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2017 IL App (3d) 160621-U

Order filed June 22, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

<i>In re J.P.,</i>	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	Appeal No. 3-16-0621
Petitioner-Appellee,	)	Circuit No. 15-JA-329
	)	
v.	)	
	)	
Patrick P.,	)	The Honorable
	)	Timothy J. Cusack,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Respondent did not receive ineffective assistance where his counsel did not file a motion to continue dispositional hearing to a later date.
- ¶ 2 Respondent is the father of J.P. The State filed a petition alleging that J.P. was neglected in that his environment was injurious to his welfare. At the time of the dispositional hearing, respondent was incarcerated. The trial court ruled that respondent was unable to care for J.P.

because of his incarceration. Respondent appeals, arguing that his trial counsel was ineffective for not seeking a continuance of the dispositional hearing. We affirm.

¶ 3

### FACTS

¶ 4

On December 16, 2015, the State filed a petition, pursuant to the Juvenile Court Act of 1987 (Act), alleging that J.P., a seven-month-old child, was a neglected minor in that his environment was injurious to his welfare. The petition alleged that J.P.’s mother “has been using a schizophrenic man to act as caretaker for the minor,” and was “in a paramour relationship with the minor’s father Patrick P[.]\*\*\*, who has a lengthy criminal history and has been domestically violent to the mother[.]” The petition further alleged that respondent had a criminal history including 30 criminal convictions and that J.P.’s mother took out several orders of protection against him for domestic violence, alleging that he punched her, choked her, grabbed her hair, kicked her, pinned her against a wall, and hit her with a bat. J.P. was removed from his home and placed in the custody of the Illinois Department of Children and Family Services (DCFS). The parties agreed to waive the time limitations set forth in the Act for commencing the adjudicatory hearing.

¶ 5

On July 19, 2016, respondent stipulated to the allegations against him. As evidence of respondent’s domestic violence, the State introduced several orders of protection filed by J.P.’s mother against respondent from April to September 2014, alleging incidents of physical abuse. The trial court entered an order of adjudication, finding that J.P. was neglected based on the contents of the petition.

¶ 6

The parties waived the 30-day time requirement for the dispositional hearing. The dispositional hearing was held on September 7, 2016. Respondent was incarcerated at that time. At the hearing, respondent’s counsel stated: “My client informs me that it’s possible for him to

be released in [late] September this year, but the latest he'll be released is November of this year." No evidence was presented regarding respondent's expected release date. The State asked that respondent be found unfit based on unresolved issues of alcoholism and domestic violence. Respondent's counsel recommended that respondent be found unable to care for J.P. "due to his incarceration." The guardian *ad litem* agreed.

¶ 7 After the hearing, the trial court entered a dispositional order finding respondent unable to care for, protect, train, or discipline J.P. based on his "incarceration." J.P. was made a ward of the court, and DCFS was appointed as his guardian, with the right to place. The court ordered respondent to cooperate with DCFS, obtain a drug and alcohol assessment, successfully complete a domestic violence course, obtain and maintain stable housing, complete substance abuse screenings requested by DCFS, visit J.P. as scheduled by DCFS, and demonstrate appropriate parenting during visits with J.P.

¶ 8 ANALYSIS

¶ 9 Respondent argues that his trial counsel was ineffective for failing to file a motion to continue the dispositional hearing to a later date when he would no longer be incarcerated.

¶ 10 Although there is no constitutional right to counsel in proceedings pursuant to the Act, a statutory right is granted under the Act. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32. Courts use the *Strickland* test to measure the effectiveness of counsel under the Act. *Id.* (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). In order to establish ineffective assistance of counsel under *Strickland*, one must show that counsel's representation fell below an objective standard of reasonableness and that a reasonable probability exists that, but for the error, the result would have been different. *Id.* "Counsel's conduct is presumed to be the product of sound trial strategy, and respondent bears the burden of overcoming this presumption." *Id.*

¶ 11 Respondent must prove both prongs of the *Strickland* test to prevail on a claim of ineffective assistance of counsel. *Id.* ¶ 33. If an ineffectiveness claim can be disposed of because defendant did not suffer prejudice, the court need not consider whether counsel’s performance was deficient. *Id.* If it is easier to do so, the court should dispose of the entire claim of ineffective assistance of counsel based on a lack of prejudice. *Id.*

¶ 12 A party claiming that his counsel was ineffective for failing to request a continuance must show that the result of the proceeding would have been different if counsel had sought a continuance. See *People v. Steele*, 2014 IL App (1st) 121452, ¶ 42; *People v. Williams*, 262 Ill. App. 3d 808, 825 (1994). The court should reject an ineffective-assistance claim premised on counsel’s failure to request a continuance if the respondent was not prejudiced. See *People v. Lear*, 175 Ill. 2d 262, 275 (1997); *Steele*, 2014 IL App (1st) 121452, ¶ 42.

¶ 13 Illinois recognizes that “serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor and the family and \*\*\* frustrates the health, safety and best interests of the minor and the effort to establish permanent homes for children in need.” 705 ILCS 405/2-14(a) (West 2014). The Act’s intent is to insure that “the State of Illinois will act in a just and speedy manner to determine the best interests of the minor.” *Id.*

¶ 14 Under the Act, an adjudicatory hearing must be held within 90 days of the date of service of the petition upon the minor, parents, or guardian. 705 ILCS 405/2-14(b) (West 2014). Upon motion of the parties or the court and a finding by the trial court that a continuance is for good cause and “consistent with the health, safety and best interests of the minor,” the adjudicatory hearing may be continued for up to 30 days. 705 ILCS 405/2-14(c) (West 2014). “The time

limits of this Section may be waived only by consent of all parties and approval by the court.”  
705 ILCS 405/2-14(d) (West 2014).

¶ 15 The dispositional hearing must be set within 30 days after an adjudicatory order is entered. 705 ILCS 405/2-21(2) (West 2014). “The dispositional hearing may be continued once for a period not to exceed 30 days if the court finds that such continuance is necessary to complete the dispositional report.” *Id.* The court, State’s Attorney, a parent, guardian, custodian, responsible relative or counsel may move to adjourn the dispositional hearing “for a reasonable period to receive reports or other evidence, if the adjournment is consistent with the health, safety and best interests of the minor, but in no event shall continuances be granted so that the dispositional hearing occurs more than 6 months after the initial removal of a minor from his or her home.” 705 ILCS 405/2-22(4) (West 2014). The time limits for a dispositional hearing “may be waived only by consent of all parties and approval by the court, as determined to be consistent with the health, safety and best interests of the minor.” 705 ILCS 405/2-21(3) (West 2014).

¶ 16 There is no absolute right to a continuance under the Act. *In re D.P.*, 327 Ill. App. 3d 153, 158 (2001). It is within the juvenile court’s discretion whether to grant or deny a continuance. *In re K.O.*, 336 Ill. App. 3d 98, 104 (2002). A court’s decision to deny a motion to continue “will not be disturbed absent manifest abuse or palpable injustice.” *Id.*

¶ 17 Illinois Supreme Court Rule 901, which governs child custody cases, provides: “Child custody proceedings shall be scheduled and heard on an expedited basis. Hearings in child custody \*\*\* proceedings shall be held in strict compliance with applicable deadlines established by statute or by this article.” Ill. S. Ct. R. 901(a) (eff. Mar. 8, 2016). Illinois Supreme Court Rule 901(c) governs continuances in child custody proceedings and provides:

“Parties, witnesses and counsel shall be held accountable for attending hearings in child custody \*\*\* proceedings. Continuances shall not be granted in child custody \*\*\* proceedings except for good cause shown and may be granted if the continuance is consistent with the health, safety and best interests of the child. The party requesting the continuance and the reasons for the continuance shall be documented in the record.” Ill. S. Ct. R. 901(c) (eff. Mar. 8, 2016).

¶ 18 Motions to continue dispositional hearings should be viewed with skepticism because “the legislature intended, with good reason, that proceedings involving the termination of parental rights be handled with dispatch.” *In re K.S.*, 203 Ill. App. 3d 586, 596 (1990). This is because “some or all of the children are of tender years, making them more attractive for adoption than they would be at an older age, and increasing the likelihood of a successful bonding with their adoptive parents at that younger age as well.” *Id.* A trial court does not abuse its discretion by denying a continuance for a dispositional hearing where a young child is involved. See *id.*

¶ 19 Here, J.P. was removed from his home in December 2015, when he was only seven months old. The adjudicatory hearing was held nearly seven months later, and the dispositional hearing was held two months after that. Respondent argues that his counsel was ineffective for failing to file a motion to continue the dispositional hearing for up to three more months until he was no longer incarcerated. We disagree.

¶ 20 Respondent has failed to establish that he was prejudiced by his counsel’s failure to seek a continuance. Because trial courts have discretion to grant or deny a motion to continue a hearing (*In re K.O.*, 336 Ill. App. 3d at 104), respondent cannot show that the trial court would have granted a continuance if his attorney had requested one. Respondent suggests that the trial

court would have no reason to deny a motion to continue because he and J.P.’s mother waived the deadlines set forth in the Act. However, the Act and Supreme Court Rule 901 require that a continuance be “consistent with the health, safety and best interests of the child.” See 705 ILCS 405/2-21(3) (West 2014); Ill. S. Ct. R. 901(c) (eff. Mar. 8, 2016). Respondent has failed to show or even allege that a continuance, which would stall the juvenile court proceedings for an additional three months, would be “consistent with the health, safety and best interests” of J.P., a very young child.

¶ 21 Moreover, respondent cannot show that even if the trial court had granted a continuance, the result of the dispositional hearing would have been different. Here, the trial court found respondent unable to care for J.P. as a result of his incarceration and ordered him to perform certain tasks, including completing a domestic violence course, obtaining and maintaining stable housing, performing substance abuse screenings, and demonstrating appropriate conduct during visits with J.P. In light of respondent’s lengthy criminal history and repeated incidents of domestic violence against J.P.’s mother, respondent cannot demonstrate that a reasonable probability exists that the trial court would have found him fit if the dispositional hearing had taken place when he was no longer incarcerated. Because respondent cannot prove that his counsel’s failure to seek a continuance prejudiced him, his ineffective assistance claim fails. See *Lear*, 175 Ill. 2d at 275; *Steele*, 2014 IL App (1st) 121452, ¶ 42.

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

¶ 23 Affirmed.