

We do not find any merit to either of Appellant's arguments. Therefore, we overrule her assignments of error and affirm the trial court's judgment.

FACTS

{¶2} In 2020, South-Central Ohio Job and Family Services (“the agency”) filed a complaint that alleged the child is a dependent child due to concerns regarding Appellant's mental health. The court subsequently placed the child with the maternal grandmother and granted the agency protective supervision.

{¶3} On December 15, 2020, the child's father filed a motion that requested legal custody of the child. The trial court later adjudicated the child dependent and placed the child in the father's temporary custody subject to the agency's protective supervision. The court additionally noted that the permanency plan was to place the child in the father's legal custody. The court set the matter for a review hearing to be held on April 27, 2021.

{¶4} On April 15, 2021, the agency filed a motion that asked the court to place the child in the father's legal custody and to terminate the protective supervision order. On that same date, the agency asked to serve Appellant by certified mail and by posting. The assistant prosecutor asserted that service of process at appellant's last known address had been unsuccessful

and that appellant's current address is unknown. The court granted the motion to serve Appellant by posting.

{¶5} On April 27, 2021, the trial court held the review hearing as scheduled. At the start, Appellant's counsel indicated that Appellant may be hospitalized and that she may not have received notice of the hearing date. Appellant's counsel thus asked the court to continue the matter until Appellant's presence could be secured.

{¶6} Appellant's counsel also objected to the manner of service regarding the agency's April 15, 2021 motion. He asserted that the agency could not resort to service by posting without first waiting for service by certified mail to be returned as undeliverable.

{¶7} The court overruled Appellant's motion to continue and found that Appellant had been properly served with the agency's motion. The court thus proceeded with the hearing.

{¶8} After the hearing, the court granted the father legal custody of the child. This appeal followed.

ASSIGNMENTS OF ERROR

- I. THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR BY DENYING APPELLANT'S REQUEST FOR A REASONABLE CONTINUANCE IN VIOLATION OF HER DUE PROCESS RIGHTS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTIONS.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW AND COMMITTED PLAIN ERROR IN HOLDING THAT SCOJFS PERFECTED SERVICE UPON APPELLANT THROUGH ITS USE OF PUBLICATION BY POSTING PURSUANT TO JUV.R. 16.

ANALYSIS

FIRST ASSIGNMENT OF ERROR

{¶9} In her first assignment of error, Appellant argues that the trial court abused its discretion by denying her request to continue the hearing until her attendance could be secured. Appellant asserts that proceeding with the hearing in her absence deprived her of the ability to fully protect her right to custody of the child.

{¶10} “The determination whether to grant a continuance is entrusted to the broad discretion of the trial court.” *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 147, citing *State v. Unger*, 67 Ohio St.2d 65, 423 N.E.2d 1078 (1981), syllabus. Consequently, “ ‘[a]n appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion.’ ” *State v. Jones*, 91 Ohio St.3d 335, 342, 744 N.E.2d 1163 (2001), quoting *Unger*, 67 Ohio St.2d at 67. “ ‘[A]buse of discretion [means] an ‘unreasonable, arbitrary, or unconscionable use of discretion, or * * * a view or action that no conscientious judge could honestly have taken.’ ” *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d

818, ¶ 67, quoting *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 23. “An abuse of discretion includes a situation in which a trial court did not engage in a ‘ “sound reasoning process.” ’ ” *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34, quoting *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). The abuse-of-discretion standard is deferential and does not permit an appellate court to simply substitute its judgment for that of the trial court. *Darmond* at ¶ 34.

{¶11} The Supreme Court of Ohio has adopted a balancing approach that recognizes “all the competing considerations” to determine whether a trial court’s denial of a motion to continue constitutes an abuse of discretion. *Unger*, 67 Ohio St.2d at 67. In exercising its discretion, a trial court should “[w]eigh[] against any potential prejudice to a defendant * * * concerns such as a court’s right to control its own docket and the public’s interest in the prompt and efficient dispatch of justice.” *Id.* A court should also consider: (1) the length of the delay requested; (2) whether other continuances have been requested and received; (3) the inconvenience to litigants, witnesses, opposing counsel and the court; (4) whether the

requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; (5) whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and (6) other relevant factors, depending on the unique circumstances of the case. *Id.*; *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 147; *State v. Jordan*, 101 Ohio St.3d 216, 2004-Ohio-783, 804 N.E.2d 1, ¶ 45.

{¶12} “ ‘There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.’ ” *Unger*, 67 Ohio St.2d at 67, quoting *Ungar v. Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964); *State v. Broom*, 40 Ohio St.3d 277, 288, 533 N.E.2d 682 (1988) (“Obviously, not every denial of a continuance constitutes a denial of due process”). As a general matter, “the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, *and to that extent only.*” *State v. Grate*, 164 Ohio St.3d 9, 2020-Ohio-5584, 172 N.E.3d 8, ¶ 83 (emphasis sic), quoting *Snyder v. Massachusetts*, 291 U.S. 97, 107-108, 54 S.Ct. 330, 78 L.Ed. 674 (1934). Additionally, with respect to the continuance of

juvenile court hearings, Juv.R. 23 provides that “[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties.”

{¶13} Furthermore, “[o]n review we must look at the facts of each case and the [appellant] must show how [s]he was prejudiced by the denial of the continuance before there can be a finding of prejudicial error.” *Broom*, 40 Ohio St.3d at 288. Prejudice must be established “ ‘on the face of the record.’ ” *Hayward v. Summa Health Sys./Akron City Hosp.*, 139 Ohio St.3d 238, 2014-Ohio-1913, 11 N.E.3d 243, ¶ 26, quoting *Wagner v. Roche Laboratories*, 85 Ohio St.3d 457, 462, 709 N.E.2d 162 (1999).

{¶14} In the case at bar, we do not believe that the trial court abused its discretion by overruling Appellant’s motion to continue. Additionally, Appellant has not demonstrated that the denial of her motion prejudiced her case. She has not argued that if the trial court had continued the hearing, then Appellant would have been able to present evidence or testimony that would have caused the trial court to question or to deny the father’s motion for legal custody of the child. Moreover, Appellant’s counsel was present and had the opportunity to fully cross-examine the agency’s witnesses. Appellant does not explain how her presence at the hearing would have affected the outcome of the proceedings. Appellant cannot, therefore, demonstrate that the court’s denial of her motion prejudiced her. *See*

generally *In re M.B.*, 4th Dist. Pike No. 18CA888, 2018-Ohio-3778, ¶ 26; *In re C.M.*, 4th Dist. Athens No. 17CA16, 2017-Ohio-9037, ¶ 44 (both concluding that parent failed to establish that denial of motion to continue custody hearing constituted prejudicial error).

{¶15} Accordingly, based upon the foregoing reasons, we overrule Appellant's first assignment of error.

SECOND ASSIGNMENT OF ERROR

{¶16} In her second assignment of error, Appellant contends that the trial court erred by determining that she had been properly served with the agency's motion to place the child in the father's legal custody. Appellant asserts that the agency's attempt to serve her by posting did not comply with Juv.R. 16 and was, therefore, ineffective.

{¶17} We do not agree with Appellant that the agency was required to comply with Juv.R. 16 when serving its motion that asked the court to place the child in the father's legal custody. In *In re J.M.B.*, 4th Dist. Ross No. 07CA2978, 2008-Ohio-1285, this court addressed a similar issue. In that case, the child's father argued that he had not received adequate notice of the adjudicatory and dispositional hearings. He asserted that Juv.R. 16 and R.C. 2151.353(C) required the court to provide written notice of the hearings by personal service. We disagreed, however, and observed that after the initial

summons is served in accordance with Juv.R. 15 and 16, “the Juvenile Rules do not require notices of subsequent adjudicatory and dispositional hearings to be provided by means of a summons.” *Id.* at ¶ 16.

{¶18} We further observed:

Other courts have held that a party receives proper notice of a hearing when the court complies with Juv. R. 20(B), which provides for service of notices and other papers subsequent to the filing of the complaint. Under Juv. R. 20(B), whenever “service is required or permitted on a party represented by an attorney, the service shall be made upon the attorney unless service is ordered by the court upon the party.” Juv. R. 20(B) also states that service shall be made in the manner provided by Civ.R. 5(B). Under Civ.R. 5(B), service is made by “delivering a copy” to the attorney or the party, and ordinary mail service to the last known address of the person served constitutes delivering a copy.

Id. at ¶ 17.

{¶19} We ultimately concluded that the father had received adequate notice of the adjudicatory and dispositional hearings. We noted that the father’s counsel had received sufficient notice of both hearings and had appeared at both hearings. We thus determined that the failure to personally serve the father with a summons or written notice of the hearings did not violate his due process rights.

{¶20} Likewise, in *In re D.D.*, 9th Dist. Wayne No. 11CA0031, 2012-Ohio-1122, ¶¶ 5-7, the court determined that a mother received adequate

notice of the father's motion for legal custody when the record showed that the motion had been served upon the mother's attorney in accordance with Juv.R. 20 and Civ.R. 5. The court observed that Juv.R. 20(B) provides that when a party is represented by an attorney, written motions shall be served "upon the attorney unless service is ordered by the court upon the party" and that "[s]ervice upon the attorney or upon the party shall be made in the manner provided in Civ.R. 5(B)." The court noted that the father's attorney had served the motion in accordance with Civ.R. 5(B): the attorney signed a proof of service attached to the motion that indicated that the attorney had served the motion upon the mother's counsel by ordinary mail. The court thus concluded that the mother "had notice, at least through her lawyer as required by the Juvenile Rules, of the date, time, and issues to be considered at the hearing" and that the trial court did not violate her due process rights. *Id.* at ¶ 7.

{¶21} Similarly, in the case at bar, counsel for the agency signed a proof of service attached to its motion that indicated that it served a copy of the motion upon Appellant's attorney. Appellant's counsel appeared at the hearing and did not argue that he did not have notice of the father's motion or of the hearing date. Under Juv.R. 20(B), service of the motion upon Appellant's attorney was proper. *D.D.* at ¶¶ 5-7. Appellant has not cited

any authority to indicate that a party must serve a motion for legal custody in accordance with Juv.R. 16(A).

{¶22} We also note that at the conclusion of the January 26, 2021 dispositional hearing, the trial court scheduled the matter for a review hearing to be held on April 27, 2021. Appellant signed her name to the dispositional order directly below the April 27, 2021 date. The record thus reflects that Appellant had notice of the April 27, 2021 hearing date.

{¶23} Therefore, we do not agree with Appellant that the agency failed to properly serve her with a copy of its motion requesting the court to place the child in the father's legal custody. The agency served the motion in accordance with Juv.R. 20, and Appellant has not asserted that her counsel did not receive notice of the agency's motion. Moreover, the record shows that the trial court informed the parties that the matter had been scheduled for an April 27, 2021 review hearing. Thus, we disagree with Appellant that the trial court improperly determined that she had been properly served with the agency's motion or that she lacked adequate notice of the April 27, 2021 hearing.

{¶24} Accordingly, based upon the foregoing reasons, we overrule Appellant's second assignment of error.

CONCLUSION

{¶25} Having overruled Appellant's two assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and Appellant shall pay costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking County Juvenile Court, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J., concur in Judgment and Opinion.

For the Court,

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.