2015 IL App (5th) 150202-U

NO. 5-15-0202



IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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| *In re* Z.B.H., a Minor | ) | Appeal from the |
| | ) | Circuit Court of |
| (The People of the State of Illinois, | ) | Saline County. |
| | ) | |
| Petitioner-Appellee, | ) | |
| | ) | |
| v. | ) | No. 13-JA-10 |
| | ) | |
| Jerry L., | ) | Honorable |
| | ) | Todd D. Lambert, |
| Respondent-Appellant). | ) | Judge, presiding. |

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JUSTICE CATES delivered the judgment of the court.
Justices Chapman and Stewart concurred in the judgment.

**ORDER**

¶ 1 *Held*: Trial court's decision terminating father's parental rights did not violate father's due process rights.

¶ 2 Respondent, Jerry L., father, appeals from the order entered by the circuit court of Saline County finding him to be an unfit parent and terminating his parental rights to the minor, Z.B.H. Father argues on appeal that he was denied his due process rights during the pendency of the proceedings. We affirm.

¶ 3 We note that pursuant to Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010), our decision in this case was to be filed on or before October 24, 2015, absent good cause

shown. The briefing schedule was delayed, however, when respondent sought and received several extensions of time to file his brief. As a result, this cause was not fully briefed until after the required filing date. Consequently, we find that good cause exists for issuing our decision after October 24, 2015.

¶ 4 We now turn to the facts. The minor, Z.B.H., was born on June 29, 2012. Given that father and the minor's birth mother were not married, and were not living together, the minor lived with mother. On February 20, 2013, the State filed a petition for adjudication of wardship of the minor alleging that he was neglected because of the parents' substance abuses and arrests. The minor was adjudicated a ward of the court on April 9, 2013, pursuant to mother's stipulation.

¶ 5 On July 30, 2014, the State filed a petition for termination of parental rights, and for appointment of a guardian with the right to consent to adoption for the minor child. The hearings on father's fitness and the best interests of the minor were held January 14, 2015, after which the trial court entered the order terminating father's parental rights. The court also ordered the appointment of a guardian with the power to consent to adoption. Father appeals the circuit court's decision, claiming that he was denied his due process rights during the pendency of the proceedings.

¶ 6 A person's interest in maintaining a parental relationship with his or her child is a fundamental liberty interest protected by the due process clause of the fourteenth amendment. *Santosky v. Kramer*, 455 U.S. 745 (1982). Due process requires adequate notice to the parents of a minor in juvenile court proceedings. Due process, however, requires only that the parents be given notice of court dates, not that they must also be

present at those court dates. *In re C.L.T.*, 302 Ill. App. 3d 770, 778, 706 N.E.2d 123, 129 (1999). Father claims here that the procedures used by the trial court, *i.e.*, having the hearing without father being present, and denying his motion for a continuance, led to an erroneous deprivation of his due process rights in that he was not given a meaningful opportunity to be heard through counsel, and to defend the allegations against him. Father further claims that his attorney repeatedly failed to notify him of hearing dates. He also alleges that his counsel failed to meet an objective standard of competence to the extent that his counsel's deficient performance resulted in prejudice to father, as he lost his parental rights. The State counters that the trial court did not abridge any of father's rights. Rather, the State contends, that father, by failing to appear in court to participate in the proceedings, abandoned his statutory rights. We agree.

¶ 7 We initially note that termination hearings may proceed in a party's absence when that party fails to appear at the hearings. See *In re C.L.T.*, 302 Ill. App. 3d at 779, 706 N.E.2d at 129. In this instance, 11 different hearings pertaining to Z.B.H. were held between February 20, 2013, and May 12, 2015. Father appeared for only five of those hearings. While father did appear for some of the hearings, he failed to appear for some of the more critical hearings. Specifically he failed to appear for the adjudicatory hearing, failed to appear for the dispositional hearing, failed to appear for the unfitness portion of the hearing to terminate his parental rights, and also failed to appear for the best interest portion of the hearing. More importantly, father never offered, and has yet to offer, any reason for his absence from these hearings, other than the incompetence of counsel. *Cf. In re S.B.*, 2015 IL App (4th) 150260, 38 N.E.3d 652. Father blamed his

first attorney for his absences in court, claiming that he never received notices because his counsel failed to maintain a correct address for him. Father claimed he was living at the same address since the beginning of the proceedings, yet father also remarked to the court during one of his appearances that he was living out on the streets. Father then asked the court to appoint a specific attorney for him instead of the one already appointed. The court allowed the first attorney to withdraw, and appointed the attorney father requested. In spite of this, father still failed to show up in court for the fitness or termination hearings, even though he had also been given in-court notice of the date of the proceedings. Father clearly did not even attempt the minimal effort required under the circumstances to demonstrate a deprivation of his due process rights. No attorney could make up for father's lack of effort shown throughout the proceedings. Contrary to father's assertions, we find no evidence of any incompetence on the part of counsel.

¶ 8 We further agree with the State that, under the circumstances presented here, the proceedings complied with due process. Father was provided with actual, in-court notice, of the date and time of hearing on the motion to terminate his parental rights. He chose not to attend the hearing, thereby opting not to participate. Again, to this date, father has offered no reason to explain his absence from the termination hearing. Nor has father identified any evidence that he could or would have presented had he been present. Instead, he simply argues that he could not cross-examine witnesses, present a defense, or make an argument, as represented by counsel, on his own behalf. We note that at the unfitness portion of the hearing, there were no witnesses. Rather, the court took judicial notice of all prior hearings and orders. After the close of the unfitness proceeding, and

after the court found both parents unfit, the State requested to proceed to an immediate best interest hearing (see *In re C.L.T.*, 302 Ill. App. 3d at 779, 706 N.E.2d at 129-30 (fitness and best interest hearings may be held one right after the other)). At the best interest hearing, father's attorney cross-examined the State's witness, but otherwise offered no evidence. Father has not identified what testimony he would have offered to counter the State's allegations of unfitness. He has no offer of proof or any motion to correct any error of fact with regard to the unfitness finding. Even on appeal, father does not challenge the underlying finding of unfitness nor does he contend the child's interests would be better served were he to remain his father. The termination proceedings in this instance had already spanned over 18 months. Throughout this time, the court had repeatedly continued and delayed the case to accommodate father. While father argues the court should have granted him yet another continuance until he could appear in court, it is difficult to see what evidence father could have produced to change the outcome, or what progress father could have made were the court to grant yet another continuance. We are aware that delays in termination proceedings impose grave costs to the lives of the children involved. See *In re S.W.*, 2015 IL App (3d) 140981, ¶ 37, 33 N.E.3d 861. Given such potential for harm, there is no absolute right to a continuance, even when a parent is not present for the termination hearings. See *In re A.F.*, 2012 IL App (2d) 111079, ¶ 36, 969 N.E.2d 877. The granting of any continuance is within the discretion of the trial court. We will not reverse the court's decision to deny a continuance unless it can be shown that the denial resulted in prejudice. Such prejudice must be shown by demonstrating a fair probability of a different outcome if the case had been continued

until the parent could be present. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 37, 969 N.E.2d 877. Father cannot show any such prejudice in this instance. Accordingly, the denial of father's motion to continue the hearings did not constitute an abuse of discretion. The court provided father with an opportunity to be heard at a meaningful time and in a meaningful manner. The court was not required to wait until father chose to appear. See *In re S.W.*, 2015 IL App (3d) 140981, 33 N.E.3d 861.

¶ 9 Turning to the merits of the termination proceedings themselves, again we find no reversible error. While a finding of parental unfitness must be proved by clear and convincing evidence (*In re Pronger*, 118 Ill. 2d 512, 526, 517 N.E.2d 1076, 1081 (1987)), the court's finding of unfitness will not be reversed unless it is against the manifest weight of the evidence (*In re J.P.*, 261 Ill. App. 3d 165, 174, 633 N.E.2d 27, 34 (1994)). Here, father was found unfit for failing to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare (see 750 ILCS 50/1(D)(b) (West 2014)) and for failing to make reasonable progress toward the return of the child during any nine-month period following adjudication (see 750 ILCS 50/1(D)(m)(ii) (West 2014)). Under the circumstances presented, we cannot say that the court's findings were against the manifest weight of the evidence. Father was advised on at least two occasions when he was in court that he needed to cooperate with DCFS, comply with his service plan, and correct the conditions which led to the child being in care, or risk the loss of parental rights. Again, father ignored the opportunities to help himself and the minor child. In fact, father did little to cooperate with DCFS, claiming that he should not have to comply with any service plans until it was proven that he was the minor's father.

In response, the court ordered a DNA test for father and denied visitation with the minor until his paternity was proven. The DNA test was scheduled several times, yet father failed to follow through with the test. It was not until a year and three months from the date the DNA test was first ordered that father actually had the testing done, even though he was not allowed visitation during this entire time period. Without father's cooperation in the DNA testing, and without his participation in the assessments, no service plan could be developed to assist father with his parenting deficits. It was father who frustrated DCFS's efforts, not the other way around. Unfortunately, for father, his lack of attention and interest in his child has caused him to lose any and all rights to the minor.

¶ 10 For the foregoing reasons, we affirm the order of the circuit court of Saline County terminating father's parental rights, and, consistent with the best interests of the minor, authorizing the appointment of a guardian to consent to the adoption of the child.

¶ 11 Affirmed.