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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-592

Filed 04 April 2023

Wake County, No. 20 JT 160

IN THE MATTER OF: M.J.K.

Appeal by Respondent-Mother from Order filed 23 March 2022 by Judge Ashleigh Dunston in District Court, Wake County. Heard in the Court of Appeals 22 February 2023.

Hooks Law, P.C., by Laura G. Hooks for Respondent-Appellant Mother.

Mary Wells for Petitioner-Appellee Wake County Health and Human Services.

Womble Bond Dickinson, LLP, by Reid C. Adams, Jr. and Louisa C. Clark for Petitioner-Appellee Guardian ad Litem.

STADING, Judge.

Respondent-Mother (hereinafter “Mother”) appeals from an Order (hereinafter “Order”) terminating her parental rights to her minor child, MJK (hereinafter “MJK”).¹ On appeal, Mother alleges the trial court erred in its denial of her Motion to Continue the Termination of Parental Rights hearing when a conflict arose, and

¹ Pseudonyms are used to protect the identity of minor children. See N.C. R. App. P. 42.

the hearing proceeded without her presence. After careful review, we affirm the Order denying Mother's Motion to Continue, based on the foregoing reasons.

I. Facts and Procedural Background

Mother has an "extensive [Child Protective Services] [h]istory" extending back to 2016. The Wake County Health and Human Services (hereinafter "Petitioner") received reports on 8 September, 29 September, and 3 October 2020 with respect to Mother, her husband and stepfather of the children, and her three children. The reports alleged improper care, lack of supervision, substance abuse, educational neglect, and injurious environment. One visitor of the residence was particularly concerned by "the children having access to crack pipes and needles." Additionally, the home was "infested with roaches, bed bugs, and rats." The home did not have running water and any water in the home was stored in buckets brought from the residence of a family member. It was also reported that Mother and her husband "have left the children home alone, without supervision or provisions, for as long as three (3) days."

On 2 October 2020, Petitioner filed a juvenile petition for MJK alleging neglect. On 7 October 2020, Petitioner obtained non-secure custody of MJK. On 18 March 2021, an adjudication hearing was held. Mother was served with notice of the hearing but did not appear. On 26 March 2021, with Mother's agreement, the trial court entered a consent order on adjudication and disposition, finding Mother's three children had been neglected. Additionally, Mother was ordered to comply with an

agreement to make reasonable progress within a reasonable time on her case plan, complete a substance abuse assessment, take parenting education classes, and reside in a home safe for her children. On 7 June 2021, a permanency planning hearing was held, and Mother was not present. The trial court found that Mother did not comply with the requirements of the order and had inconsistent visitation with MJK.

Thereafter, on 17 September 2021, Petitioner filed its Motion to Terminate Parental Rights of Mother for MJK.² On 18 January 2022, Mother was properly served via first-class mail. The hearing for this Motion took place on 9 February 2022; however, Mother did not appear at the hearing. Mother's counsel stated that the last time he spoke with his client was 5 January 2022. Nonetheless, Mother's counsel expected her at the hearing because "she did have notice." Furthermore, counsel checked to make sure Mother was not in custody, and he "sent her a couple of letters, e-mails, [and] text messages." After informing the court of his extensive efforts to reach his client, counsel for Mother moved the trial court to continue the hearing. Nevertheless, the trial court denied the Motion to Continue because Mother was both properly served, and her counsel had exercised his "due diligence" in attempting to ensure her appearance. The hearing proceeded without Mother's appearance. The trial court found it was in the best interest of MJK to terminate

² MJK's father is not a party to this case, as he relinquished his parental rights.

Mother's parental rights. Therefore, on 23 March 2022, the trial court entered an order to that effect. Mother timely appealed the trial court's Order.

II. Jurisdiction

This Court has jurisdiction over Mother's appeal from the Order pursuant to N.C. Gen. Stat. §§ 7B-1001(a)(7) and 7B-1002(4) (2022).

III. Analysis

The issue before this Court is whether the trial court abused its discretion in denying Mother's Motion to Continue the Termination of Parental Rights hearing. A trial court's ruling on a motion to continue is discretionary and will not be disturbed on appeal absent a showing of an abuse of discretion. *In re J.L.*, 199 N.C. App. 605, 608–09, 685 S.E.2d 11, 14 (2009) ("abuse of discretion occurs 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"). For this Court to grant a new trial, Mother must show that the trial court erroneously denied the motion to continue, and that she suffered prejudice because of the error. *In re D.J.*, 378 N.C. 565, 569, 862 S.E.2d 766, 770 (2021). Based on the following, we find no such error or prejudice.

First, Mother argues there is a conflict of interest for her own failure to communicate with her lawyer, which in turn created an impossibility for her lawyer to properly represent her. Then, Mother presupposes the denial of the Motion to Continue "forced the termination hearing to proceed with a conflicted attorney-client

relationship.” Mother correctly points out that due process does not provide a parent with an absolute right to be present at a termination hearing, *In re Murphy*, 105 N.C. App. 651, 654, 414 S.E.2d 396, 398 (1992), and “the private interests affected by the proceeding[] clearly weighs in favor of a parent’s presence at the hearing.” *In re Quevado*, 106 N.C. App. 574, 580, 419 S.E.2d 158, 160 (1992). Mother cites *In re K.M.W.*, in support of her argument; however, this case is distinguishable both in facts and analysis. 376 N.C. 195, 851 S.E.2d 849 (2020). In *K.M.W.*, the mother was forced to proceed without an attorney and the crux of that case was whether the mother had waived her right to counsel in a valid manner. *Id.* at 213, 851 S.E.2d at 862. Conversely, in this case, Mother’s attorney diligently tried to communicate with his client and zealously advocated for her during the hearing. Mother further argues her failure to communicate with her counsel created an attorney-client conflict, such that he could not provide her effective assistance of counsel. However, the evidence in the record indicates that any failure to communicate was the result of a voluntary choice by Mother.

Next, Mother argues that she was prejudiced when the hearing proceeded without her being present and with an attorney she maintains provided ineffective assistance of counsel. Mother cites a rule from *In re Bishop* that “[t]he right to effective assistance of counsel includes, as a matter of law, the right of client and counsel to have adequate time to prepare a defense.” 92 N.C. App. 662, 666, 375 S.E.2d 676, 679 (1989). Coincidentally, a review of the facts of *Bishop* portrays a

more sympathetic mother whose inactions echo the efforts of Mother in the present case. *Id.* at 669, 375 S.E.2d at 681. In *Bishop*, “there was ample time for trial preparation and respondent simply failed to cooperate with her counsel.” *Id.* at 666, 375 S.E.2d at 679. This Court denied the claim of ineffective assistance of counsel, finding “[w]here the lack of preparation for trial is due to a party’s own actions, the trial court does not err in denying a motion to continue.” *Id.* Similarly, here, it is apparent that any shortcomings of counsel were a result of Mother’s voluntary actions to neither communicate with her attorney nor appear at a properly noticed hearing. In fact, after acknowledging her absence on the record, counsel competently advocated for Mother, making objections to evidence and cross-examining witnesses. Consequently, we conclude the trial court’s denial of the Motion to Continue was well-reasoned and supported by ample evidence in the record. Therefore, Mother’s ineffective assistance of counsel argument must fail.

Mother further contends that the trial court may not rule on a motion to continue without hearing evidence. In support of this claim, Mother cites *Shankle v. Shankle*, in which an attorney abruptly withdrew from a case which forced the litigants to trial absent legal counsel. 289 N.C. 473, 223 S.E.2d 380 (1976). In *Shankle*, our Supreme Court held that “before ruling on a motion to continue the judge should hear the evidence pro and con, consider it judicially and then rule with a view to promoting substantial justice.” *Id.* at 483, 223 S.E.2d at 386. Furthermore, the Court stated that “a denial of the motion is not an abuse of discretion where the

evidence introduced on the motion for a continuance is conflicting or insufficient.” *Id.* In light of these settled principles, it is clear that the trial court complied with the rules of *Shankle*. Here, the trial court engaged in a dialogue with Respondent’s counsel to discover that proper service was effectuated and multiple fruitless efforts by various means were employed to contact Respondent. Thus, the trial court did not abuse its discretion after hearing the reasons provided by counsel for a continuance.

Lastly, Mother contends that a denial her Motion to Continue violated her right to due process. Analysis of the factors articulated in *Mathews v. Eldridge*, supports the trial court’s denial of Mother’s request. 424 U.S. 319, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976). The first *Eldridge* factor—the private interest affected—is undoubtedly a heavy consideration in that “a natural parent’s desire for and right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right.” *In re Murphy*, 105 N.C. App. 651, 654, 414 S.E.2d 396, 398 (1992). The second factor—risk of error created by the State’s procedure—shows no risk of error as this was a problem of Mother’s own creation. *Id.* at 655, 414 S.E.2d at 399. The evidence in the record indicates that Mother did not appear at many of the prior hearings throughout this case despite having notice. Moreover, Mother failed to maintain consistent contact with the social workers, engage in her case plan, respond to her attorney, and consistently visit with her child. Finally, the third *Eldridge* factor—the countervailing government interest—ultimately favors the trial court’s decision to proceed in that child-custody

litigation must conclude as rapidly as is consistent with fairness. *Id.* at 655, 414 S.E.2d at 398. As such, we find no due process violation, and hold that the trial court appropriately denied Mother's Motion to Continue.

IV. Conclusion.

Since the trial court's denial of Mother's Motion to Continue was not manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision, we conclude that there was no abuse of discretion. We find there was not a conflict of interest and conclude that Mother was not prejudiced by ineffective assistance of counsel. Additionally, we find the trial court properly ruled on the Motion to Continue after hearing from Mother's counsel regarding proper service and various attempts to communicate. Finally, after balancing the factors articulated in *Eldridge*, we find no due process violation. Accordingly, we affirm the Order of the trial court.

AFFIRMED.

Judges DILLON and CARPENTER concur.

Report per Rule 30(e).