

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO

IN RE: D.C.

(D.O.B. 09/12/2024)

Case No. 2026CA00073

Opinion And Judgment Entry

Appeal from the Stark County Court of Common
Pleas, Family Court Division, Case No.
2024JCV01109

Judgment: Affirmed

Date of Judgment Entry: September 16, 2026

BEFORE: Craig R. Baldwin; Robert G. Montgomery; David M. Gormley, Judges

APPEARANCES: JAMES B. PHILLIPS, for STARK COUNTY JFS, Appellee;
RICHARD D. HIXSON, for Appellant.

Montgomery, J.

{¶1} Mother and Appellant, Mercedee Chenault, appeals from the judgment of the Stark County Court of Common Pleas, Family Court Division, asserting two assignments of error. For the reasons below, we AFFIRM the judgment in all respects.

STATEMENT OF THE CASE

{¶2} On September 13, 2024, Stark County Job and Family Services (hereinafter “the Agency”) filed a complaint alleging the dependency of D.C. (DOB 09/12/2024), and an

emergency order requesting that the child be placed into the Agency's emergency temporary custody. The complaint alleged that Mercedee Chenault ("Mother") had significant previous agency involvement, including "three older siblings who were ultimately ordered into the permanent custody of" the Agency. *See In Re Zo.P., et al.*, 2026-Ohio-1847 (5th Dist.) (affirming the trial court's award of permanent custody of Mother's three children to the Agency).¹ The Agency has been involved with Mother and her children since 2019, for concerns related to mental health, domestic violence, and homelessness.

{¶3} On September 16, 2024, the court ordered D.C. to be placed into the Agency's emergency temporary custody. On December 5, 2024, after hearing, the trial court found the child to be dependent. The court approved and adopted the Agency's case plan and held appropriate review hearings as required. On August 13, 2025, the Agency filed its motion for permanent custody and a hearing was scheduled for December 9, 2025. On September 19, 2025, Mother's first court appointed attorney withdrew due to Mother's behavior and conduct. The court appointed a second attorney, Attorney Arkow, to represent Mother. The December 9, 2025, hearing was continued due to the GAL not filing a timely report.

{¶4} On February 20, 2026, Attorney Arkow filed a similar motion to withdraw, due to Mother's behavior and conduct. That motion was set to be heard the same day as the Agency's motion for permanent custody. On March 18, 2026, at the beginning of the permanent custody hearing, the court granted Attorney Arkow's motion to withdraw. The court allowed withdrawal based on Mother taking Attorney Arkow's file from his office prior

¹ This Court held mother failed to visit children for over 20 months, had not completed case plan after more than two years, remained unsafe to parent per expert testimony, and children were in custody 12 or more months during a 22-month period. *Zo.P., supra*.

to the permanent custody hearing, threatening him with grievances, and threatening that she would “expose” him and others involved in this matter on social media and in other online forums.

{¶5} After granting the motion, the trial court began the permanent custody portion of the hearing. Shortly thereafter, Mother became irate and decided to exit the hearing. The trial court warned Mother the hearing would go forward even if she was not present. Tr. at 19. Mother chose to leave and ultimately, did not present her case.

{¶6} On March 30, 2026, the trial court issued its decision granting permanent custody of D.C. to the Agency and terminated Mother’s parental rights. Judgment Entry, dated March 30, 2026. The court found: (1) the Agency made reasonable efforts to prevent continued removal from the home; (2) the child had been in the Agency’s custody for a period greater than 12 of the last 22 months; (3) Mother did not fully comply with a majority of the case plan objectives and recommendations; (4) Mother did not regularly meet with her case worker and in May of 2025, Mother told the caseworker not to contact her anymore; and (5) it was in D.C.’s best interest to award permanent custody to the Agency.² Mother appealed.

BACKGROUND FACTS

{¶7} The record demonstrates the following facts, which are not raised or referenced in any respect in the two assignments of error on appeal. The ongoing caseworker, Kensington Thomas, and Dr. Amie Thomas, testified at the permanent custody hearing. Caseworker Thomas testified that D.C. had been in the Agency’s custody since September 13, 2024. A case plan was developed and adopted by the court to address the

² At the time of the permanent custody hearing, Mother had a violent felony criminal charge pending in the Stark County Court of Common Pleas.

concerns which caused D.C.'s removal. Mother's case plan required her to complete a parenting evaluation and follow all recommendations³, obtain stable housing and employment, work with the agency caseworker to go over case plan services on a monthly basis, and sign releases of information. Mother completed her parenting evaluation but did not complete the case plan recommendations. Mother also refused to sign medical releases or meet with the caseworker.

{¶8} Mother was to comply with mental health services. Mother was engaged with Phoenix Rising for mental health counseling but made only minimal progress in her treatment. Mother was also put on "color code" due to her extensive marijuana usage. Mother's last drug screen was on December 20, 2024, and Mother was positive for marijuana. Mother had 117 "no-shows" for color code screenings which are deemed to be positive results.

{¶9} Throughout the case, Mother continued to threaten the caseworker, the court, and anyone that is involved in the case. Mother has not completed her case plan or reduced the risks she presents to the child. Mother never engaged in Goodwill Parenting because she did not stabilize her mental health. The only change or improvement Mother made since her prior three cases was that she has obtained housing for herself. However, Mother's housing - through Hunter's House, who works with Coleman Behavioral Health - was not appropriate for D.C. because children were simply not permitted to live there.

{¶10} Overall, Caseworker Thomas testified that Mother had not successfully completed her case plan and could not safely care for D.C. Caseworker Thomas testified that

³ The evaluation suggested the following recommendations for Mother: comprehensive mental/health treatment, complete anger management, engage in psychiatric services, maintain sobriety from marijuana (as marijuana can increase paranoia in persons with mental health issues), complete Goodwill Parenting once her mental health was stabilized, obtain stable employment and housing for herself and her child.

Mother lost permanent custody of three other children in related cases in October of 2025 due to the same concerns. At the time of the hearing regarding D.C., the Agency had been working with Mother for three years with no improvement.

{¶11} Dr. Thomas also testified. Dr. Thomas evaluated Mother on three separate occasions, but because Mother was so defensive during the psychological testing, it was not useful. Dr. Thomas stated that Mother's presentation was striking - she was hostile, irritable, and easily agitated. Mother admitted to Dr. Thomas her ongoing use of marijuana. Dr. Thomas stated that although Mother initially stated she was diagnosed with bipolar disorder, she later refused to acknowledge it. Dr. Thomas noted that Mother's insight into her mental health is very poor and it was highly unlikely that Mother would embrace treatment. Mother was extremely reactive and unpredictable despite being medicated for mental health and mood stabilization.

{¶12} According to Dr. Thomas, Mother could not safely parent her child, due to being physically aggressive, engaging in risky and dangerous behaviors, and Mother's angry temperament. Dr. Thomas believed that Mother was engaged in many problematic parenting approaches but would not accept any feedback. Mother believed her children were hers, and no one could tell her how to parent them. Essentially, there was not much change between Mother's first evaluation in 2020 and the 2025 evaluation. Mother was given recommendations that included comprehensive mental health treatment, anger management and psychiatric services. Mother never successfully completed any of those services.

ASSIGNMENTS OF ERROR

{¶13} "I. THE TRIAL COURT ERRED AND VIOLATED APPELLANT'S RIGHT TO COUNSEL WHEN IT GRANTED TRIAL COUNSEL'S MOTION TO WITHDRAW AT THE PERMANENT CUSTODY HEARING AND FAILED TO APPOINT REPLACEMENT COUNSEL FOR THE PERMANENT CUSTODY

HEARING WHEN MOTHER AFFIRMATIVELY ASSERTED HER RIGHT TO COUNSEL.”

{¶14} “II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED MOTHER’S MOTION FOR A CONTINUANCE AFTER TRIAL COUNSEL WITHDREW AT THE PERMANENT CUSTODY HEARING.”

ANALYSIS

1) Right to Counsel

{¶15} In the first assignment of error, Mother argues that the trial court violated her right to counsel by not appointing her a third attorney on the day of the permanent custody hearing. Mother claims she explicitly asserted her right to counsel upon the withdrawal of her attorney at the permanent custody hearing. Mother asserts the trial court could have either (1) denied Attorney Arkow’s motion to withdraw and required Mother to proceed with his representation; or (2) granted Mother’s request for a continuance and appointing replacement counsel for Mother. We disagree.

{¶16} The Ohio Supreme Court has likened the termination of one's parental rights to the family-law equivalent of the death penalty. *In re R.K.*, 2018-Ohio-23, ¶ 1. Thus, “it is critical that the rights of a parent who faces the permanent termination of parental rights are appropriately protected. One of those protective measures is the right to be represented by an attorney at all stages of the proceedings.” *Id.*; R.C. 2151.352. Of course, like all rights, the right to counsel can be waived. *R.K.*, at ¶ 5; *In re Adoption of A.K.H.*, 2025-Ohio-1922, ¶ 7 (5th Dist.), citing *In re W.W.E.*, 2016-Ohio-4552, ¶ 36 (10th Dist.).

{¶17} “[W]hen reviewing a waiver of the right to counsel in the context of a permanent termination of parental rights, courts in Ohio have examined whether the waiver was knowingly, intelligently, and voluntarily made.” *Id.*; *see also, In re Hayes*, 2002 WL 819216, *2 (5th Dist.). A parent can expressly or implicitly waive the right to counsel. *See In*

re C Children, 2023-Ohio-588, ¶ 17 (1st Dist.). Indeed, waiver of counsel may be inferred “where the total circumstances of the individual case, including the background, experience *and conduct of the parent* indicate that the parent has waived the right to counsel.” (emphasis added); *In re M Children*, 2019-Ohio-484, ¶ 15 (1st Dist.), quoting, *In re Rachal G.*, 2003-Ohio-1041, ¶ 14 (6th Dist.). A waiver may be implied where a parent fails to maintain contact with counsel, fails to appear for scheduled hearings, or fails to cooperate with counsel and the court. *A.K.H.*, ¶ 8, citing *Rachal G.*, ¶ 14; *In re A.S.*, 2010-Ohio-1441, ¶ 27 (8th Dist.). “Inferred waivers have been found in circumstances where a parent has repeatedly failed to communicate with counsel or attend scheduled hearings.” *M Children*, ¶ 15; citing *A.S.*, ¶ 30.

{¶18} Appellate courts review a trial court's refusal to appoint substitute counsel for a parent in permanent custody hearings for an abuse of discretion. *In re W.J.*, 2022-Ohio-2449, ¶ 36 (3d Dist.). However, an appellate court reviews de novo whether an individual waived their right to counsel. *State v. Smallwood*, 2020-Ohio-5556, ¶ 9 (6th Dist.); *W.J.* at ¶ 35. “In a totality of the circumstances review, we must consider all of the particular facts of the case to ascertain whether an inferred waiver of counsel occurred.” *C Children*, *supra*, ¶ 17; *In re E.A.*, 2025-Ohio-5573, ¶ 31 (3d Dist.) (finding father’s pattern of alienating attorneys, filing pro se motions despite having representation, and failing to cooperate constituted an implied waiver of counsel).

{¶19} For example, in *E.A.*, the Third District inferred the father’s waiver of counsel based on the father’s complete lack of cooperation and after having multiple appointed attorneys withdraw due to his behavior. The Court stated:

Upon review of the record, we find that in the particular circumstances of the instant case, the trial court did not err by not appointing counsel to represent

Scott at the * * * hearing. Scott had a demonstrated history of not working with his counsel, filing his own pro se motions and not complying with the case plan or court orders. * * *

The trial court concluded that it is "evident from the motions and hearings that Scott has had extreme conflict with his attorneys because he does not like the way they have handled this case on his behalf[.]" As a result of Scott's actions throughout the case, the trial court found that "Scott's actions are intended to cause delay in this case and further finds Scott is a vexatious litigator[.]"

Although Scott claims that he did not intend to waive any right he may have had to court appointed counsel, his conduct belies this claim. We find that, by his behavior throughout the case, including continually seeking new counsel, demonstrated lack of cooperation with counsel, disparaging comments and repeated accusations against counsel, incessant filing of voluminous pro se motions despite his representation by counsel, the trial court did not err by finding that Scott's actions were intended as a delay tactic.

Accordingly, we find substantial justice has been provided to Scott and the trial court did not err by declining to appoint yet another attorney to represent Scott

* * *

E.A., at ¶¶ 32-34.

{¶20} Here, the record clearly demonstrates Mother's history of not being able to work with her court-appointed attorneys. Mother was appointed two attorneys in her previous case involving her three other children, only a few months before the March 2026 hearing. Both of those attorneys withdrew due to Mother's behavior. In said case, the trial

court similarly declined to appoint her a third attorney and Mother represented herself. *Zo.P., supra.*

{¶21} When the instant complaint was filed regarding D.C., the trial court again appointed an attorney to represent Mother. Within a short time, the attorney filed a motion to withdraw due to Mother's conduct and constant breakdowns in communication. The trial court granted said motion and appointed Attorney Arkow. Consistent with past behavior, Mother chose not to cooperate and even took Attorney Arkow's file from his office prior to the permanent custody hearing, despite his offer to make her copies of everything. At the March 18, 2026, hearing, Attorney Arkow stated as follows:

So, Your Honor, I am not in a position today to be able to represent [Mother] from a preparation standpoint, number one, and number two, from an adversarial standpoint that has developed as between myself and my client - - or rather between my client and myself.

I understand * * * that Mother suffers from mental health issues * * * [and] I believe, [I am] Mother's fourth attorney now that has represented her in these cases.

But the level to which I've been accused of being on the same side, * * * with the Department, that the Court, we're all in on this, that she just refuses to cooperate at any point during any of my prior meetings, which have been numerous. We've had numerous meetings in my office. Each meeting has broken down within 20 to 30 minutes of accusations that I'm against her, that I'm not helping her, and so on and so forth.

Tr., pp. 9-10.

{¶22} The Court then afforded Mother an opportunity to respond, wherein Mother states that Attorney Arkow is not a good attorney for her and that everyone in the courtroom is in “cahoots.” *Id.*, pp. 10-12. Mother then states “I have not waived my right to counsel. I cannot afford an attorney, and because I cannot afford one, one is supposed to be appointed to me. Now, what I would like is to ask for a continuance until the proper counsel is appointed to me because legally that is my right * * * y’all not allowed to move forward without me having counsel.” *Id.*, p. 12. Thereafter, the trial court granted Attorney Arkow’s motion to withdraw and overruled Mother’s oral motion to continue. Although the trial court did not specifically state the reasons for granting the withdrawal at the hearing and on the record, the transcript and record in its entirety clearly reveal that withdrawal was warranted in this case. *Id.*, pp. 5-10.

{¶23} Indeed, given Mother’s history of being extremely uncooperative with her court-appointed attorneys, in this case as well as the prior permanent custody cases, we conclude that Mother impliedly waived her right to counsel. Such implied waiver is a direct result of Mother’s (1) continued lack of cooperation with multiple counsel; (2) repeated accusations against counsel; (3) repeated overreactions to the Agency’s allegations and repeated accusations against everyone involved; (4) repeated breakdowns in communications with her attorneys; and (5) overall delay tactics of requesting new counsel. Thus, the trial court did not err in failing to appoint Mother a third attorney in this matter. A trial judge must balance the mother’s claimed desire for legal representation against the child’s need for stability, certainty, and permanency. Mother’s first assignment of error is overruled.

2) *Denial of Continuance*

{¶24} It is well-settled in Ohio that a trial court's decision to grant or deny a motion for continuance is reviewed under an abuse of discretion standard. "The grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge. An appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion." *State v. Unger*, 67 Ohio St.2d 65, 67 (1981) (other citations omitted). An abuse of discretion connotes more than an error of law or judgment; it occurs where the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶25} The standard is a balancing test which requires the trial court to consider all competing factors. *Id.*; *In re Gibby*, 2004-Ohio-2708, ¶ 28-29 (5th Dist.); *Zo.P.*, ¶ 30. This Court has stated:

In evaluating whether the trial court abused its discretion by denying a continuance request, we apply a balancing test and consider (1) the length of the requested delay, (2) whether other continuances had been requested and granted, (3) the convenience or inconvenience to the parties, witnesses, counsel, and court, (4) whether the delay was for legitimate reasons or was instead dilatory, purposeful, or contrived, (5) whether the party contributed to the circumstances giving rise to the request, (6) whether denying the continuance resulted in identifiable prejudice to the party's case, and (7) the complexity of the case.

Gibby, ¶ 28-29; *Zo.P.*, ¶ 30.

{¶26} Here, Mother requested a continuance so that she could be appointed a third attorney, because her own conduct caused two prior attorneys to withdraw (in addition to multiple counsel withdrawals in her previous cases). Without question, Mother created the circumstances that led to her attorney's withdrawal and said withdrawal was the only reason she requested the continuance. Mother had done the same thing in her prior cases just a few months earlier, in October 2025, when Mother represented herself at the permanent custody hearing.

{¶27} As set forth above, Mother's delay tactics appear purposeful and cannot outweigh the child's need for safety, security, and permanency. The permanent custody hearing was previously continued from December 9, 2025, to March 18, 2026, such that the Agency's motion for permanent custody was pending for over seven months. Thus, the trial court did not abuse any discretion in denying Mother's request for a continuance. The trial court's decision was clearly not arbitrary, unreasonable, or unconscionable under the totality of the circumstances. Accordingly, Mother's second assignment of error is overruled.

CONCLUSION

{¶28} Mother's first and second assignments of error are overruled and the judgment of the Stark County Court of Common Pleas, Family Court Division, is affirmed in all respects.

{¶29} Costs to Appellant.

By: Montgomery, J.

Baldwin, P.J. and

Gormley, J. concur.