

NOTICE
Decision filed 11/09/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 180301-U

NO. 5-18-0301

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> JAYL.S.A., JAC.S.A., JAT.S.A.,)	Appeal from the
JAYC.S.A., J.K.M.A., JUL.S.A., and W.D.G.,)	Circuit Court of
Minors)	Bond County.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	
)	
v.)	No. 17-JA-2
)	
William G.,)	Honorable
)	Ronald R. Slemer,
Respondent-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Moore and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's denial of the respondent father's motion to continue is affirmed where it was not an abuse of discretion and did not deny him due process.

¶ 2 The respondent father, William G., appeals the March 16, 2018, decision of the circuit court of Bond County denying his motion to continue. He first argues that the court abused its discretion in denying his motion. Second, he argues that the court's

denial of the motion to continue violated his constitutional right to due process. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 As a preliminary matter, because this appeal involves a final order terminating parental rights, Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) requires that, except for good cause shown, the appellate court issue its decision within 150 days of the filing of the notice of appeal. Accordingly, the decision in this case was due November 1, 2018. The case was placed on the October 30, 2018, oral argument setting, and we now issue this Rule 23 order.

¶ 5 This appeal involves only the termination of William G.'s parental rights of William Jr., born December 11, 2015, to William G. and Jennifer M. Jennifer M. is also the natural mother to six other children. The termination of the parental rights of Jennifer M. is the subject of a separate appeal. To avoid redundancy, this order will reiterate only those facts related to William G. and the court's denial of his motion to continue.

¶ 6 On January 24, 2017, the State filed a petition for adjudication of wardship, asserting, in pertinent part, that William Jr. was neglected in that his environment was injurious to his welfare in violation of section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2016)) where the Illinois Department of Children and Family Services (DCFS) initiated an open intact family case with Children's Home and Aid and William G. failed to follow through with requested services including substance-abuse assessments and meeting minimum parenting standards.

¶ 7 On January 26, 2017, the State filed a first amended petition for adjudication of wardship that made no additional allegations against William G. On February 3, 2017, the trial court entered a temporary custody order placing custody of William Jr. with DCFS. On that same day, William G. was administered a drug test and tested positive for amphetamines and methamphetamines.

¶ 8 On February 22, 2017, the State filed a second amended petition adding an additional allegation against William G. that William Jr. was neglected in that his environment was injurious to his welfare in violation of section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)) where there were ongoing concerns regarding William G. and his substance abuse and his ability to care for William Jr.

¶ 9 At the February 26, 2018, unfitness hearing, the trial court had the following colloquy with William G.'s then-counsel Mr. Abell and William G.:

"MR. ABELL: Your Honor, I wish to address the Court. This afternoon they brought [William G.] to court. We had a discussion at that time; and at that time I expressed some frank opinions what I believed the outcome would be of the various motions that [William G.] wanted to file and the various matters pending before the Court.

[William G.] did not appreciate the opinions and feedback which I gave [him] and at that time [he] threatened my physical safety. I would ask that I be relieved from representing [William G.] in this proceeding. I really don't feel comfortable sitting next to him, Your Honor.

THE COURT: [William G.], stand up.

[WILLIAM G.]: Yes, sir.

THE COURT: What do you want?

[WILLIAM G.]: I'd rather him not be my lawyer, Your Honor. He just stood in there and told me you're not getting your family back. A lawyer like that I don't need on my side.

THE COURT: [William G.], have you hired an attorney to be here to represent you here today?

[WILLIAM G.]: No, I didn't. I didn't know this would happen, Your Honor, until I got here and he said what he did to me."

The court then allowed Mr. Abell to withdraw from the case and immediately appointed Calvin Fuller as William G.'s new counsel.

¶ 10 On March 16, 2018, the trial court held a hearing on William G.'s unfitness. At the beginning of the proceeding, William G.'s lawyer requested a continuance on his client's behalf, stating that he was appointed approximately 7 to 10 days prior to the hearing. He also informed the court that he had met with William G. at the Centralia Correctional Center and that he had reviewed all of the discovery given to him by prior counsel, Mr. Abell. However, according to Mr. Fuller, "to most effectively represent [William G.] I would need some additional time to meet with him in Centralia and go over the documents more thoroughly." The court denied the continuance, ruling that "under the circumstances with the arrangement the Court has made, on the request of [William G.], new counsel has been appointed. And I don't think there's sufficient cause for [William G.] to be asking for a continuance at this time. So, the continuance is denied." The court then went forward with the unfitness hearing.

¶ 11 On April 4, 2018, the trial court entered a written order finding William G. unfit for failing to make reasonable efforts towards the return of William Jr. within nine months after an adjudication of neglect; for failing to make reasonable progress towards the return of William Jr. within nine months after an adjudication of neglect; and that he is depraved as defined in section 1(i) of the Adoption Act (750 ILCS 50/1(i) (West 2016)) and that he failed to rebut the presumption of depravity by clear and convincing evidence.

¶ 12 On May 4, 2018, the trial court held a best-interest hearing regarding William Jr. On May 11, 2018, the trial court entered a written order terminating the parental rights of William G., finding by clear and convincing evidence that:

"a. He has failed to make reasonable efforts toward the return of the minor to him within nine (9) months after an adjudication of neglect; and

b. He has failed to make reasonable progress towards the return of the minor to him within nine (9) months after an adjudication of neglect; and

c. He is depraved, in that [William G.] has been criminally convicted of at least three (3) felonies under the laws of this State and at least one (1) of these convictions took place within five (5) years of the filing of this Motion, as evidenced by convictions as contained in Montgomery County cases 04CF157 and 02CF187, White County case 13CF21, and Bond County cases 17CF110 and 04CF66 and incorporated by reference."

¶ 13

II. ARGUMENT

¶ 14

A. Abuse of Discretion

¶ 15 The first issue raised by William G. is that the trial court abused its discretion in denying his motion to continue prior to the March 16, 2018, unfitness hearing.

¶ 16 When a party moves for a continuance, it is within the trial court's discretion whether to grant or deny the motion, and the court's decision will not be disturbed absent manifest abuse or palpable injustice. *In re K.O.*, 336 Ill. App. 3d 98, 104 (2002). An abuse of discretion arises where no reasonable person would take the view of the trial court. *In re Marriage of Knoche*, 322 Ill. App. 3d 297, 308 (2001). A movant has no absolute right to a continuance. *In re D.P.*, 327 Ill. App. 3d 153, 158 (2001). Further, "serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor." 705 ILCS 405/2-14(a) (West 2016). The court may grant the continuance "only if the continuance is consistent with the health, safety and best

interests of the minor." 705 ILCS 405/2-14(c) (West 2016). The denial of a motion to continue is not grounds for reversal unless the moving party has been prejudiced by such denial. *In re M.R.*, 305 Ill. App. 3d 1083, 1086 (1999).

¶ 17 Here, William G. has not established, nor does the record indicate, that he was prejudiced by the denial of his motion to continue. Though he claims that his attorney required more time to review the extensive amount of discovery in this case, and implies that his lawyer's representation would have been more effective if counsel was given additional time to prepare, that is based on speculation. William G. does not point to any manner in which he was prejudiced or how the decision of the circuit court would have been different had the continuance been granted. This argument is also unpersuasive in light of the evidence presented by the State as to his unfitness based on depravity. Under the Adoption Act, "[t]here is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State *** and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2016). The record shows that William G. had been criminally convicted of at least three prior felonies, one within five years of the filing of the motion. He is currently incarcerated, and his earliest expected release date is January 30, 2020. The State must establish, by clear and convincing evidence, that the parent is an unfit person under one of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). 705 ILCS 405/2-29(2), (4) (West 2016); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Here, his convictions created a presumption of depravity, which he failed to rebut. 750

ILCS 50/1(D)(i) (West 2016). Therefore, he was not prejudiced by the court's denial of his motion to continue.

¶ 18 William G. argues that the substitution of counsel on February 26, 2018, required written notice and a 21-day continuance under Illinois Supreme Court Rule 13 (eff. July 1, 2013). This argument is based on a misreading of Rule 13. Rule 13 ponders a 21-day continuance where there is no substitution of counsel to give the party time to either retain other counsel or enter their own supplementary appearance. In this case, new counsel for William G. was immediately substituted for Mr. Abell and a 21-day continuance was not required. William G. also argues that Rule 13 requires a motion to withdraw be in writing. Although typically an oral motion to withdraw is ineffective, that is not the case where, as here, the respondent consented to his attorney's withdraw by stating, "I'd rather him not be my lawyer, Your Honor." Thus, William G. has forfeited any argument about the oral nature of the motion when he acquiesced to the procedure. See *People v. Harvey*, 211 Ill. 2d 368 (2004).

¶ 19 Therefore, the trial court did not abuse its discretion in denying William G.'s motion to continue.

¶ 20 **B. Due Process**

¶ 21 Second, William G. argues that he was denied due process where the trial court denied his motion to continue.

¶ 22 "A parent's interest in maintaining a parental relationship with [their] child is a fundamental liberty interest protected by the due process clause of the fourteenth amendment." *In re C.J.*, 272 Ill. App. 3d 461, 464 (1995) (citing *Santosky v. Kramer*,

455 U.S. 745 (1982)). Whether the constitutional requirement of procedural due process has been met is a question of law, and this court therefore reviews *de novo* the ruling of the trial court. *In re Todd K.*, 371 Ill. App. 3d 539, 541 (2007).

¶ 23 There are three factors that must be considered in determining whether the procedures carried out in a parental-rights termination proceeding satisfied the constitutional demands of due process. *C.J.*, 272 Ill. App. 3d at 465. Courts must consider: "(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *C.J.*, 272 Ill. App. 3d at 465 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

¶ 24 As to the first factor, it is well established that a parent's liberty interest in maintaining a parental relationship with a child involves a heightened private interest. See *In re D.R.*, 307 Ill. App. 3d 478, 483 (1999); see also *C.J.*, 272 Ill. App. 3d at 465.

¶ 25 As to the second factor, this court first notes that for the unfitness hearing, William G. was given notice, was represented by counsel, was present despite being incarcerated, had the opportunity to present evidence and witnesses, and the opportunity to cross-examine adverse witnesses. His argument that his right to counsel was "thwarted" by the court denying his motion for a continuance is unpersuasive. According to the record, counsel informed the court that:

"I have met with [William G.] at the Centralia Correctional Center. We did have a conversation regarding this case. I have also reviewed the file, materials that Mr. Abell gave me and that Ms. Mann has provided to me. However, I think in order for me to most effectively represent [William G.] I would need some additional time to meet with him in Centralia and go over the documents more thoroughly."

Based on this colloquy we believe that any additional time to review discovery would have been of little value.

¶ 26 As to the third factor, any continuance would have resulted in an increase cost on the function of government and a delay in the final resolution regarding William Jr. As William G. is still incarcerated and is not expected to be paroled until January 2020, any benefit to him in delaying the proceeding would have been outweighed by the burden such a continuance would have imposed on both the government interest and William Jr.'s well-being. Accordingly, we find that the court's denial of William G.'s motion for a continuance did not deny him procedural due process.

¶ 27 **III. CONCLUSION**

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of Bond County.

¶ 29 Affirmed.