

[Cite as *In re B.M.*, 2009-Ohio-4846.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: B.M.	:	
	:	No. 09AP-60
(K.M.,	:	(C.P.C. No. 07JU06-09189)
Appellant).	:	(REGULAR CALENDAR)
	:	
In re: S.M.	:	
	:	No. 09AP-61
(K.M.,	:	(C.P.C. No. 06JU12-18009)
Appellant).	:	(REGULAR CALENDAR)
	:	
In re: K.M.	:	
	:	No. 09AP-62
(K.M.,	:	(C.P.C. No. 07JU02-01670)
Appellant).	:	(REGULAR CALENDAR)
	:	
In re: J.B.	:	
	:	No. 09AP-63
(K.M.,	:	(C.P.C. No. 08JU01-01430)
Appellant).	:	(REGULAR CALENDAR)
	:	
In re: G.B. et al.	:	
	:	No. 09AP-64
(K.M.,	:	(C.P.C. No. 07JU06-09191)
Appellant).	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on September 15, 2009

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*Rosemarie A. Welch*, for appellant.

*Robert J. McClaren*, for Franklin County Children Services.

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APPEALS from the Franklin County Court of Common Pleas,  
Division of Domestic Relations, Juvenile Branch.

BRYANT, J.

{¶1} Appellant, K.M. ("Mother"), appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, which granted the motion of appellee, Franklin County Children Services ("FCCS"), for permanent custody of five of her children, S.M. (age 11), K.M. (age 10), G.B. (age 7), D.B. (age 5), and J.B. (age 11 months), and a motion for planned permanent living arrangement for one child, B.M. (age 16).

{¶2} S.M. first came into the care of FCCS in December 2006 because he had committed sexual abuse against his siblings. Temporary court commitment of S.M. was granted in February 2007.

{¶3} B.M., K.M., G.B., and D.B. came into FCCS's care in April 2007 because Mother and Mother's boyfriend had physically abused B.M. Temporary court commitment of B.M., K.M., G.B., and D.B. was granted in September 2007.

{¶4} J.B. was born in November 2007. At his birth, he tested positive for cocaine and marijuana. He came into FCCS's care shortly thereafter, and temporary court commitment of J.B. was granted in March 2008.

{¶5} The trial court ordered a reunification case plan that included all six children. Under the plan, Mother was to (1) attend parenting classes and demonstrate the skills she learned in those classes during her visits with the children, (2) complete a drug and alcohol assessment and follow all recommendations from it, (3) complete random urine screens, (4) complete a psychological evaluation and follow all recommendations from it, (5) complete individual counseling, and (6) maintain stable housing and income.

{¶6} In December 2007, contending that Mother had not progressed satisfactorily on the case plan, FCCS filed motions for permanent custody for S.M., K.M., G.B., D.B., and J.B., and a motion for a permanent planned living arrangement for B.M. As we detail below, Mother did not appear for the final hearing on the motions in October 2008. The trial court denied her counsel's request for a continuance and granted her counsel's request to withdraw from representing her. The hearing on the motions proceeded without Mother or her counsel.

{¶7} On December 24, 2008, the trial court issued a decision and judgment entry. The court granted FCCS's motion for permanent custody for S.M., K.M., G.B., D.B., and J.B. The court also granted FCCS's motion for permanent planned living arrangement for B.M.

{¶8} Mother filed a timely appeal, and she raises the following two assignments of error:

[I.] THE TRIAL COURT'S DECISION TO DENY APPELLANT'S REQUEST FOR A CONTINUANCE VIOLATED APPELLANT'S DUE PROCESS RIGHTS AND WAS AN ABUSE OF DISCRETION.

[II.] THE TRIAL COURT'S DECISION TO ALLOW APPELLANT'S ATTORNEY TO WITHDRAW AND PROCEED WITH THE TRIAL WITHOUT REPRESENTATION FOR APPELLANT WAS AN ABUSE OF DISCRETION AND PLAIN ERROR.

{¶9} We begin with the principle that the right to raise a child is a basic and essential civil right. *In re Hayes* (1997), 79 Ohio St.3d 46, 48, citing *In re Murray* (1990), 52 Ohio St.3d 155, 157. Because permanent termination of parental rights is the family law equivalent of the death penalty in a criminal case, parents must receive every procedural and substantive protection the law permits. *Hayes* at 48, citing *In re Smith* (1991), 77 Ohio App.3d 1, 16.

{¶10} In her first assignment of error, Mother contends that her right to due process was violated when the trial court denied her counsel's request for a continuance on the day of the final hearing. We disagree.

{¶11} The decision whether to grant a continuance lies within the sound discretion of the trial court, and we will not reverse that decision on appeal absent an abuse of that discretion. *In re I.R.*, 10th Dist. No. 04AP-1296, 2005-Ohio-6622, ¶7, citing *State v. Unger* (1981), 67 Ohio St.2d 65, 67. An abuse of discretion is more than an error of law or judgment; it suggests an attitude that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶12} In *Unger* at 67, the Supreme Court of Ohio prescribed certain factors a trial court should consider when deciding whether to grant a continuance, as follows:

[T]he length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate

reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case.

{¶13} This court has stated that "'natural parents have a constitutionally protected right to be present at a permanent custody hearing.'" *In re Garcia* (Mar. 16, 2004), 10th Dist. No. 03AP-874, quoting *In re Sears*, 10th Dist. No. 01AP-715, 2002-Ohio-368. In cases where a parent communicates with the court or counsel to explain a problem attending a hearing, "Ohio courts have held that a trial court's failure to take extra care to ensure the parent's presence constitutes an abuse of discretion." *Garcia*, citing *In re Rachal G.*, 6th Dist. No. L-02-1306, 2003-Ohio-1041, ¶14. Accord *In re C.H.*, 162 Ohio App.3d 602, 2005-Ohio-4183, ¶10.

{¶14} Here, the final hearing was set for 10:00 a.m. on October 14, 2008. At about 9:30 a.m. that day, Mother called her counsel and said that she was at the emergency room ("ER") with strep throat. She said that she had been there since 7:00 a.m., and she "had no idea when she might be processed out and released." (Tr. 5.) Her counsel explained to her that she was responsible for appearing in court that morning and said he would inform the court of her situation.

{¶15} Although we do not have a transcript of counsel's initial communication with the court that morning, the court's decision states that it informed counsel that no continuance would be granted without verification of Mother's whereabouts. The court recessed until 1:00 p.m. Mother's counsel attempted to call her again. He could not reach her by phone, and he could not leave a voicemail. When the court reconvened,

Mother still had not appeared. Her counsel asked the court "for a reasonable continuance to determine, you know, what her status is and to have her present for trial." (Tr. 6.)

{¶16} Counsel for FCCS objected. She recalled that Mother had also failed to appear for a pre-trial on July 22, 2008. At that time, Mother said that she was in a car accident and could not attend. Contending that Mother had engaged in similar "stall tactics" in the past, and hearing that Mother claimed to be in the ER at Mt. Carmel West Hospital, FCCS's counsel reported that she called the hospital and was unable to verify that Mother had not been "admitted" to the ER that morning. (Tr. 6.)

{¶17} Counsel for S.M. also objected. She said that S.M. "needs this done. He's agonizing about it, he's got anxiety about it, he wants it done." (Tr. 7.)

{¶18} The guardian ad litem ("GAL") said that she was "unopposed" to going forward. (Tr. 8.) She thought it was in the best interest of the children to proceed that day and resolve the matter.

{¶19} The court then asked Mother's counsel if Mother was aware that the case was set for a final trial that day. Mother's counsel said that he had sent Mother a couple of letters, including an October 7, 2008 letter informing her of the date and time of the hearing. The court also confirmed that Mother had not left any voicemails for the court that morning. The court recalled Mother's "unverified absence" from the pre-trial. (Tr. 9.) The court then said that "the matter has pended for long enough and without verification, and given the delay that we've given an additional four hours since the time that this was set and there's been no follow up with you to find out whether or not

anything happened this morning, I'm going to not grant your Motion for Continuance."  
(Tr. 9-10.)

{¶20} Before this court, Mother notes that her counsel only requested a "reasonable" continuance. Although she concedes her failure to appear for the July 2008 pre-trial, she notes that her attorney could not recall whether he had asked her to verify that she had been in a car accident, and there is no proof that she was simply stalling that day. She notes that a brief continuance would not have affected the children significantly. And she questions the statements of FCCS's counsel that Mother had not been "admitted" to the ER on the morning of the final hearing.

{¶21} Our review of the records for each of the six children indicates that numerous continuances had been granted in each separate case. In S.M.'s case, the longest-pending, there were at least ten continuances granted, three at Mother's request. Of those three requests, one was to obtain counsel, one was to obtain additional information, and one was for the July 2008 pre-trial when Mother claimed to have been in a car accident. In K.M.'s case, there were ten continuances granted, but only one at the request of Mother (the pre-trial). The records of the remaining cases reflect only that one request was from Mother, but numerous other continuances were granted on requests from the court, FCCS, the GAL, and the parties collectively.

{¶22} Nevertheless, whether at Mother's request or not, the cases involving all six children had been pending for a significant amount of time. S.M. entered FCCS in December 2006, 22 months before the hearing. B.M., K.M., G.B., and D.B. entered FCCS's care in April 2007, and J.B. entered FCCS's care immediately after his birth in

November 2007. As the GAL and counsel for FCCS noted, it was important for the cases involving all the children to be finally resolved.

{¶23} Furthermore, while an ER visit might serve as a valid excuse for failure to appear at a final hearing, Mother's presence in the ER could not be verified. Despite express verbal and written notice of the importance of the final hearing, Mother did not follow up with her attorney that morning, was not accessible following her single phone call, and did not appear after a four-hour delay.

{¶24} We acknowledge that Mother had appeared many times over the course of the proceedings. We must also acknowledge, however, that Mother had missed one previous hearing (the pre-trial) and had made other continuance requests. The court considered the correct factors in making its decision, both at the time of the hearing and in its written decision. Under these circumstances, we conclude that the trial court did not abuse its discretion when it denied the request for a continuance. Therefore, we overrule Mother's first assignment of error.

{¶25} In her second assignment of error, Mother contends the trial court erred when it granted her counsel's request to withdraw from representing her. We disagree.

{¶26} Parents involved in permanent custody proceedings are entitled to the effective assistance of counsel. See R.C. 2151.352; Juv.R. 4(A). Their right to counsel, however, is not absolute. Where a parent " 'fails to maintain contact with counsel, fails to appear for scheduled hearings despite receiving notice of such, and fails to cooperate with counsel and the court, the court may infer that the parent has waived his or her right to counsel and may grant counsel's request to withdraw.' " *In re Garcia* at ¶12,



quoting *In re Rachal G.* at ¶14. "In order to determine whether a waiver may be inferred, 'the court must take into account the total circumstances of the individual case, including the background, experience and conduct of the parent.' " *Id.* Accord *In re C.H.* at ¶10. "An attorney or guardian ad litem may withdraw only with the consent of the court upon good cause shown." Juv. 4(F). "A party's lack of cooperation or failure to communicate with counsel may be good cause for withdrawal." *In re T.K.*, 9th Dist. No. 24006, 2008-Ohio-1687, ¶18. The decision to grant or deny the motion to withdraw is a matter within the sound discretion of the trial court. *In re Garcia* at ¶11.

{¶27} Here, immediately after the trial court denied the request of Mother's counsel for a continuance, Mother's counsel stated that, given the trial court's ruling on his motion for continuance, he moved "to withdraw as her counsel." (Tr. 10.) Counsel explained he "sent her numerous correspondences, the most recent was on October 7th, it specifically references October 14th at 10:00 A.M. before [the trial court] in courtroom 63." (Tr. 10.) In the letter, counsel advised Mother "that failure to appear may prejudice her rights and result in the Court entering orders that terminate her parental rights without her participation." (Tr. 10.) Counsel further pointed out in the letter that her "failure to appear may result in [his] requesting permission from the Court to withdraw as her attorney." (Tr. 10.) Noting for the trial court that Mother was "on a reasonable notice that failure to appear may result in [his] requesting leave from the Court to withdraw as her counsel," that she nonetheless failed to appear, and that he lacked any communication with her "since about 9:30 this morning," counsel stated he

"cannot effectively represent her and [he] would request leave from the Court to withdraw. (Tr. 10-11.)

{¶28} The court asked the other parties whether they objected to counsel's request to withdraw, and no one objected. The court then granted counsel's request and excused Mother's counsel. The case proceeded without Mother or her counsel.

{¶29} Mother argues the trial court committed plain error when it permitted her counsel to withdraw without first making two inquiries of counsel in order to ascertain "whether the client 'by other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.' " *In re Sadie R.*, 6th Dist. No. L-04-1057, 2005-Ohio-325, ¶35, citing *In re Alyssa C.*, 153 Ohio App.3d 10, 2003-Ohio-2673, ¶44, citing *In re M.L.R.*, 150 Ohio App.3d 39, 2002-Ohio-5958, and DR 2-110(C)(1)(d). Specifically, Mother contends the trial court was required to inquire: (1) whether counsel's attempts to communicate with and obtain Mother's cooperation were reasonable, and (2) whether the failure of this communication resulted in the inability of counsel to ascertain Mother's wishes. See *In re Sadie R.* at ¶36 (imposing the two-part inquiry articulated in *In re Savannah M.*, 6th Dist. No. L-03-1112, 2003-Ohio-5855, ¶45). (Singer, J., concurring.)

{¶30} The better practice may be for a trial court to complete the two-pronged inquiry when a parent's counsel advises the court at a permanent custody hearing that he or she cannot effectively represent the parent in the parent's absence. We, however, decline to impose a duty upon trial courts to make specific inquiries when faced with such circumstances. Instead, we affirm that a trial court has discretion to allow a parent's counsel to withdraw from representation in a permanent custody proceeding

where the court, upon taking into account the total circumstances of the case, properly may infer that the parent has waived his or her right to counsel. *In re Garcia*; *In re T.K.*; *In re C.H.*; *In re Rachal G.*

{¶31} This court has stated an attorney may not withdraw from representing a client until the attorney has taken reasonable steps to avoid prejudice to the clients, and those steps include giving notice prior to withdrawal. *In re Bosworth* (May 13, 1986), 10th Dist. No. 85AP-669; *Hall v. Solid Corp.* (Dec. 3, 1985), 10th Dist. No. 85AP-576. See Prof.Con.R. 1.16(d). In this case, counsel's letter expressly warned Mother that her failure to appear at the hearing could prejudice her rights and result in his withdrawal as her counsel.

{¶32} Additionally, the record demonstrates Mother had a history of failing to cooperate with FCCS and the trial court. For example, she refused to sign any of the case plans, failed to participate in any of the semi-annual reviews of the case plan for reunification, failed to pursue the caseworker's 15 referrals for drug and alcohol abuse assistance, failed to complete any of the 102 urine screens she was given, and failed to participate in individual counseling to improve her coping skills and to address issues of past domestic physical and sexual abuse.

{¶33} Mother also was inconsistent in appearing for scheduled hearings despite having notice of the hearings. Although Mother appeared at earlier hearings held between December 2006 and June 2008, she failed to appear at the July 2008 pre-trial and the October 2008 dispositional hearing, both with last-minute excuses that could not be verified. Perhaps most significantly, the court recessed the dispositional hearing

for four hours to facilitate her presence. Nonetheless, despite counsel's advice that her rights could be prejudiced and counsel could withdraw if she did not appear, Mother neither communicated with counsel or the trial court after 9:30 a.m. on the day of the dispositional hearing nor appeared at the hearing.

{¶34} Although Mother does not challenge the merits of the trial court's decision granting FCCS's motions for permanent custody to five of her children and a permanent planned living arrangement for the remaining child, the testimony elicited at the hearing indicates the absence of Mother's counsel did not render the proceeding fundamentally unfair or have any effect on the trial court's termination of Mother's parental rights. See *In re Garcia* at ¶18, citing *In re Allen R.* (Mar. 31, 1997), 6th Dist. No. L-96-093. The FCCS caseworker assigned to work with Mother and her children testified for FCCS; counsel representing one of the children cross-examined her. The evidence FCCS presented was clear and convincing that Mother did little to meet the case plan requirements, and the GAL recommended that the trial court grant FCCS's motions concerning the children. Mother's counsel had not subpoenaed any witnesses for the hearing, and counsel likely would not have been able to effectively cross-examine FCCS's witnesses in Mother's absence. In light of the foregoing and the history of the case regarding Mother and the children, the record does not disclose what Mother's counsel could have done in her absence to change the outcome.

{¶35} Given the circumstances of this case, the trial court did not abuse its discretion in granting the motion of Mother's counsel to withdraw. Accordingly, Mother's second assignment of error is overruled.

{¶36} In conclusion, we overrule Mother's first and second assignments of error and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

*Judgment affirmed.*

BROWN, J., concurs.

FRENCH, P.J., concurs in part and dissents in part.

FRENCH, P.J., concurring in part and dissenting in part.

{¶37} I concur in the majority opinion concerning Mother's first assignment of error. I respectfully dissent, however, from the majority opinion concerning Mother's second assignment of error, which asserts that the trial court erred by allowing Mother's counsel to withdraw from representing her.

{¶38} As the majority notes, Mother was not consistent in her cooperation with FCCS or the court. For example, Mother had appeared at least 14 times between December 2006 and June 2008, and many of these appearances were for hearings that got continued at the request of another party or the court. Mother attended visits with the children, completed some portions of the case plan, and kept in contact with the caseworker. See Tr. 21, 25, 28, 33, 47.

{¶39} But Mother also failed to appear at the July 2008 pre-trial and the October 2008 final hearing, both with last-minute excuses that could not be verified. She did not participate in any of the semi-annual reviews of the case plan for reunification, pursue the caseworker's 15 referrals for drug and alcohol abuse assistance or complete any of the 102 urine screens she was given. See Tr. 30-32, 45, 55.

{¶40} Where a parent has completely failed to communicate with counsel and cooperate with the court, Ohio courts have inferred from that failure that a parent has waived his or her right to counsel. In *In re Garcia* (Mar. 16, 2004), 10th Dist. No. 03AP-874, for example, this court found no error where a trial court allowed an attorney to withdraw from representing a mother at a final parental termination hearing when the mother failed to appear. The mother had failed to appear for any of the three prior hearings, two of which had been continued at her request. She had made no attempt to communicate with her counsel or the court prior to the final hearing, and she ignored her counsel's request to provide medical documentation concerning her absence. Under these circumstances, we concluded that the trial court did not abuse its discretion by allowing counsel to withdraw. See also *In re T.K.*, 9th Dist. No. 24006, 2008-Ohio-1687 (affirming trial court's grant of counsel's motion to withdraw where counsel had made repeated unsuccessful attempts to contact the mother over a period of four months, and the mother did not inform counsel of her incarceration); Accord *In re C.H.*, 162 Ohio App.3d 602, 2005-Ohio-4183 (affirming trial court's grant of counsel's motion to withdraw where the mother failed to appear for hearings, failed to communicate with counsel, and failed to provide contact information to children services employees); *In re Savannah M.*, 6th Dist. No. L-03-1112, 2003-Ohio-5855 (affirming trial court's grant of counsel's motion to withdraw where the mother failed to appear for final hearing, and she had not been available to, or cooperative with, counsel or children services workers).

{¶41} Ohio courts have found error when a counsel withdraws under different circumstances, however. For example, in *In re M.L.R.*, 150 Ohio App.3d 39, 2002-Ohio-5958, the Eighth District Court of Appeals found error where the trial court allowed counsel to withdraw. The father had appeared at all of the prior hearings and arrived late for the final hearing. Although counsel stated that the father had been uncooperative, counsel did not explain whether that lack of cooperation had made it unreasonably difficult for him to represent his client effectively, nor did the court inquire. *Id.* at ¶16, citing DR 2-110(C)(1)(d) (allowing a lawyer to withdraw from representation when a client makes it " 'unreasonably difficult for the lawyer to carry out his employment effectively' "). The appellate court found it both prejudicial and erroneous to allow counsel to withdraw on the day of the dispositional hearing, in the client's absence, without prior motion or notice, without a demonstration that "the client had rendered it unreasonably difficult for the attorney to represent him, and without appointing new counsel and/or continuing the hearing," and then to require the client, after arriving late to the hearing, to proceed immediately without representation. *Id.* at ¶22. See also *In re Sadie R.*, 6th Dist. No. L-04-1057, 2005-Ohio-325 (reversing where the court allowed counsel to withdraw after the father failed to appear at a final hearing, the father had expressed his position to counsel, and the court did not engage in two-part inquiry to determine (1) the course of communication between the attorney and the parent, and (2) whether a failure of communication resulted in counsel's inability to ascertain the client's wishes).

{¶42} Here, while counsel warned Mother that her failure to appear at the hearing could result in his withdrawal, and counsel indicated that he had sent Mother "numerous correspondences," the record does not demonstrate a complete lack of communication by Mother. (Tr. 10.) Mother's counsel did not state that Mother had a history of not cooperating with him (either before or since the July 2008 pre-trial) or that she had failed to respond to his correspondence, and the court did not inquire further. In contrast to those cases where a parent has failed to maintain any communication with counsel, Mother had contacted counsel at 9:30 a.m. that morning, just a few hours prior to the withdrawal. Without an on-the-record discussion of Mother's history of cooperation with counsel, or some other indication in the record that Mother had been completely uncooperative for a lengthy period of time, I cannot conclude that Mother's lack of cooperation implied a waiver of her right to counsel.

{¶43} Secondly, counsel did not state, and the trial court did not inquire, whether Mother's failure to appear at the hearing rendered her counsel unable to ascertain her wishes or to otherwise represent her. In an ex parte motion for extraordinary attorney fees, filed in the trial court after final judgment, Mother's counsel indicated that he had represented Mother since November 2007, nearly a year before the hearing, and he represented her in all six cases. He stated that, from the time of his appointment until the court's final judgment in December 2008, he "appeared as counsel on behalf of [Mother] at nine separate hearings." He "reviewed an extraordinary amount of discovery materials provided by" FCCS, discovery that "filled a number of 'expando' file folders." He filed and personally served a subpoena to obtain and review records



relating to Mother's drug treatment and then met and spoke by telephone with the director of the drug treatment center.

{¶44} Counsel also indicated in his motion that he litigated an FCCS motion to terminate Mother's visitation rights. After the court granted FCCS's motion, counsel "researched the law and facts of this motion," and then prepared and filed a motion to set aside the court's order. Thereafter, the court held two additional hearings on the facts surrounding FCCS's request to suspend visitation. Finally, counsel stated that he "continued to exercise due diligence in the preparation of these case[s] for trial up to the final trial date of October 14, 200[8]."

{¶45} By detailing the contents of counsel's motion for extraordinary fees, I do not mean to disparage counsel's representation of Mother in any way or to suggest that he was not entitled to an award of fees. To the contrary, the record confirms counsel's active participation in the proceedings throughout his term of representation and his zealous representation of Mother. It also convinces me, however, that counsel was prepared to proceed with the final hearing on October 14. While Mother's absence undoubtedly would have hampered his efforts, there was no discussion or inquiry about whether counsel knew his client's wishes. Nor was there discussion about whether, even if he knew her wishes, he had a case to present without her as a witness or could otherwise defend against FCCS's case in favor of termination. While that discussion may have occurred off the record before the trial court, our record contains no such discussion. And given the content of the record we do have, I have no basis for concluding that Mother's failure to appear rendered counsel unable to represent her.

{¶46} Like the majority, I also would decline to impose a specific inquiry upon a trial court faced with these circumstances. Compare *In re Sadie R.* at ¶36, citing *In re Savannah M.* at ¶45 (articulating the following two-part inquiry imposed by the Sixth District Court of Appeals: (1) the court must determine that counsel's attempts to communicate with and obtain the cooperation of the client were reasonable; and (2) the court must verify that the failure of this communication resulted in the inability of counsel to ascertain the client's wishes). Instead, I would re-affirm our prior holdings that a trial court has discretion to allow a parent's counsel to withdraw from representation in a permanent custody proceeding where the parent fails to communicate with counsel, appear for hearings after adequate notice, and cooperate with counsel and the court. In exercising that discretion, the court must consider the total circumstances of the individual case, including the background, experience, and conduct of the parent. I would also add to our prior holdings that, if those circumstances indicate a parent's failure to communicate with counsel, the court must then consider whether the parent's inaction has rendered counsel unable to ascertain the parent's wishes, to proceed without the parent as a witness or to otherwise represent the parent effectively.

{¶47} In my view, the record in this case does not establish that Mother had a history of failing to communicate or cooperate with the court or her counsel. Nor does it establish that Mother's absence from the hearing rendered her counsel unable to represent her. Without a discussion of these factors on the record, and given the contrary evidence in the record, I would conclude that the trial court could not have inferred that Mother waived her right to counsel. Therefore, in my view, the trial court

abused its discretion by granting counsel's request to withdraw, and I would sustain Mother's second assignment of error.

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