

[Cite as *In re M.W.*, 2016-Ohio-2948.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103705

IN RE: M.W., ET AL.
Minor Children

[Appeal By D.G., Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 13913602, AD 13913603, AD 13913604,
AD 13913605, AD 13913606, and AD 13913607

BEFORE: E.T. Gallagher, P.J., S. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: May 12, 2016

ATTORNEY FOR APPELLANT

Gregory T. Stralka
6509 Brecksville Road
P.O. Box 31776
Independence, Ohio 44131

ATTORNEYS FOR APPELLEE

For CCDCFS

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Anthony R. Beery
Assistant Prosecuting Attorney
CCDCFS
4261 Fulton Parkway
Brooklyn, Ohio 44144

ALSO LISTED

Guardian Ad Litem for Children

Michael E. Stinn
21300 Lorain Road
Fairview Park, Ohio 44126

Attorney For Children

Anna Markovich
Law Office of Anna Markovich
18975 Villaview Road, #3
Cleveland, Ohio 44119

For E.B.

E.B., pro se
Grafton Correctional Institution
2500 South Avon Belden Road
Grafton, Ohio 44044

For B.H.

Mark Witt
6209 Barton Road
North Olmsted, Ohio 44070

For T.W.

Daniel J. Bartos
Bartos & Bartos, L.P.A.
20220 Center Ridge Road
Suite 320
Rocky River, Ohio 44116

EILEEN T. GALLAGHER, P.J.:

{¶1} Appellant-Mother, D.G. (“Mother”), appeals an order of the Cuyahoga County Common Pleas Court, Juvenile Division, that placed her children, N.W., T.W., B.G., D.W., L.W., and M.W., in the permanent custody of appellee, Cuyahoga County Division of Children and Family Services (“CCDCFS”).

Mother raises the following assignment of error for our review:

1. The trial court’s denial of appellant’s request for a continuance was an abuse of discretion since no attempt was made to determine whether the appellant would be able to attend the hearing.

{¶2} After careful review of the record and relevant case law, we affirm the trial court’s judgment.

I. Procedural History

{¶3} In September 2013, CCDCFS filed a complaint and motion for predispositional temporary custody, alleging the minor child, T.W. was abused, and all six minor children neglected. A hearing on the motion for predispositional temporary custody was held that same day. At the conclusion of the hearing, the minor children were placed into the predispositional custody of CCDCFS.

{¶4} In January 2014, the minor children were committed to the temporary custody of CCDCFS. In July 2014, CCDCFS filed a motion to modify temporary custody of the children to permanent custody pursuant to Juv.R. 19 and R.C. 2151.413. Following numerous pretrial hearings, the matter proceeded to trial in

August 2015. On the date of trial, however, Mother failed to appear. As a result, Mother's counsel requested a continuance, indicating that Mother's ride to the courthouse had "fallen through." At that time, the following discussion took place on the record:

THE COURT: Hold on a minute. So she didn't show up today and you [counsel] called her?

TRIAL COUNSEL: Yes, your Honor.

THE COURT: And her statement is that she just can't get down here?

TRIAL COUNSEL: She does not have a ride down today, your Honor.

THE COURT: Where does she live?

TRIAL COUNSEL: I'm not sure the exact address of where she is residing at this point.

THE COURT: I understand the position you [counsel] are in, however, as I make clear at every single arraignment, not showing up to court, without some sort of legitimate excuse. * * * If she was truly without a ride, she should have notified — she should have contacted this Court or yourself and made arrangements for this prior to the day of trial.

* * *

We've got about seven attorneys here. We pretty much have a meeting of a Bar section and getting all of you back in the same courtroom again is not an easy task. And yes, that is one factor in the case law when the Court is considering whether to grant a continuance.

{¶5} Following the foregoing discussion, the trial court denied counsel's

motion to continue pursuant to Loc.Juv.R. 49(C) and proceeded with the trial in Mother's absence.

{¶6} In September 2015, the trial court issued a journal entry and finding of facts, granting permanent custody of the minor children to CCDCFS and terminating Mother's parental rights.

{¶7} Mother now appeals from the trial court's judgment.

II. Law and Analysis

{¶8} In her sole assignment of error, Mother argues the court abused its discretion in denying her request to continue the permanent custody trial.

{¶9} Without question, parents have a constitutionally protected interest in the care, custody, and management of their children. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). "The right to parent one's children is a fundamental right' * * * protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution." *In re B.W.*, 8th Dist. Cuyahoga No. 102475, 2015-Ohio-2768, ¶ 21, quoting *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 28. "A fundamental requirement of due process is the 'opportunity to be heard' at a 'meaningful time and in a meaningful manner.'" *In re B.W.* at ¶ 21, quoting *In re L.F.*, 9th Dist. Summit Nos. 27218 and 27228, 2014-Ohio-3800, ¶ 39.

{¶10} In cases where the parent has communicated with the trial court or with counsel to explain a problem with attending the scheduled hearing date, Ohio courts have recognized that the failure of a trial court to take extra care to ensure the parent could be present is an abuse of discretion. *In re Trevor W.*, 6th Dist. Lucas No. L-01-1371, 2001 Ohio App. LEXIS 5307 (Nov. 30, 2001).

{¶11} Conversely, however, even when termination of parental rights is at stake, parents “must exhibit cooperation and must communicate with counsel and with the court in order to have standing to argue that due process was not followed” if the court proceeds with a hearing in their absence. *In re Q.G.*, 170 Ohio App.3d 609, 2007-Ohio-1312, 868 N.E.2d 713, ¶ 12 (8th Dist.). Thus, a parent’s right to be present at the permanent custody hearing is not absolute. *In re C.G.*, 9th Dist. Summit No. 26506, 2012-Ohio-5999, ¶ 19, citing *In re J.S.*, 9th Dist. Lorain No. 10CA009908, 2011-Ohio-985, ¶ 17.

{¶12} With respect to the continuance of juvenile court hearings, Juv.R. 23 provides that “[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties.” Loc.R. 49(C) of the Cuyahoga County Court of Common Pleas, Juvenile Division, further provides:

No case will be continued on the day of trial or hearing except for good cause shown, which cause was not known to the party or counsel prior to the date of trial or hearing, and provided that the party and/or counsel have used diligence to be ready for trial and have notified or made diligent efforts to notify the opposing party or counsel as soon as

he/she became aware of the necessity to request a postponement. This rule may not be waived by consent of counsel.

{¶13} The decision whether to grant a continuance is within the “broad, sound discretion” of the trial court and will not be reversed absent an abuse of discretion. *In re S.C.*, 8th Dist. Cuyahoga No. 102350, 2015-Ohio-2410, ¶ 23. An abuse of discretion occurs where the trial court acted unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶14} In *State v. Unger*, 67 Ohio St.2d 65, 423 N.E.2d 1078 (1981), the Ohio Supreme Court identified certain factors to be considered in determining whether a continuance is appropriate. These factors include:

the 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.

Id. at 67-68.

{¶15} A review of the record in this case reveals that Mother was personally served with notice of the permanent custody hearing and was aware that the trial court might terminate her parental rights. She nevertheless failed to appear for the hearing, purportedly because she was unable to secure transportation to the

courthouse. Under these circumstances, Mother certainly failed to exercise “diligence in being ready for trial” and “contributed to the circumstances that gave rise to the request for a continuance.” More importantly, the record reflects that Mother failed to communicate the basis of her absence with the trial court, and failed to make a diligent effort to notify trial counsel of her lack of transportation as soon as she became aware of the necessity to request a postponement. Instead, the basis of Mother’s absence was not discovered until trial counsel contacted Mother just before the trial was to begin.

{¶16} Under the totality of the circumstances presented in this case, we find this is not a situation where a parent facing the termination of parental rights has communicated with the trial court or with counsel to explain a problem with attending a scheduled hearing. Rather, we find Mother failed to exhibit the necessary level of cooperation and communication to reasonably argue that her due process rights were violated by the trial court’s decision to proceed with the hearing in her absence. *See In re C.G.*, 9th Dist. Summit No. 26506, 2012-Ohio-5999, ¶ 20.

{¶17} Moreover, the record reflects that Mother was represented by competent counsel and that a continuance would have caused great inconvenience to the witnesses, opposing counsel, guardian ad litem, and court personnel, who were present and ready to proceed with the hearing. As referenced by the trial court,

the nature of this case required the presence of approximately seven separate attorneys and rescheduling the permanent custody proceeding would have impaired the trial court's ability to control its own docket. *See Unger*, 67 Ohio St.2d at 67, 423 N.E.2d 1078.

{¶18} Finally, despite Mother's contentions to the contrary, the record reflects that the trial court made reasonable inquiries into Mother's travel situation and the legitimacy of her absence. However, given the limited information provided to trial counsel during her phone conversation with Mother, trial counsel was unable to provide the trial court with additional information, such as Mother's address or when Mother would be able to appear. Thus, it is evident that the trial court attempted to carefully balance all considerations, but was impeded from doing so given the limited information and cooperation provided by Mother.

{¶19} Applying Loc.Juv.R. 49(C) and the *Unger* factors to the present case, we find the trial court did not abuse its discretion in denying trial counsel's motion for a continuance and proceeding with the termination of parental rights hearing in Mother's absence. *See In re Ka.C.*, 8th Dist. Cuyahoga Nos. 102000, 102002, 102005, and 102006, 2015-Ohio-1158 (finding the trial court did not abuse its discretion in denying a requested continuance where mother failed to appear at a parental rights hearing because her ride "fell through").

{¶20} Accordingly, Mother's sole assignment of error is overruled.

{¶21} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR