

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (3d) 210570-U

Order filed August 15, 2022

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2022

<i>In re</i> K.J.B.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
a Minor)	Hancock County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-21-0570
)	Circuit No. 21-JA-7
v.)	
)	
James M.,)	Honorable
)	Rodney G. Clark,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices McDade and Peterson concurred in the judgment.

ORDER

¶ 1 *Held:* Father was not denied effective assistance of counsel in juvenile proceedings when his attorney did not move to dismiss on timeliness grounds because the adjudicatory hearing was commenced within the statutory time frame.

¶ 2 The respondent father, James M. appeals from the trial court's dispositional order entered pursuant to the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/1-1 *et seq.* (West 2020)). The

father was found to be dispositionally unfit to care for his minor son, K.J.B., and the minor was made a ward of the court. On appeal, the father argues that he received ineffective assistance of counsel when his attorney failed to move to dismiss the judgment of wardship for violations of the deadlines and procedures in section 2-14 of the Act (705 ILCS 405/2-14 (West 2020)).

¶ 3

I. BACKGROUND

¶ 4

A petition for adjudication of wardship was filed on June 2, 2021, alleging that the minor, who was born on December 18, 2020, was neglected due to an environment injurious to his welfare. Both of the minor's parents were present in court on June 2, 2021, at the shelter care hearing and each was appointed an attorney. A temporary custody order was entered, giving custody to the Department of Children and Family Services (DCFS).

¶ 5

The adjudicatory hearing commenced on July 9, 2021, with the testimony of the DCFS investigator, Mike Hugenberg. After Hugenberg testified, the State requested a continuance, informing the trial court that one of its main witnesses was in the hospital. Attorneys for both parents objected. The trial court granted the continuance and the matter was set for August 30 and September 3, 2021. DNA testing was ordered for the father and second potential father of the minor.

¶ 6

When the case was called on August 30, 2021, the State informed the court that the mother's appointed attorney had a conflict of interest because her attorney also represented one of the witnesses. New counsel, who was present in court on August 30 upon request of the State, was appointed for the mother. Neither the mother nor the father was present in court. The matter was reset for October 4, 2021.

¶ 7

On October 4, 2021, the mother's attorney requested a continuance, which the father's attorney joined, but the trial court denied the motion and the matter proceeded to the adjudicatory

hearing. The trial court heard evidence on October 4 and 8, 2021. The father was not present on either date. At the conclusion of the hearing, the trial court concluded that the allegations of the petition were established by a preponderance of the evidence. The matter was set for a dispositional hearing, but trial court asked if there was any objection to scheduling it more than 30 days later, for November 29, 2021, to allow for a meaningful dispositional hearing. Since the father was not present, his attorney took no position. The mother's attorney did not object.

¶ 8 The mother and the father were present at the dispositional hearing on November 29, 2021. It was noted that the DNA testing of the father and the second potential father of the minor had not been completed. The father and the DCFS caseworker testified. The trial court found that both the mother and the father were dispositionally unfit and made the minor a ward of the court. The father appealed.

¶ 9 II. ANALYSIS

¶ 10 The father argues that his trial counsel was ineffective for failing to move to dismiss the petition for adjudication of wardship when the adjudicatory hearing restarted on October 4, 2021. The father contends that a motion to dismiss would have been granted for violations of the deadlines and procedures in section 2-14 of the Act. The father does not substantively challenge the trial court's findings of neglect and unfitness. The State contends that the adjudicatory hearing commenced well within the 90 days required by section 2-14(b) of the Act, so the father's attorney was not ineffective for failing to move to dismiss the petition on timeliness grounds.

¶ 11 Under the Act, the parent of a minor who is the subject of proceedings has a statutory right to be represented by counsel. 705 ILCS 405/1-5(1) (West 2020); *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32. To establish a claim of ineffective assistance of counsel, the parent must show both that his counsel's representation fell below an objective standard of reasonableness and, but

for the error, there is a reasonable probability that the outcome would have been different. *Charles W.*, 2014 IL App (1st) 131281, ¶ 32 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).¹

¶ 12 The Act recognizes that serious delay in the adjudication of abuse, neglect, or dependency cases can cause harm to the minor and his family, and delay can frustrate the intent of the Act. 705 ILCS 405/2-14(a) (West 2020). Thus, when a petition alleging that a minor is abused, neglected, or dependent is filed, the Act requires that the adjudicatory hearing be commenced within 90 days of the date of service of process. *Id.* § 2-14(b); but see *In re S.G.*, 175 Ill. 2d 471, 482 (1997) (prior to amendment in 2002, section 2-14(b) of the Act required that the adjudicatory hearing be heard and completed within the statutory deadline). Once the hearing is commenced, delays in the proceedings may be allowed when necessary to ensure a fair hearing. *Id.* § 2-14(b). In this case, the adjudicatory hearing was commenced well within the 90-day period, on July 9, 2021. While the hearing was not completed until October 8, 2021, the delays were allowed by the court because of the hospitalization of a witness and a conflict with the mother's appointed attorney. Since the adjudicatory hearing was commenced within the statutory time period, and the delays allowed were reasonable to ensure a fair hearing, there was no grounds for a motion to dismiss. The father did not establish ineffective assistance of counsel because there was not a reasonable probability that the result would have been different even if the father's attorney had filed a motion to dismiss. See *Charles W.*, 2014 IL App (1st) 131281, ¶ 33 (both prongs of the *Strickland* test need to be satisfied to prevail on a claim of ineffective assistance of counsel).

¶ 13

III. CONCLUSION

¹We note there is still a question regarding the parentage of the minor, and DNA testing of the respondent father and the other potential father has not been completed. For purposes of this order, we are assuming the father has a right to the minor.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court of Hancock County.

¶ 15 Affirmed.