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2023 IL App (3d) 230350-U

Order filed December 19, 2023

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

| | | |
|---------------------------------------|---|-------------------------------------|
| <i>In re</i> M.F., |) | Appeal from the Circuit Court |
| |) | of the 12th Judicial Circuit, |
| a Minor |) | Will County, Illinois. |
| |) | |
| (The People of the State of Illinois, |) | |
| |) | |
| Petitioner-Appellee, |) | Appeal No. 3-23-0350 |
| |) | Circuit No. 21-JA-71 |
| v. |) | |
| |) | |
| Shawn G., |) | |
| |) | The Honorable |
| Respondent-Appellant). |) | Paula A. Gomora and John J. Pavich, |
| |) | Judges, presiding. |

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Holdridge and Justice Davenport concurred in the judgment.

ORDER

¶ 1 *Held:* In a termination of parental rights case, the circuit court did not err when it denied the respondent-father's motion to continue the trial.

¶ 2 The circuit court entered orders finding the respondent, Shawn G., to be an unfit parent and terminating his parental rights to his minor child, M.F. On appeal, Shawn argues that the circuit court violated his due process rights or, alternatively, abused its discretion, when it denied his motion to continue the trial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 1, 2021, the State filed a juvenile petition alleging that the minor (born August 10, 2015) was neglected by reason of an injurious environment. More specifically, the petition alleged that the minor’s “mother and father are involved in domestic violence when the minor is present.” The minor was taken into shelter care that day, and Shawn was given visitation rights two times per week for at least two hours per visit. After a hearing in July, the circuit court adjudicated the minor neglected. The court held a dispositional hearing in September at the conclusion of which it made the minor a ward of the court, appointed the Department of Children and Family Services as guardian, and found Shawn to be an unfit parent. The court also set the case for a Permanency Review Hearing to be held on January 20, 2022.

¶ 5 In September 2022, the State filed a petition to terminate Shawn’s parental rights, which alleged, among other things, that he had failed to make reasonable progress toward the return of the minor to his care. The case was eventually set for trial to be held on April 27, 2023.

¶ 6 The case was called for a Permanency Review Hearing in March 2023. The record reflects that an assistant public defender appeared on behalf of Shawn, but neither the circuit court’s docket entry nor the court’s written order state whether Shawn himself was present. Further, no transcript from the hearing on that date appears in the record on appeal. At that hearing, the trial date was stricken and changed to May 18.

¶ 7 The circuit court called the case for trial on the State’s petition on May 18. An assistant public defender was present on Shawn’s behalf, but he was not present. His attorney orally moved the court for a continuance due to his absence. The State objected, adding that “I don’t believe there is any reasonable explanation for his absence, so I -- he was aware of the date. He was here when it was set.” Shawn’s attorney responded, “[m]y client says that he did not know that there was a hearing today, although I will note that my client was present in court on the last court date.” The court denied the motion.

¶ 8 At the end of the trial, the circuit court found Shawn to be unfit. A best-interest hearing was immediately held, the result of which was that Shawn’s parental rights to the minor were terminated. After a motion to reconsider filed by his attorney was denied, Shawn appealed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, Shawn argues that the circuit court violated his due process rights or, alternatively, abused its discretion, when it denied his motion to continue the trial. He alleges that the court’s ruling was erroneous because (1) he was not provided notice of the trial date in accordance with section 2-16(4) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-16(4) (West 2022)), (2) the court relied on incorrect statements of fact from the State, and (3) the court failed to inquire into the notice issue.

¶ 11 Safeguards on a parent’s due process rights during parental termination proceedings are built into the Act. 705 ILCS 405/1-5(1) (West 2022); *In re D.R.*, 307 Ill. App. 3d 478, 482 (1999). While a parent has a right to be present at a hearing held under the Act, a parent’s presence is not mandatory. *In re C.L.T.*, 302 Ill. App. 3d 770, 778 (1999).

¶ 12 We note initially that Shawn claims *de novo* review applies because he argues that his due process rights were violated. He claims that abuse-of-discretion review only applies to his

“alternative” argument. Shawn is incorrect. Shawn actually posits just one argument—that the circuit court erred when it denied his attorney’s motion to continue the trial on the termination petition. It is well settled that a party does not have an absolute right to the continuance of a proceeding under the Act. *In re P.S.*, 2021 IL App (5th) 210027, ¶ 53. Further, it is well settled that we review a circuit court’s decision on a motion to continue for an abuse of discretion. *Id.*

¶ 13 In relevant part, section 2-16(4) of the Act provides that if the date for a hearing on a juvenile petition must be changed, “notice of the resetting of the date must be given, by certified mail or other reasonable means, to each respondent who has been served with summons personally or by certified mail.” 705 ILCS 405/2-16(4) (West 2022).

¶ 14 In this case, Shawn claims that both the State and his attorney erroneously stated that he was present in court when the trial date was changed in March 2023. But whether he was present on that date in March is irrelevant because his attorney was present. “Notice to counsel would be one method of providing the notice by ‘other reasonable means’ that section 2-16(4) contemplates.” *C.L.T.*, 302 Ill. App. 3d at 778; see also *In re B.C.*, 317 Ill. App. 3d 607, 613 (2000) (quoting *In re D.R.*, 307 Ill. App. 3d 478, 482 (1999) for the proposition that “it is well settled that notice to an attorney is considered notice to the client, notwithstanding whether the attorney has actually communicated such knowledge to the client”). Moreover, Shawn possessed “a duty to follow the progress of [his] case and to learn from [his] attorney the date of the next hearing.” *Id.* Under the circumstances of this case, it is indisputable that Shawn had adequate notice of the hearing on the termination petition. Accordingly, we hold that the circuit court did not abuse its discretion when it denied his attorney’s motion to continue the trial.

