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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-640

No. COA22-210

Filed 20 September 2022

Buncombe County, Nos. 18 JT 181–82

IN THE MATTER OF: J.B.P. & N.A.N.J.

Appeal by respondent-mother from orders entered 17 November 2021 by Judge Ward D. Scott in Buncombe County District Court. Heard in the Court of Appeals 6 September 2022.

Suzanne Avett for petitioner-appellee Buncombe County Department of Social Services.

Michael N. Tousey for Guardian ad Litem.

Peter Wood for respondent-appellant mother.

PER CURIAM.

¶ 1 Respondent is the mother of minor children J.B.P. ("Jacob")[1] and N.A.N.J. ("Nancy"). She appeals from the trial court's orders terminating her parental rights to Jacob and Nancy. She contends the trial court erred by (1) failing to inquire into counsel's reasons for wanting to move to withdraw and (2) in denying counsel's motion for a continuance and holding the hearing in her absence.

[1] Pseudonyms are used to protect the juveniles' identities and for ease of reading.

I. Background

¶ 2 In April 2018, the Madison County Department of Social Services ("MCDSS") became involved with the family after Respondent tested positive for marijuana and fentanyl at the time of Nancy's birth. Nancy's meconium also tested positive for marijuana. MCDSS requested assistance from the Buncombe County Department of Social Services ("BCDSS") regarding one-year-old Jacob, who was living with his paternal grandmother. The concern for Jacob was based on the grandmother's history with child protective services and her allowing Jacob's father, a convicted sex offender, to have unsupervised contact with Jacob. In May 2018, BCDSS learned Respondent and Nancy's father had moved to Buncombe County.

¶ 3 On 13 June 2018, BCDSS filed juvenile petitions alleging the children to be neglected juveniles. These petitions were based on a child protective services report alleging Respondent and Nancy's father were selling and abusing illegal substances in the home while the children were present. The petitions also alleged domestic violence had occurred between Respondent and Nancy's father.

¶ 4 Respondent admitted to a social worker to smoking methamphetamines and marijuana while the children were in the home, but she claimed that this activity was not done in their presence. Respondent told the social worker the children were supervised in a bedroom while methamphetamines were smoked in the living room.

¶ 5 Respondent entered into a temporary safety plan providing for the children to

reside with family friends. However, on 13 June 2018, BCDSS learned that the temporary placement providers' address was that of Jacob's father, a convicted child sex offender. Respondent was unable to provide an alternative suitable arrangement at the time. BCDSS obtained nonsecure custody of the children that same day.

¶ 6 On 18 January 2019, after a hearing in which the parties stipulated to the allegations of neglect set forth in the petition, the trial court adjudicated the children neglected. The court ordered Respondent to provide proof of completing the Positive Parenting Program online parenting classes and demonstrate learned skills during visits with the children; to reengage with her substance abuse classes and submit to random drug screens; to obtain stable housing and employment; and to continue to attend drug treatment and therapy to address her issues. The court granted Respondent 6-10 hours per week of supervised visitation.

¶ 7 On 4 April 2019, after an initial permanency planning and review hearing, the trial court ordered the primary permanent plans for the children as reunification with secondary plans of adoption. In its orders, the trial court found that the parents had not been able to successfully complete any treatment to address the issues that led to the children's removal. The court also found that Respondent had not visited her children since November 2018, when she moved in with her sister and father in Florida, due to a lack of funds to make the trip back to North Carolina. The court reduced Respondent's visitation to one hour of supervised visits per week.

¶ 8 Six months later, on 8 October 2019, the trial court entered subsequent permanency planning and review orders finding that Respondent was not making progress in that she had not attended any substance abuse classes since the summer of 2018, had not provided any proof of completing online parenting classes, had not visited the children since mid-April 2019, and had been arrested in June 2019 for possession of methamphetamine and a probation violation. The court found that the conditions that led to children's removal from the home continued and changed the permanent plans to adoption with secondary plans of reunification.

¶ 9 On 7 November 2019, BCDSS filed petitions to terminate Respondent's parental rights based on the following grounds: (1) neglect, (2) willful failure to make reasonable progress to correct the conditions which led to the children's removal from the home, (3) willful failure to pay a reasonable cost of the children's care, and (4) willful abandonment.[2] *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(3), (7) (2021).

¶ 10 After experiencing delays due to the COVID-19 pandemic, court time restraints, and issues relating to Nancy's father's incarceration, the trial court held a hearing on the petitions 6 October 2021. Respondent was not present at the hearing in person or via WebEx. Her counsel, Terry Young, was present and moved to continue the matter "to allow [him] an opportunity to either get in touch with

[2] The petitions also sought to terminate the fathers' parental rights. However, Nancy's father relinquished his parental rights and has not appealed.

[Respondent] or to withdraw." The court denied the motion and held the hearing in Respondent's absence.

¶ 11 In orders entered 17 November 2021, the trial court found that grounds existed to terminate Respondent's parental rights to Jacob and Nancy based on two grounds: (1) neglect and (2) willful failure to make reasonable progress to correct the conditions that led to the children's removal from the home. N.C. Gen. Stat. § 7B-1111(a)(1)–(2) (2021). The court also concluded that termination of Respondent's parental rights was in Jacob and Nancy's best interests. Therefore, the court terminated her parental rights to the children. Respondent timely appealed.

II. Analysis

A. Withdrawal of Counsel

¶ 15 Respondent first argues the trial court abused its discretion "when it decided that it would not grant counsel's motion to withdraw without first hearing the motion" and when it did not inquire into the reasons for the withdrawal motion to ensure Respondent had competent representation at the hearing in her absence.

¶ 16 "[A] trial court's decision concerning whether to allow the withdrawal of a parent's counsel in a termination of parental rights proceeding is discretionary in nature, with any such decision being subject to reversal on appeal only in the event that the trial court's ruling constitutes an abuse of discretion." *In re K.M.W.*, 376 N.C. 195, 209, 851 S.E.2d 849, 859 (2020). "An abuse of discretion occurs when the

trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020) (citation omitted). "However, this general rule presupposes that an attorney's withdrawal has been properly investigated and authorized by the court, so that, where an attorney has given his client no prior notice of an intent to withdraw, the trial judge has no discretion." *In re K.M.W.*, 376 N.C. at 209, 851 S.E.2d at 860 (citation omitted).

¶ 17 Here, Respondent's counsel never formally moved to withdraw. After the trial court denied counsel's motion to continue, the following exchange occurred:

> [THE COURT]: Mr. Young, you had indicated, for what it's worth, that you wanted to have a continuance so you might be able to withdraw. Are you asking the Court to be allowed to withdraw?
>
> MR. YOUNG: I would not be asking the Court to withdraw without giving my client notice of my intent to withdraw.
>
> THE COURT: Thank you, Mr. Young. I figured you wouldn't, but I just wanted to get that – nor would the Court be allowed to – or inclined to grant that, for what it's worth, but just as a matter of form, I didn't think you would ask for that.

Respondent's counsel specifically stated that he was not asking to withdraw because he had not given any notice to Respondent. As counsel did not present the court with a valid motion, there was nothing for the court to consider. Additionally, the court did not err in determining that even if counsel had moved to withdraw, it would not

allow the motion due to the lack of notice given to Respondent. *In re K.M.W.*, 376 N.C. at 209, 851 S.E.2d at 860.

B. Motion to Continue

¶ 18 Respondent next argues the trial court abused its discretion in denying her counsel's motion to continue when it did not know the reason for her absence and made no inquiry into whether any party made any attempts to contact her.

¶ 19 "Ordinarily, a motion to continue is addressed to the discretion of the trial court, and absent a gross abuse of that discretion, the trial court's ruling is not subject to review." *In re A.L.S.*, 374 N.C. 515, 516–17, 843 S.E.2d 89, 91 (2020) (citation omitted). An "[a]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Id.* at 517, 843 S.E.2d at 91. However, "a denial of a motion to continue is only grounds for a new trial when defendant shows both that the denial was erroneous, and that [s]he suffered prejudice as a result of the error." *Id.*

¶ 20 Under our Juvenile Code, "[c]ontinuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice[.]" N.C. Gen. Stat. § 7B-1109(d) (2021). "Furthermore, '[c]ontinuances are not favored and the party seeking a continuance has the burden of showing sufficient grounds for it. The chief consideration is whether granting or denying a continuance will further substantial justice.'" *In re*

S.M., 375 N.C. 673, 680, 850 S.E.2d 292, 299-300 (2020) (alteration in original) (citation omitted).

¶ 21 In this case, when the termination petitions were heard 6 October 2021, nearly two years after the petitions were filed, counsel for Respondent was present via WebEx but Respondent was not present.

¶ 22 We conclude the trial court did not abuse its discretion in determining that Respondent's unexplained absence was not an extraordinary circumstance that merited continuing the termination hearing further beyond the ninety-day timeframe set forth in N.C. Gen. Stat. § 7B-1109(d). Respondent failed to provide any reason to justify the requested continuance both during the hearing and on appeal. She merely suggests that because the hearing had been continued "eleven straight" times due to the COVID-19 pandemic "in which appearances were apparently excused for everybody, [Respondent] *may have* reasonably expected that her appearance might again be excused, and the case continued again . . . especially since the pandemic was still raging at the time." Respondent's argument is unconvincing.

¶ 23 The continuance orders do not show that the termination hearing was continued eleven times in a row solely for the COVID-19 pandemic. Indeed, the last six continuance orders included in the record on appeal provided other reasons for the continuance aside from the COVID-19 pandemic. Accordingly, we cannot say that the trial court abused its discretion in denying the continuance. Respondent has

failed to demonstrate that the trial court's denial of her motion to continue "is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re J.E.*, 377 N.C. 285, 291, 856 S.E.2d 818, 822, 2021-NCSC-47 ¶ 14 (citation omitted).

¶ 25 Additionally, Respondent failed to argue, let alone show, how she was prejudiced by the trial court's denial of her motion to continue. Respondent does not claim in her brief that she intended to testify at the hearing or identify any evidence or defenses she was unable to present due to her absence. Given "counsel's advocacy on behalf of respondent at the termination hearing and the unchallenged findings of fact supporting the termination of h[er] parental rights [ ], we believe it is unlikely that the result of the termination proceedings would have been different had the hearing been continued." *Id.* at 292, 856 S.E.2d at 823, 2021-NCSC-47 ¶ 18.

¶ 26 Respondent has not challenged the trial court's adjudication of grounds or best interest determination for terminating her parental rights. Therefore, we affirm the trial court's orders.

AFFIRMED.

Panel consisting of Judges DILLON, DIETZ and HAMPSON.

Report per Rule 30(e).