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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF T.T.P., Minor Child,	)	
A.L.P., Father,	)	
Appellant-Respondent,	)	
vs.	)	No. 40A05-1008-JT-723
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-1001-JT-32

May 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

A.L.P. (Father) appeals the involuntary termination of his parental rights to T.T.P.[1] Father argues the court denied him procedural due process by mailing orders to an incorrect address and abused its discretion by suspending reunification services because his parental rights to another child had been terminated. We affirm.

FACTS AND PROCEDURAL HISTORY

T.T.P. tested positive for opiates when he was born in February 2008.[2] The Indiana Department of Child Services (DCS) filed a petition to have T.T.P. declared a child in need of services (CHINS), but then entered into a Program of Informal Adjustment (IA) with T.T.P.'s mother.[3] Father was not named as a party to the IA, but he was aware of it. Father did not initiate any contact with DCS during the IA, and the DCS case manager has no knowledge of Father having contact with T.T.P. during the IA.

Approximately one year later, in February 2009, T.T.P. was taken into emergency protective custody after DCS learned Mother had been arrested and incarcerated. DCS thereafter filed an amended petition alleging T.T.P. was a CHINS. Father was named in the Amended CHINS petition, but DCS was unable to place T.T.P. with Father because DCS previously had substantiated child neglect allegations against Father in at least two counties.

The court held a detention and initial CHINS hearing in March 2009. Father appeared

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[1] Father has four additional children who are not subject to this judgment.

[2] At that time, Father was married to T.T.P.'s mother, Ta.P. (Mother), but the couple was no longer living together. Father and Mother divorced in January 2010. Mother voluntarily relinquished her parental rights to T.T.P. and does not participate in this appeal. We discuss only those facts pertinent to Father.

[3] A Program of Informal Adjustment is a negotiated agreement between a family and the Indiana Department of Child Services (DCS) whereby the family agrees to participate in services to prevent the child or children from being formally deemed in need of services. *See* Ind. Code 31-34-8 et. seq.

and denied the allegations. A fact-finding hearing was set for April 30, 2009. Father did not request appointed counsel or appear for the hearing. The court adjudicated T.T.P. a CHINS.

In July 2009, Father failed to appear for the dispositional hearing. Neither did he appear to contest DCS's motion for permission to refuse or suspend reunification services for Father and T.T.P., which the trial court granted. Over the next several months, Father failed to appear for scheduled court hearings, did not contact DCS to inquire about T.T.P.'s well-being, and did not seek visitation privileges.

In January 2010, DCS petitioned for involuntary termination of Father's parental rights to T.T.P. The trial court appointed counsel for Father and Father was represented by counsel at all hearings in the termination case. Father was present at the final hearing.

During the final hearing, DCS demonstrated Father made little or no effort to communicate with DCS and/or to secure his parental rights to T.T.P. despite being well-aware of the underlying IA, CHINS, and termination proceedings. DCS also provided evidence Father was a "total stranger" to T.T.P., and that T.T.P. was "thriving" and "doing wonderful[ly]" in his current pre-adoptive foster home. (Tr. at 23.) Father's own testimony confirmed that, although he had sired five children, none were in his care. The trial court terminated Father's parental rights to T.T.P.

DISCUSSION AND DECISION

We are highly deferential in reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge witness credibility. *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 most favorable to the judgment. *Id.* In deference to the trial court's unique position to assess evidence, we set aside the judgment only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied*, *trans. denied*, *cert. denied* 534 U.S. 1161 (2002).

Where, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *See Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine first whether the evidence supports the findings and second whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

1. Due Process

Although Father's last known address was correctly listed in the Amended CHINS Petition as "*621* Tulip Poplar Ct." in Mooresville, Indiana, (App. at 8 (emphasis added)), the trial court's order adjudicating T.T.P. a CHINS, and all subsequent orders, were erroneously addressed to "*641* Tulip Poplar Ct." (*Id*. at 14 (emphasis added).) Father contends that error led to "notice deficiency issues and a resulting violation of [Father's] due process rights [as DCS] later used [Father's] absences at hearings he was not notified of against him in the CHINS proceeding, ultimately resulting in a termination proceeding." (Appellant's Br. at 5.)

"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*. When the State seeks to terminate a parent-child relationship, it must do so in accordance with Due Process Clause. *Hite v. Vanderburgh Cnty. Office of Family & Children*, 845 N.E.2d 175, 181 (Ind. Ct. App. 2006). "Although due process has never been precisely defined, the phrase embodies a requirement of 'fundamental fairness.'" *E.P. v. Marion Cnty. Office of Family & Children*, 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995).

Nevertheless, a parent may waive a due process claim in a CHINS or involuntary termination case when it is raised for the first time on appeal. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 194-95 (Ind. Ct. App. 2003); *see also In re K.S.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001) (by raising issue for first time on appeal, mother waived due process claim that trial court violated her rights in failing to follow statutory requirements governing permanency hearings, case plans, and dispositional orders).

At no point during the CHINS proceedings, of which Father was well aware, did Father complain about lack of communication or notice of hearings. During the termination proceedings, when Father had counsel, he never alleged his right to due process was violated by the notice deficiencies during the CHINS proceedings. As Father raises his procedural due process claim for the first time on appeal, he has waived his constitutional challenge. *See McBride*, 798 N.E.2d at 194-95 (finding mother's due process challenge waived for appeal by her failure to complain during the CHINS or termination proceedings).

Waiver notwithstanding, the court's use of an erroneous house number did not deprive Father of due process. Father and his fiancée both acknowledged that, despite the

typographical error, Father in fact had received several of the court's orders, each of which included the date of the next scheduled hearing. The DCS case manager testified she sent notice of each CHINS hearing to Father at the correct address, and the return receipts indicated Father received those notices. Father knew of DCS's involvement with Mother and T.T.P. as early as Mother's participation in the IA in 2008; yet Father "[n]ever" attempted to contact the case manager. (Tr. at 19.) Under these circumstances, we cannot conclude Father's procedural due process rights were significantly compromised.[4]

Nor can we agree with Father's assertion that the procedural irregularities in the CHINS proceedings operated to deprive Father of procedural due process in the termination case. Father was represented by counsel throughout the termination proceedings. Father appeared for the termination evidentiary hearing, had an opportunity to be heard and to cross-examine witnesses, and was zealously represented by counsel. For all these reasons, we cannot conclude that the inadvertent lack of official notice from the court as to at least some of the CHINS hearings substantially increased the risk of error in the termination proceedings. *See Hite*, 845 N.E.2d at 184 (failure to provide notice and copies of case plans to father during initial stages of CHINS action did not require reversal of judgment terminating parental rights).

[4] Moreover, by declining to attend the CHINS hearings of which he had actual knowledge, failing to contact the court with a correct address after receiving a mailing incorrectly addressed and by failing to initiate any contact with DCS, Father has, at least in part, invited the alleged error of which he now complains. Error invited by the complaining party is not reversible error. *See, e.g.*, *Breining v. Harkness*, 872 N.E.2d 155, 159 (Ind. Ct. App. 2007) (doctrine of invited error prohibits party from taking advantage of an error that he commits or invites, or which is the natural consequence of his own neglect or misconduct), *trans. denied*.

2. Withdrawal of Reunification Services

Father also contends the trial court abused its discretion by granting DCS's request to forgo reunification services. We first note Father did not, either in response to DCS's motion during the CHINS proceedings or after receiving appointed counsel during the termination proceedings, assert the withdrawal of reunification services pursuant to Ind. Code § 31-34-21-5.6 was error. Father has therefore waived any such argument on appeal. *See McBride*, 798 N.E.2d at 194-95 (due process challenge waived by failure to complain to trial court).

Waiver notwithstanding, we find no merit in Father's assertion that we should vacate the termination order simply because DCS did not provide reunification services during the CHINS proceedings. A parent may not "sit idly by without asserting a need or desire for services" and then successfully argue on appeal that he or she was denied services to assist him or her with parenting. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). As Father did not contact DCS to inquire about T.T.P. or to request visitation and reunification services during the underlying proceedings, he cannot expect them now.

Even if the court erred by allowing DCS to discontinue reunification services during the CHINS proceeding,[5] Father may not attack the termination order on that ground. "[T]he provision of family services is *not* a requisite element of our parental rights termination

[5] Pursuant to Ind. Code § 31-34-21-5.6(b)(4), reasonable efforts to reunify or preserve the family of a CHINS may not be required if the court finds the child has a parent whose parental rights to a biological or adoptive sibling of the current CHINS were involuntarily terminated. Father admits his parental rights to T.T.P.'s sibling, S.P., were terminated, but Father asserts that termination was *voluntary* because Father failed to appear for the termination hearing after expressing to the DCS case manager his willingness to relinquish his parental rights. Because we resolve this appeal on other grounds, we need not determine whether the trial court erred by finding DCS could terminate reunification services pursuant to Ind. Code § 31-34-21-5.6.

statute, and thus, even a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal." *In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000) (emphasis added).

CONCLUSION

We reverse a termination of parental rights "only upon a showing of 'clear error' – that which leaves us with a definite and firm conviction that a mistake has been made." *Egly v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

BAKER, J., and BRADFORD, J., concur.