



Appellant/Petitioner Janell Peery appeals from the dismissal of her Verified Petition for Judicial Review (“petition”) of the Indiana Department of Child Services’s (“DCS”) decision affirming the substantiated findings of child abuse and neglect by the local DCS office. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

At all times relevant to this appeal, Peery worked as a child care provider at the Bullfrogs and Butterflies daycare facility in Scottsburg. On July 21, 2008, a complaint was filed with a local DCS office alleging that a child had been abused and neglected while in Peery’s care. The allegations of child abuse and neglect were later substantiated following an investigation into the allegations by the local office. Peery was notified of the local office’s determination regarding the allegations of abuse and neglect. Peery subsequently requested and was granted administrative review of the local office’s decision. On March 23, 2009, DCS issued a decision affirming the local office’s findings.

On April 20, 2009, Peery filed a petition seeking judicial review of DCS’s decision. In this petition, Peery requested that DCS “produce the recorded record of the Administrative Hearing.” Appellant’s App. p. 8. Peery filed no other papers or motion in regard to the agency record. On June 11, 2009, DCS moved to dismiss Peery’s petition for failure to timely file the agency record. Peery responded to DCS’s motion on June 18, 2009. The trial court conducted a hearing on DCS’s motion to dismiss the instant action on July 28, 2009. On September 14, 2009, the trial court issued an order dismissing the instant action. In its order, the trial court found that although Peery’s petition contained a request that DCS

prepare the agency record, Peery filed no additional papers or motions regarding the filing of the agency record within the statutorily required thirty-day time period. The trial court further found that Peery's failure to either file the agency record or request additional time to do so within the required time period warranted the dismissal of her petition. Peery now appeals.

### **DISCUSSION AND DECISION**

Peery contends that the trial court erred in granting DCS's motion to dismiss her petition for failure to timely file the agency record. The standard of appellate review for rulings on motions to dismiss for jurisdictional grounds depends on whether the trial court resolved disputed facts, and if so, whether the trial court conducted an evidentiary hearing or ruled on a paper record. *Mosco v. Ind. Dep't of Child Serv.*, 916 N.E.2d 731 (Ind. Ct. App. 2009), *trans. denied*. The Indiana Supreme Court recently held that "[w]e review de novo a court's ruling on motions to dismiss for failure to timely file necessary agency records where the court ruled on a paper record." *Ind. Family and Soc. Serv. Admin. v. Meyer*, 927 N.E.2d 367, 370 (Ind. 2010).

Judicial review of an agency decision is governed by the Administrative Orders and Procedures Act ("AOPA"), Indiana Code section 4-21.5-1 *et seq.* (2009), which provides the "exclusive means for judicial review of an agency action." *See* Ind. Code § 4-21.5-5-1. Chapter five of AOPA requires that the aggrieved petitioner file a petition seeking judicial review with the appropriate trial court within thirty days of service of the final agency action. *See* Ind. Code § 4-21.5-5-2, -5. In order to be entitled to review of a final agency action

under AOPA, the petitioner must comply with Indiana Code section 4-21.5-5-13, which provides, in relevant part, as follows:

(a) Within thirty (30) days after the filing of the petition, or within further time allowed by the court or by other law, *the petitioner shall transmit* to the court the original or a certified copy of the agency record for judicial review of the agency action, consisting of

- (1) any agency documents expressing the agency action;
- (2) other documents identified by the agency as having been considered by it before its action and used as a basis for its action; and
- (3) any other material described in this article as the agency record for the type of agency action at issue, subject to this section.

(b) An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible agency within the time permitted by this section is good cause. *Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.*

(c) Upon a written request by the petitioner, the agency taking the action being reviewed shall prepare the agency record for the petitioner. If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties to the judicial review proceeding stipulate to omit in accordance with subsection (e).

Ind. Code § 4-21.5-5-13 (2008) (emphases added). The purpose of section 13 is to ensure that the review of an agency action proceeds in an efficient and speedy manner, and that the reviewing trial court has access to the record before rendering its decision. *Meyer*, 927 N.E.2d at 370.

Peery concedes that she did not file the agency record or request an extension of time to do so within thirty days of filing her petition. Peery argues, however, that she was not required to file the agency record or request additional time within thirty days of filing her

petition because Indiana Code section 4-21.5-5-13(a) provides “three separate time periods” in which the agency record may be filed. Appellant’s Br. p. 6. Peery argues that these “separate time periods” are independent of one another and compliance with one excuses a failure to comply with the others.

Peery’s argument centers around Indiana Code section 4-21.5-5-13(a) which reads, in relevant part, as follows: “Within thirty (30) days after the filing of the petition, or within further time allowed by the court or by other law....” Indiana Code section 4-21.5-1-7 provides that the term “law” means “the federal or state constitution, any federal or state statute, a rule of an agency, or federal regulation.” Peery argues that she was excused from filing the agency record within thirty days of filing her petition because “the third option which is that allowed by law was clearly met when the Appellant requested that the Agency produce the record.” Appellant’s Br. p. 7. Peery, however, cites to no authority in support of her position, and provides no argument relating to what “other law” was invoked by her request that DCS produce the record. Peery merely claims that the plain language of Indiana Code section 4-21.5-5-13(a) regarding the so-called “other law” option would excuse her failure to file the agency record or a request for additional time to do so within thirty days. The plain language of Indiana Code section 4-21.5-5-13(a) clearly establishes that a petitioner is required to file the agency record within thirty days of filing a petition for judicial review of an administrative agency unless the petitioner is specifically granted additional time by the trial court or some specified “other law.” *See* Ind. Code § 4-21.5-5-13(a).

Additionally, to the extent that Peery argues that the trial court's order was erroneous because the burden shifted to DCS to file the agency record after she requested that it prepare the record in her petition, we observe that Peery's argument must fail because it is contrary to well-settled Indiana law. Indiana Code section 4-21.5-5-13 places the responsibility to file the agency record in a timely fashion on the petitioner. *Meyer*, 927 N.E.2d at 370. Further, it is well-established that once a petitioner requests that an agency prepare an administrative record, the onus is on the petitioner to request an extension of time to file the agency record if it becomes clear that the agency will not be able to prepare the agency record within the thirty-day window. *Mosco*, 916 N.E.2d at 735; *Microvote Gen. Corp. v. Office of the Sec'y of State*, 890 N.E.2d 21, 28 (Ind. Ct. App. 2008), *trans. denied*. Peery cites to no authority supporting her burden-shifting argument, and we find none.

In sum, we conclude that Peery failed to satisfy her responsibility to comply with the time requirements set forth by Indiana Code section 4-21.5-5-13. In light of Peery's failure to comply with the requirements of Indiana Code section 4-21.5-5-13, we further conclude that the trial court properly dismissed Peery's petition for judicial review for failure to timely file the agency record.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.