transcript at 42. However, by the time of the termination hearing, both boys had made “[l]ots of progress.” Id. at 43.

Based on the totality of the evidence, we conclude that the trial court’s finding that termination is the children’s best interests is supported by clear and convincing evidence. See In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000) (holding that the testimony of the CASA and the family case manager, coupled with the evidence that the conditions resulting in the placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence that termination was in the child’s best interests). Even assuming that Mother and/or Father will eventually develop into suitable parents, it is unfair to ask the children to wait to enjoy the permanency and stability that is essential to their development and overall well-being. Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. In re R.S., 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), trans. denied (2003). The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Id.

II.

Mother’s and Father’s next assertion of error, that procedural irregularities in the underlying CHINS proceeding deprived them of procedural due process in the

termination proceeding, is also unavailing. First, the parents claim that they were denied due process of law because the caseworker failed to obtain their signatures on the case plans and because the most recent case plan was not filed with the trial court. Secondly, the parents claim they were denied due process of law because the trial court and HCDCS “denied both [Father] and [Mother] visitation [with the children] while they were incarcerated.” Appellant’s Br. at 18. We will address each argument in turn.

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), trans. denied. When the state seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of the due process clause. In re S.P.H., 806 N.E.2d 874, 878 (Ind. Ct. App. 2004). Our legislature has enacted an interlocking statutory scheme governing CHINS proceedings and the involuntary termination of parental rights proceedings. Id. This statutory scheme is designed to protect the rights of parents in raising their children while allowing the State to effect its legitimate interest in protecting children from harm. Id. Thus, the CHINS and involuntary termination statutes are not independent of each other, and an involuntary termination proceeding is governed by the procedures prescribed by the CHINS statutes contained in Indiana Code Article 31-34. Id.

At the outset, we point out that Mother and Father, who were represented by counsel during the CHINS and termination proceedings, failed to raise their due process arguments pertaining to the case plans during the CHINS proceedings. They also failed to raise this issue during the termination hearing.

Despite the constitutional nature of the parents' claim, it is well established that we may consider a party's constitutional claim waived when it is raised for the first time on appeal. Id. Because the parents raise their due process allegations of error for the first time on appeal, we deem these issues waived. See id at 877-78. Waiver notwithstanding, we will address the parents' contention that they were deprived due process on the merits.

In support of their contention that their constitutional right to due process was violated, the parents rely on A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), trans denied, where we considered the relationship between CHINS and termination proceedings. In A.P., we opined that "procedural irregularities in a CHINS proceedings may be of such import that they deprive a parent of procedural due process with respect to the termination of his or her parental rights." Id. However, in A.P., we were faced with a "record replete with procedural irregularities throughout the CHINS and termination proceedings that [were] plain, numerous, and substantial[,]" and which, when taken together, required reversal of the trial court's judgment. Id. at 118. In reversing the trial court, however, we clearly noted that standing alone, we were not convinced that any one of the seven identified deficiencies would have resulted in a due process violation. Id. Because we do not find a multiplicity of procedural irregularities in the underlying proceedings, we find A.P. distinguishable from the present case.

Here, the parents complain that the case plans did not contain their signatures and that the final case plan was not timely filed with the court. Indiana Code section 31-34-15-1 provides that "a case plan is required for each child in need of services who is under

the supervision of the county.” Indiana Code section 31-34-15-2 provides that the department of child services, “after negotiating with the child’s parent, guardian, or custodian, shall complete a child’s case plan not later than sixty (60) days after . . . the date of the child’s first placement . . . or, the date of a dispositional decree.” Thus, although it may be customary practice to do so, neither statute requires that a parent sign the case plan. Rather, the Department of Child Services is merely obligated to negotiate with the parents and thereafter submit a plan to the court within a specified time period. See S.P.H., 806 N.E.2d at 879 (concluding that Indiana Code §§ 31-34-15-1 and -2 do not mandate that a case plan be signed by a parent).

Assuming arguendo that the HCDCS’s failure to obtain the parent’s signature constituted a statutory violation, and assuming that the HCDCS failed to timely file the final case plan, we still would not find that these procedural irregularities alone resulted in a violation of the parents’ due process rights. “Two important purposes of a case plan are to notify parents of conduct that could lead to the termination of parental rights and to inform parents of the steps they need to take in order to facilitate reunification with their children.” Castro v. State Office of Family & Children, 842 N.E.2d 367, 376 (Ind. Ct. App. 2006), trans. denied. Significantly, Mother and Father do not claim that they did not receive a copy of the case plans, nor do they claim that they were unaware of the information contained therein. Moreover, neither parent explains how their substantive rights were significantly compromised by the alleged procedural failures of the HCDCS in the underlying CHINS proceedings. The record reveals that both parents, who were represented by counsel, were provided with an opportunity to be heard at a meaningful

time, and in a meaningful manner, during both the CHINS and termination proceedings. Additionally, we have already determined that clear and convincing evidence supports the trial court's judgment terminating Mother's and Father's parental rights.

Based on the foregoing, we do not believe that the trial court's judgment would have been different if the HCDCS had obtained the parents' signatures or timely filed the final case plan. Thus, we conclude no violation of the parents' due process rights occurred. See id. (concluding that, while technically in violation of the statute, the State's failure to timely file the case plan did not deprive the parent of due process); In re A.H., 751 N.E.2d 690, 701-02 (Ind. Ct. App. 2001) (concluding that even if parents did not have an opportunity to negotiate with the county office regarding the case plan, this procedural violation did not constitute a violation of the parents' right to due process where sufficient evidence was presented to support the trial court's finding), trans. denied; see also McBride, 798 N.E.2d at 198 (stating that no reversible error occurred when parent failed to demonstrate how an alleged procedural error during the CHINS proceeding rose to the level of a due process violation).

We are also unpersuaded by Mother's and Father's final assertion that they were denied due process of law because they were unable to exercise visitation with their children while incarcerated. Importantly, Mother and Father do not allege that they were not allowed to participate in visitation; rather, they were simply unable to do so because of their incarceration. This Court has previously recognized that "individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children. In re A.C.B., 598 N.E.2d 570, 572 (Ind. Ct.

App. 1992). The HCDCS's case plan provided an opportunity for the parents to participate in supervised visitation. However, the parents' own pursuit of criminal activity prevented them from taking advantage of their visitation privileges.

In sum, we conclude that the alleged procedural irregularities in the underlying CHINS proceedings did not serve to deprive Mother and Father of the process that was due them in the termination proceedings. Additionally, clear and convincing evidence supports the trial court's judgment terminating the parents' parental rights to D.H. and G.T. Accordingly, we find no error.

Affirmed.

BARNES, J. and VAIDIK, J. concur