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2015 IL App (3d) 150073-U

Order filed May 8, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

<i>In re</i> T.I.,	)	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. 3-15-0073
	)	Circuit No. 12-JA-9
v.	)	
	)	
Jessica I.,	)	
	)	The Honorable
Respondent-Appellant).	)	Paula Gomora,
	)	Judge, presiding.

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PRESIDING JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and O'Brien concurred in the judgment.

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**ORDER**

¶ 1      *Held:* In a termination of parental rights case, the appellate court held that the circuit court did not abuse its discretion when it denied the respondent's motion to continue the unfitness hearing.

¶ 2 The circuit court entered orders finding the respondent, Jessica I., to be an unfit parent and terminating her parental rights to the minor, T.I. On appeal, the respondent argues that the court erred when it denied her motion to continue the unfitness hearing. We affirm.

¶ 3 FACTS

¶ 4 On January 18, 2012, a juvenile petition was filed that alleged the minor was neglected by reason of an injurious environment. Documents filed with the circuit court stated that the Department of Children and Family Services (DCFS) became involved after a vehicular accident occurred in which the minor's putative father was driving without a license and the respondent and the minor were passengers in the vehicle.<sup>1</sup> The respondent began engaging in services, but began a pattern of noncompliance, which culminated in her not staying in contact with the agency such that her whereabouts with the minor were unknown. The minor was taken into shelter care and was later placed with the maternal grandmother.

¶ 5 Documents filed with this case indicated that the respondent was charged with battery on August 2, 2012, but she was not taken into custody on a warrant related to that charge until March 23, 2013. On March 25, 2013, she was charged with, *inter alia*, possession of a controlled substance. Attorney Chuck Bretz appeared on behalf of the respondent on April 9, 2013. The respondent pled guilty to battery and to possession of a controlled substance on April 12, 2013, and was sentenced, *inter alia*, to probation.

¶ 6 On June 17, 2013, the circuit court held a hearing at which the respondent was present. Up to that point, the respondent had been represented by an assistant public defender, Lea Norbut. At the outset of the hearing, the assistant State's attorney informed the court that “I

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<sup>1</sup> Documents filed with the court indicated that the vehicle had been traveling at a high rate of speed before it flipped.

received a call on Friday from [attorney] Chuck Bretz' office who indicated that they are going to file an appearance on behalf of the [respondent.] They could not be here today.” The case was continued to July 22, 2013, so Bretz' office could file an appearance. The court's minute entries do not show that Bretz' office appeared at that hearing, however, and the court continued the matter again for status on the respondent's choice of counsel.

¶ 7 In September 2013, the case was called again. Neither the respondent nor private counsel appeared, and the court set the matter for trial. A petition to revoke the respondent's probation was filed, and a warrant for her arrest issued on October 1, 2013. Also in October 2013, the court continued the instant matter to December 11, 2013.

¶ 8 On December 2, 2013, the minor was placed into a traditional foster home.

¶ 9 On December 11, 2013, the circuit court held an adjudicatory hearing. The respondent was not present, and Norbut moved to continue the case. Norbut had stated that she believed the respondent was not present due to an outstanding warrant for her arrest. The assistant State's attorney stated that a warrant was outstanding for the respondent's arrest in several cases and that the respondent was represented in those matters by Bretz. The court denied the motion and stated that the respondent should make herself available to the court. At the close of the hearing, the court found the minor to be neglected. With regard to the respondent, the court found that she “failed to comply with intact services and there is currently a warrant out for her arrest.” The respondent was not present at the hearing.

¶ 10 The circuit court held a dispositional hearing on January 9, 2014. The respondent was not present, and Norbut moved to continue the case, although she had no knowledge of the reason for the respondent's absence. The court denied the motion and speculated that the outstanding warrant for the respondent's arrest was the reason for her absence. At the close of

the hearing, the court made the minor a ward of the court, gave guardianship to DCFS with the right to place the minor, and found the respondent to be an unfit parent. The court entered specific findings that the respondent was not engaged in services and was not visiting with the minor.

¶ 11 On July 9, 2014, the case was called for a hearing. The respondent was not present, and Norbut moved to withdraw from the case, stating that she had not seen the respondent since before September 2013. The circuit court granted Norbut's motion, and the case was continued.

¶ 12 On July 11, 2014, the State filed a petition to terminate the respondent's parental rights. The petition alleged that the respondent failed to maintain a reasonable degree of interest, concern, and responsibility as to the minor's welfare. Notice of the petition was made by publication.

¶ 13 On September 12, 2014, the case was called for a status hearing. The respondent was present and in custody; she had been arrested one day earlier on her outstanding warrant. The court appointed the public defender to represent the respondent on the petition to terminate parental rights, and Norbut once again accepted the appointment. The case was continued for discovery.

¶ 14 On January 8, 2015, the case was called in the afternoon for an unfitness hearing on the termination petition. Among other matters addressed at the outset of the hearing, the court addressed a motion for continuance on behalf of the respondent. Norbut stated the following:

“MS. NORBUT: \*\*\*Your Honor, I don't know which motion or what we should address first, so I will address the Court with regards to mom Jessica who has indicated to me many times

that she does not want me to represent her. There have been conversations that she has an attorney, she has a different attorney.

THE COURT: Who is that person?

[THE RESPONDENT]: Well, I was planning to hire Chuck Bretz to do the case.

THE COURT: That time has come and gone. I have go [sic] a hearing that I have scheduled, and so if you wished for Mr. Bretz or someone in his office to file an appearance, it should have been well before today.”

Counsel then asked for a continuance until January 21, 2015, and stated that the respondent told her that if the continuance was not granted, then she wanted to have counsel removed from the case. Addressing the respondent, the court stated:

“THE COURT: Two things, No, I am not going to grant your request for a continuance, Today is my trial date. You should have thought about this or decided that you wanted to hire him well before today's date. Motion denied. The second request, having Ms. Norbut removed from the proceedings, I am going forward today and here is what you need to know.”

The court then informed the respondent of the consequences of proceeding *pro se* and discouraged her from doing so. The respondent stated that she did not want to proceed *pro se* and that she wanted a different public defender. The following exchange took place:

“THE COURT: That's within the purview of the Public Defender's office. Is there anything in particular that would give me cause for concern about Ms. Norbut's representation of you?

[THE RESPONDENT]: I feel like she is not representing me like she is supposed to be.

THE COURT: Here is the thing. She will take your direction during the course of these proceedings. She has probably advised you. You may not like what she has told you. You might not like the advice that she is giving you. I can guarantee you, because I have seen her in action in every other proceeding that she has done in front of me, that when it comes to the trial, you might not like what you talked about in the back hallway and how she presented it to you, I am just guessing, I don't know, but I am going to use that as the basis for the reason that you are asking to do this by yourself, you might not like the advice she has given you, she is giving you certain advice based upon her knowledge of the law and her legal ability and having practiced in front of me for a number of years and knowing how I rule, what evidence has to come in front of me in order for certain things to happen. So even though you might not like what she is telling you, with regard to this proceeding she is not going to sit in the chair and not do anything in order to represent you. She will represent you to the best of her ability because she is ethically required to do so as is

any attorney who walks in through these doors, and I expect that. So I am not going to make a change as far as her. That's within the Public Defender's purview to decide to do, and I am cautioning you not to terminate the Public Defender's representation of you, and I am begging you not to proceed pro se, okay?

[THE RESPONDENT]: Yes.

THE COURT: So have you reconsidered your position and are you going to allow Ms. Norbut to continue to represent you in her capacity as a Public Defender?

[THE RESPONDENT]: Yes.

THE COURT: Thank you. I appreciate that.”

¶ 15 Evidence was presented regarding the respondent's fitness, including that there had been at most two phone calls worth of contact made by the respondent during the period between October 2013 and September 2014. During one of those phone calls, the respondent stated that she was not going to visit with the minor due to her outstanding warrant. At the close of the hearing, the court found the respondent to be an unfit parent in that she failed to maintain a reasonable degree of interest, concern, and responsibility as to the minor's welfare. The matter immediately proceeded to a best interest hearing, at the close of which the court found it to be in the minor's best interest to terminate the respondent's parental rights. The respondent appealed.

¶ 16 ANALYSIS

¶ 17 On appeal, the respondent argues only that the circuit court erred when it denied her motion to continue the unfitness hearing.

¶ 18 A party does not have an absolute right to a continuance. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 882 (2010). The decision to grant or deny a motion for a continuance is a matter within the circuit court's discretion, and we will not reverse the court's decision to deny a continuance unless the complaining party was prejudiced by the court's decision. *Id.*

¶ 19 Our review of the record reveals no error in the circuit court's decision to deny the respondent's motion to continue the unfitness hearing. The motion for continuance was made at least a year-and-a-half after the respondent apparently was contemplating the hiring of Bretz to represent her. The record reflects that the only time the respondent actually appeared in court in this case was when she was in custody. She chose not to appear at scheduled hearings—due to outstanding warrants—and made no attempt to hire Bretz, whose office made it clear on the date of the unfitness hearing that they did not represent her. Under the circumstances of this case, we find no prejudice to the respondent in the court's decision to deny her motion to continue. Accordingly, we hold that the court did not abuse its discretion when it denied the respondent's motion to continue.

¶ 20 Because the respondent does not challenge the unfitness or best interest findings, we affirm those rulings.

¶ 21 CONCLUSION

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

¶ 23 Affirmed.