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2014 IL App (3d) 130890-U

Order filed October 22, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> J.P., J.P. and M.P.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	Appeal Nos. 3-13-0890, 3-13-0891 and
Petitioner-Appellee,	)	3-13-0892
	)	Circuit Nos. 12-JA-182, 12-JA-183 and
v.	)	12-JA-184
	)	
Eddie P.,	)	
	)	The Honorable
Respondent-Appellant).	)	Mark E. Gilles,
	)	Judge, presiding.

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PRESIDING JUSTICE LYTTON delivered the judgment of the court.  
Justices Holdridge and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in denying respondent father's request for his attorney to withdraw during termination proceedings under the Juvenile Court Act.

¶ 2 Respondent, Eddie P., appeals from orders of the circuit court terminating his parental rights to his children, J.P., J.P. and M.P. On appeal, he argues that the trial court committed

reversible error by denying his requests for counsel to withdraw during the termination proceedings. We affirm.

¶ 3 The State filed a petition claiming that the minors were abused and neglected on August 3, 2012. The petition contained allegations that between July 16, 2012, and July 27, 2012, respondent struck J.P. in the face, knocked him down, grabbed his ankle and slammed him into a wall, causing the three-year-old to suffer a black eye and bruising to the side of his face. The petition also alleged that respondent had a criminal history that included convictions for burglary (delinquency), aggravated battery (delinquency), possession of cannabis and resisting police.

¶ 4 At the adjudication hearing, the State moved to admit several exhibits and the matter was continued until May 20, 2013. At the May 20 hearing, respondent's attorney, Chris Frericks, moved for a continuance because one of the State's witnesses was not available. The motion was granted and the matter was continued to June 17, 2013. Before the trial court left the bench, respondent raised his hand. The court suggested that he discuss any questions he had with his attorney, at which time there was an off-the-record discussion between client and counsel. During that conversation, the court overheard respondent using inappropriate language:

"THE COURT: What did you say? What did you say, Mr P.?"

RESPONDENT: I am not understanding this whole ordeal.

THE COURT: Right, but you not understanding is different than cursing.

So, I'm pretty sure I heard what you said. I gave you a chance to clear it up. Mr.

Frericks spent plenty of time with you this morning explaining what's going on.

I'll do it again."

The court then explained the decision to continue the matter to another day and admonished defendant that he should refrain from using derogatory language in the courtroom.

¶ 5 At the June 17 hearing, the trial court reminded respondent that his demeanor was inappropriate. The court encouraged respondent to refrain from loud outbursts in the courtroom and to write his concerns down so that he could discuss them with his attorney. After some discussion regarding the State's presentation of a videotaped interview with one of the minors, the court again admonished respondent.

"THE COURT: And Mr. P., you're—you're becoming increasingly visibly agitated. I made the decision to have your hand restraints removed, and I am starting to be concerned that maybe I need to have them placed back on if you can't get your agitated state to stop. Are you going to be able to do that?"

RESPONDENT: You can put them back on. It don't matter if they are on or off, honestly.

THE COURT: Do you then not mind if they are put back on?

RESPONDENT: Put them back on.

THE COURT: All right. I think it's appropriate considering the demeanor in your answer, the tone, the way your holding your body, your body language, that for the safety of those in this courtroom including your own attorney that your hand restraints will be put on.

RESPONDENT: It's not the first time.

THE COURT: Excuse me, Mr. P.

RESPONDENT: I said, it's not the first time."

¶ 6 At the conclusion of the day, the court went back on the record and asked respondent to return to the court room.

"THE COURT: We are back on the record. Mr. P. was looking at me in a very threatening and menacing way as he was making comments. The deputy has indicated that she had overheard Mr. P. And for the security of everyone including myself, deputy, could you repeat what Mr. P. just said?

THE DEPUTY: I don't curse. He used the "F" word. "F" that court order.

THE COURT: All right. I will say what you have characterized. Did he say fuck that court order?

THE DEPUPTY: Yes, sir.

RESPONDENT: Because I know the date. I don't get the paperwork anyways there out at the jail.

¶ 7 The discussion between the court and respondent continued. The trial court subsequently found respondent in contempt of court for failing to behave appropriately. The court then reminded respondent that although his presence was important, it was not required in an adjudicatory proceeding. The court stressed that if respondent failed to conduct himself appropriately, he would be removed. Respondent refused to acknowledge the court's admonishments. At that point, respondent stated, "Your Honor, I'm asking my attorney to withdraw himself from this case, too." The court noted that the question before respondent was whether he could control his emotions, not whether counsel should withdraw. The following discussion then took place.

"RESPONDENT: I totally understand, I'm asking Mr. Frederick [sic] to withdraw himself from this situation.

THE COURT: Well that would be up to Mr. Frericks, is his name, whether he'd want to present that motion or not, but it's probably one that would be a futile

one to make. We are deep into this case. He's been representing you. As I judge it, it's not his fault that things have broken down. You are a difficult personality. It's not difficult for me to make that judgment. You would be a problem for anybody who represented you, in my estimate, and I'm not going to consider any motion by you that you have a new attorney."

¶ 8 A short while later, respondent interrupted the proceedings and stated that he wished to go back to his cell because he had asked for another attorney. The court acknowledged respondent's request to return to his cell and instructed the guard to place him in the cell area outside the courtroom in case he changed his mind.

¶ 9 After respondent was removed, Frericks addressed the court and asked that he be allowed to withdraw from the case. The court noted counsel's position but held that to allow the withdrawal at that point in the proceedings would be contrary to the best interests of the minors. In reaching its conclusion, the court made the follow statement:

"The record cannot reflect how hostile [respondent] is in his physical presentation, his facial expressions, his bodily movements. It is simply incredible, and for anyone that would be reviewing the decisions made here today, to do it fairly, you would have to have videotape of what I witnessed.

¶ 10 The matter then proceeded with Frericks present in the courtroom on behalf of respondent. After a recess and additional testimony, respondent was escorted back into the courtroom to address the court. He again stated that he wanted a different attorney and that he also wanted a new trial judge. Following a brief recess, the court denied respondent's request for a new attorney, as well as his demand for a new judge. Respondent asked to return to the jail, and he was escorted from the courtroom.

¶ 11 The adjudication hearing continued with Mr. Frericks representing respondent. At the conclusion of the hearing, the court found that the State had proved its case by a preponderance of the evidence. The court noted that respondent's courtroom behavior played no part in its ruling. The matter was then set for a dispositional hearing.

¶ 12 The docket indicates that subsequent to the adjudicatory hearing, the court entered an order granting Frericks' request to withdraw from representing respondent. The court discharged Frericks and appointed Tim McCarthy as respondent's new attorney.

¶ 13 The dispositional hearing was held with McCarthy representing respondent on October 30, 2013. At the hearing, the court considered the dispositional report, the integrated assessment and social history report and the testimony of respondent's caseworkers. Following the testimony of caseworker Thane Hunt, the State recommended that the court find respondent unfit because he physically abused J.P. and physically abused his girlfriend's child. The guardian *ad litem* agreed with the State's recommendation. The trial court found respondent unfit and ordered him to undergo a domestic violence course.

¶ 14 ANALYSIS

¶ 15 Respondent argues that the trial court violated his sixth amendment rights by denying his request for counsel to withdraw. He also claims that the court's failure to inquire into the matter resulted in reversible error and that the adjudication and subsequent dispositional orders must be vacated.

¶ 16 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (2012)) is a statutory scheme created by the legislature, the primary purpose of which is to determine the best interests of the minor children on whose behalf proceedings have been brought. 705 ILCS 405/1-2(1) (West 2012); *In re Tatiana C.*, 2013 IL App. (1st) 131573, ¶ 31. Dependency and neglect

proceedings brought pursuant to the Act are civil, not criminal, actions. *In re J.J.*, 142 Ill. 2d 1, 8 (1991).

¶ 17 Although the Act recognizes that termination proceedings "are not intended to be adversary in character," it does create a right to counsel for indigent parties. 705 ILCS 405/1-5(1) (West 2012). Specifically, the Act provides:

"At the request of any party financial unable to employ counsel \*\*\* the court shall appoint the Public Defender or such other counsel as the case may require. Counsel appointed for the minor and any indigent party shall appear at all stages of the trial court proceeding, and such appointment shall continue through the permanency hearings and termination of parental rights proceedings subject to withdrawal or substitution pursuant to Supreme Court Rules or the Code of Civil Procedure." 705 ILCS 405/1-5(1) (West 2012).

¶ 18 The sixth amendment right to the United States Constitution guarantees the right to counsel "in all criminal prosecutions." U.S. Const., amend. VI. Its terms are clear; it does not apply to civil proceedings. Thus, the limited right to counsel created in civil proceedings under the Juvenile Court Act is not the same as the constitutional right to counsel afforded in criminal cases under the sixth amendment.

¶ 19 In this case, respondent's argument is based solely on the sixth amendment right to counsel afforded in criminal cases. This argument must fail because, as stated, respondent does not have a sixth amendment right to counsel in a proceeding under the Act.

¶ 20 Moreover, in his brief, respondent only argues that he was denied the right to represent himself and that when he requested that counsel withdraw, the trial court should have inquired whether respondent wished to proceed *pro se*. However, the record demonstrates that respondent

never stated that he wished to represent himself. Several times during the proceedings, respondent clearly stated that he wanted a "new attorney" or a "different attorney." He did not indicate that he wished to continue without the assistance of counsel. The trial court is not required to admonish respondent as to his right to counsel or his right to proceed without counsel where the respondent requests new counsel in a neglect proceeding. See *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 14.

¶ 21 Even if respondent alleged the statutory reasons that the trial court erred in denying his request for a new attorney at the adjudicatory hearing, we would find that the court's decision was not error.

¶ 22 "The legislature recognizes that serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor and the family and that it frustrates the health, safety and best interest of the minor and the effort to establish permanent homes for children in need." 705 ILCS 405/2-14 (West 2012). Supreme Court Rule 13 provides that a trial judge may deny a motion to withdraw "if the granting of it would delay the trial of the case, or would otherwise be inequitable." Ill. S. Ct. R. 13 (eff. July 1, 1982). The decision to deny a motion for substitution of counsel will not be disturbed absent an abuse of discretion. *In re Travarius O.*, 343 Ill. App. 3d 844, 852 (2003).

¶ 23 Here, the adjudication petitions had been filed for more than a year before respondent sought new counsel and respondent had contributed to that delay. Moreover, respondent first requested that counsel withdraw on the last day of the adjudicatory hearing. If the trial court had granted a motion to withdraw, a continuance would have been inevitable. Given the length of time that had already elapsed and the needs of the minors in this case, further delay would not

have been appropriate. The trial court's decision to deny respondent's request was not an abuse of discretion.

¶ 24

#### CONCLUSION

¶ 25

The judgment of the circuit court of Peoria County is affirmed.

¶ 26

Affirmed.