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2017 IL App (3d) 170480-U

Order filed December 15, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> R.S. and A.S.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Minors)	Will County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal Nos. 3-17-0480, 3-17-0481
)	Circuit Nos. 10-JA-106, 14-JA-181
v.)	
)	
Kreshena M.,)	The Honorable
)	Paula A. Gomora,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* In an appeal in a termination of parental rights case, the appellate court held that the trial court did not commit an abuse of discretion in denying respondent's attorney's motion to continue the hearing on the termination petition after respondent failed to appear. That being the only issue raised on appeal, the appellate court, therefore, affirmed the trial court's judgment, terminating the respondent's parental rights to her minor children.

¶ 2 In the context of a juvenile-neglect proceeding, the State filed an amended petition to involuntarily terminate the parental rights of respondent mother, Kreshena M., to her minor children, R.S. and A.S. After hearings on the matter, the trial court found that respondent was an unfit parent/person and that it was in the minors' best interest to terminate respondent's parental rights. Respondent appeals, challenging only the trial court's denial of her attorney's motion to continue the hearing on the termination petition after respondent failed to appear. We affirm the trial court's judgment.

¶ 3 **FACTS**

¶ 4 Respondent and Russell S. were the biological parents of the minor children, R.S. (born in August 2009) and A.S. (born in December 2014). In August 2009, the family came to the attention of the Department of Children and Family Services (DCFS) after it was reported that R.S. had been born prematurely and that his meconium had tested positive for cocaine and marijuana. Upon release from the hospital, R.S. was returned to respondent and Russell S., who were referred for services. Due to non-compliance with DCFS, the matter was subsequently referred to court, and a juvenile neglect petition was filed as to R.S. That case, however, was later dismissed on the State's motion and the file closed because respondent had been doing well in her progress on services.

¶ 5 In December 2014, the State filed a first supplemental juvenile neglect petition as to R.S. and an original juvenile neglect petition as to A.S. (collectively referred to hereinafter as the juvenile neglect petition), after A.S. was born with a controlled substance in her system. The petition alleged that the two minors had been subjected to an injurious environment. Respondent was given a court-appointed attorney to represent her in the juvenile-court proceedings.

¶ 6 On April 14, 2015, an adjudicatory hearing was held on the juvenile neglect petition. Respondent was present in court for the hearing and was represented by her attorney. Respondent stipulated to or admitted the factual basis for the petition—that each child had been born with a controlled substance in his or her system—and the trial court found that the children were neglected minors.

¶ 7 A dispositional hearing was held the following month. Respondent was present in court for the hearing and was represented by her attorney. At the conclusion of the dispositional hearing, the trial court found that respondent was an unfit parent.¹ The finding of unfitness as to respondent was based upon her having not yet completed the services outlined in the service plan. The trial court made the children wards of the court, named DCFS as the guardian of the children, and admonished respondent to comply with the terms of the service plan. The permanency goal was set at that time for the children to be returned home within 12 months.

¶ 8 Over the next approximately 21 months, permanency review hearings were held at regular intervals. In total, five permanency review hearings were held in July 2015, January 2016, June 2016, September 2016, and January 2017. Respondent appeared in court for the first three permanency review hearings and was represented at those hearings by her attorney. Although not quite clear from the record, it does not appear that respondent was present in court for the last two permanency review hearings, but her attorney was present on her behalf. Reports were prepared for each of the permanency review hearings by the caseworker and by the Court Appointed Special Advocates (CASA) detailing the positive and negative aspects of respondent's performance for the period. At the conclusion of the fifth hearing, the trial court, in

¹ The trial court also found that Russell S. was an unfit parent, as well.

agreement with the recommendation of the caseworker, changed the permanency goal for the children to substitute care pending a determination on termination of parental rights.

¶ 9 In March 2017, the State filed a motion to terminate respondent's parental rights to the minor children (termination petition).² The termination petition alleged that respondent was an unfit parent/person as defined in the Adoption Act based upon multiple grounds. The first court date on the termination petition was in April 2017. Respondent was present in court on that date with her attorney, and the termination petition was set for a hearing to be held on May 22, 2017.

¶ 10 On May 16, 2017, however, the assistant state's attorney assigned to the case filed a motion to continue because she had a scheduling conflict on the scheduled hearing date. The case was noticed up before the court on May 19, 2017, to address the State's motion to continue. Respondent was not present in court that date, but her attorney was present and agreed to the continuance. The case was continued, therefore, by agreement to June 22, 2017, for hearing on the termination petition, and the May-22 hearing date was stricken.

¶ 11 On that same May-19 date, the State filed an amended termination petition. In the amended petition, the State alleged that respondent was an unfit parent/person as defined in the Adoption Act in that she failed to make reasonable progress toward the return home of the children during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (see 750 ILCS 50/1(D)(m)(iii) (West 2012)). The nine-month period alleged in the amended petition was from July 2016 through April 2017.

¶ 12 On June 22, 2017, a hearing was held on both stages of the termination proceeding (parental unfitness and best interest). Respondent was not present in court for the hearing, and no excuse was given for her absence. Respondent's attorney was present in court, however, and

² The State also sought to terminate the parental rights of Russell S. to the children.

represented respondent's interests. At the outset of the hearing, respondent's attorney made an oral motion to continue the hearing based upon respondent's absence. The trial court denied the motion and proceeded with the parental-unfitness portion of the hearing.

¶ 13 In its case-in-chief, the State presented the testimony of respondent's caseworkers and of the CASA representative assigned to the case. The State also admitted into evidence, or had the court take judicial notice of, certain documents pertaining to the case. Respondent's attorney did not object to the admission of the documents in question but did cross-examine some of the State's witnesses.

¶ 14 After the conclusion of the State's case-in-chief, respondent's attorney made a motion for a directed finding in respondent's favor on the termination petition. The trial court denied the motion. Respondent's attorney renewed his motion to continue at that time, so that he could present respondent's case, but the trial court denied that motion as well. Respondent's attorney presented no additional evidence but did make a closing argument on respondent's behalf and argued that the State failed to prove that respondent was an unfit parent/person.

¶ 15 At the conclusion of the parental-unfitness portion of the hearing on the termination petition, the trial court found that the State had proven by clear and convincing evidence that respondent was an unfit parent/person. In making that finding, the trial court noted, among other things, that the children were brought into DCFS's care because they had been exposed to controlled substances and that respondent, during the relevant time period, had failed to comply with the recommended substance abuse treatment.

¶ 16 After the parental-unfitness portion of the termination hearing had concluded, the trial court proceeded immediately to a hearing on the best-interest portion of the termination proceeding. At the outset of the best-interest hearing, respondent's attorney again made a motion

to continue the hearing based upon respondent's absence, which the trial court denied. The State presented the testimony of the CASA representative assigned to the case, and respondent's attorney cross-examined that witness.

¶ 17 After the State had rested its case-in-chief, respondent's attorney called one of the caseworkers to testify and elicited testimony favorable to respondent. Upon completion of the presentation of the evidence, respondent's attorney made a closing argument and argued that it was not in the children's best interest for respondent's parental rights to be terminated.

¶ 18 At the conclusion of the best-interest portion of the proceeding, the trial court found that it was in the best interest of the children for respondent's parental rights to be terminated. The trial court terminated respondent's parental rights, set the children's permanency goal to adoption, and named DCFS as the guardian of the children with the right to consent to adoption.³

¶ 19 About a week later, respondent's attorney filed a notice setting the case before the court on a date in July 2017 for the filing of respondent's notice of appeal. When respondent failed to appear in court on that date, however, the motion to file a notice of appeal was withdrawn. A notice of appeal was subsequently filed on respondent's behalf later that same month.

¶ 20 ANALYSIS

¶ 21 On appeal, respondent argues that the trial court erred when it denied her attorney's motion to continue the hearing on the termination petition after respondent failed to appear. Respondent asserts that the trial court's ruling constituted an abuse of discretion because: (1) a fundamental liberty interest was at stake; (2) the trial court denied the motion to continue without even inquiring whether respondent's attorney had notified respondent of the new hearing date; (3) the record does not show whether respondent appeared on the previously-set hearing date;

³ The trial court also terminated the parental rights of Russell S. to the minor children.

and (4) fundamental fairness dictated that respondent's attorney be granted a continuance, since the hearing on the termination petition had previously been continued on the State's motion.

Respondent asks, therefore, that we remand this case for a new hearing on the termination petition (presumably, after we vacate the trial court's judgment terminating respondent's parental rights).

¶ 22 The State argues that the trial court's denial of the motion to continue was proper and should be upheld. The State asserts that the trial court's ruling did not constitute an abuse of discretion because: (1) respondent has not shown that there was good cause to warrant a continuance, since respondent failed to appear for the hearing and for a subsequent court date and since no explanation has been given for respondent's failure to appear for the hearing; (2) despite the previous grant of a continuance for the State, the denial of the motion to continue was not fundamentally unfair to respondent, since respondent had agreed to the State's motion to continue; (3) respondent's attorney was present and continued to represent respondent's interests in the proceedings, even in respondent's absence; and (4) respondent was not prejudiced by the denial of her attorney's request for a continuance, has not asserted in this appeal that any prejudice resulted from the denial, and does not contest the substantive rulings of the trial court on the termination petition. The State asks, therefore, that we affirm the trial court's denial of the respondent's attorney's motion to continue and that we also affirm the trial court's substantive rulings on the termination petition.

¶ 23 The children's attorney on appeal agrees with the State's argument—that the trial court's denial of the motion to continue was proper and should be upheld. The children's attorney asserts that the trial court's decision to deny the motion was not unfair or an abuse of discretion where respondent offered no proof that her request was for good cause shown and not an attempt

to unnecessarily delay the hearing and where immediate commencement of the proceedings with respondent absent, but with her attorney fully and zealously representing her, was sufficient to protect respondent's interests and the interests of the children in the proceedings. In making that assertion, the children's attorney points out that unlike the State's motion to continue, which was agreed to by respondent's attorney, respondent's attorney's oral motion to continue was made on the hearing date without any advance notice and was not supported by fact, affidavit, testimony, or argument to establish that there was good cause for the continuance. Furthermore, the children's attorney contends that the fact that a liberty interest was involved did not mean that respondent was guaranteed a continuance, especially when respondent had a history of failing to appear, offered no explanation for her absence, and had her interests represented by her attorney in her absence to the best degree possible. The children's attorney contends further, along with the State, that respondent has made no argument that she has been prejudiced by the trial court's denial of her attorney's motion to continue. For all the reasons stated, the children's attorney asks that we affirm the trial court's judgment terminating respondent's parental rights to her minor children.

¶ 24 The involuntary termination of parental rights is governed by the provisions of both the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2016)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2016)). See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). Under the Juvenile Court Act, the involuntary termination of parental rights is a two-stage process. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). First, the State must prove by clear and convincing evidence that the parent is an unfit parent/person as defined in the Adoption Act, and, second, the State must prove by a preponderance of the evidence that termination of

parental rights is in the child's best interests. See *id.* at 889-91. Neither finding by the trial court may be reversed on appeal unless it is against the manifest weight of the evidence. *Id.*

¶ 25 In this particular case, however, the trial court's finding of parental unfitness and its best-interest determination are not directly at issue. Rather, respondent challenges only the trial court's denial of her attorney's motion to continue the termination hearing after respondent failed to appear.

¶ 26 Section 2-1007 of the Code of Civil Procedure governs requests for continuances in civil cases. See 735 ILCS 5/2-1007 (West 2016); *In re M.R.*, 305 Ill. App. 3d 1083, 1086 (1999). Section 2-1007 provides that a request for a continuance may be granted on good cause shown, in the discretion of the trial court, and on just terms. 735 ILCS 5/2-1007 (West 2016); *M.R.*, 305 Ill. App. 3d at 1086. It is well established, however, that a party has no absolute right to a continuance. *M.R.*, 305 Ill. App. 3d at 1086. The trial court, in its broad discretion, must decide if the motion to continue should be granted or denied. See *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925, 927 (1997). A decisive factor in making that determination is whether the party seeking the continuance has acted diligently in proceeding with the case. See *id.* A trial court's ruling on a motion to continue will not be reversed on appeal, absent an abuse of discretion. *M.R.*, 305 Ill. App. 3d at 1086. The threshold for finding an abuse of discretion is high one and will not be overcome unless it can be said that the trial court's ruling was arbitrary, fanciful, or unreasonable, or that no reasonable person would have taken the view adopted by the trial court. See *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009); *In re Leona W.*, 228 Ill. 2d 439, 460 (2008). In addition, the denial of a motion to continue will not be grounds for reversal on appeal unless the complaining party shows that he or she has been prejudiced by the denial. *M.R.*, 305 Ill. App. 3d at 1086.

In the present case, after reviewing the record, we find that the trial court did not commit an abuse of discretion by denying respondent's attorney's motion to continue the termination hearing after respondent failed to appear. See *Blum*, 235 Ill. 2d at 36; *Leona W.*, 228 Ill. 2d at 460. Although a fundamental liberty interest was at stake, it was not mandatory that respondent be present for the hearing, and the trial court was not obligated to wait to conduct the hearing until respondent chose to appear. See *In re K.O.*, 336 Ill. App. 3d 98, 105 (2002); *In re M.R.*, 316 Ill. App. 3d 399, 402-404 (2000). Furthermore, contrary to respondent's assertion on appeal, we see nothing unfair about the trial court's grant of the State's motion to continue the hearing, which was agreed to by the parties, and the denial of respondent's attorney's motion to continue. As the children's attorney correctly points out, the two motions were not comparable. The State filed a written motion to continue in advance, alleged good cause for the continuance, and placed the case on the court call for ruling on the motion prior to the scheduled hearing date. As noted, the State's motion to continue was ultimately granted by agreement. The motion of respondent's attorney, on the other hand, was made orally in court on the day of the hearing, after respondent failed to appear, with no excuse (good cause) given whatsoever, even at a later time. In addition, although respondent was absent from court, her attorney was present and adequately represented her interests in the termination proceeding. Finally, respondent has not alleged or established any prejudice that resulted from the trial court's denial of her motion to continue. Respondent does not claim on appeal that the trial court's ruling on the termination petition was erroneous or that her attorney failed to properly represent her interests in her absence. Thus, even if we had found that the trial court should have granted respondent's attorney's motion to continue, we still would have ruled against respondent in this appeal because of the lack of prejudice that resulted from the denial of the continuance. See *M.R.*, 305 Ill. App. 3d at 1086.

¶ 28

CONCLUSION

¶ 29

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

¶ 30

Affirmed.