

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE A.M.N.	:	
	:	No. 111155
A Minor Child	:	
	:	
[Appeal by Father, T.P.]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 16, 2022

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-19-912524

Appearances:

Gregory T. Stralka, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Joseph C. Young, Assistant Prosecuting Attorney, *for appellee.*

LISA B. FORBES, J.:

{¶ 1} T.P. (“Father”), who is the father of A.M.N., appeals the juvenile court’s denial of his request for a continuance, arguing that the court “effectively denied [his] right to counsel.” After reviewing the facts of the case and pertinent law, we affirm the juvenile court’s judgment.

I. Facts and Procedural History

{¶ 2} On October 15, 2019, the Cuyahoga County Division of Children and Family Services (“CCDCFS”) filed a motion for temporary custody and a complaint for abuse, neglect, and dependency regarding A.M.N. The same day, the juvenile court granted predispositional temporary custody of A.M.N. to CCDCFS. In March 2020, the court adjudicated A.M.N. neglected and dependent and granted temporary custody of A.M.N. to CCDCFS. In June 2021, CCDCF filed for permanent custody of A.M.N.

{¶ 3} On August 24, 2021, Father’s counsel filed a motion to withdraw, alleging a “break-down of the attorney client relationship that cannot be repaired.” On August 26, 2021, the juvenile court found “good cause exists for the request” and ordered that Father’s counsel be removed, essentially granting her motion to withdraw. Additionally, that same day, the court appointed new counsel to represent Father.¹ On September 7, 2021, Father, through his attorney, filed a motion requesting legal custody of A.M.N. to Father. On September 13, 2021, the court held a telephonic attorney conference and scheduled a hearing on Father’s motion for legal custody and CCDCFS’s motion for permanent custody for November 15, 2021. Notice of this hearing was sent to all parties, including Father and Father’s attorney.

¹ All references in the remainder of this opinion to “Father’s attorney” or “Father’s counsel” concern the attorney appointed on August 26, 2021.

{¶ 4} The court held the hearing on Father’s motion for legal custody and CCDCFS’s motion for permanent custody of A.M.N. on November 15, 2021. At this hearing, Father’s counsel requested to continue the proceedings, asserting that, dating back to “the beginning of September,” it was his “understanding” that Father intended to “get his own counsel, retain his own attorney.” Father’s counsel stated that “[w]e haven’t had enough time to prepare for today’s hearing and for [Father] to address some of those issues on the case plan that we were trying to address * * *.”

{¶ 5} CCDCFS objected to the request for a continuance, arguing that Father “had two years to address his case plan services” and over two months to hire another attorney. The juvenile court denied Father’s request for a continuance.

{¶ 6} It is from this order that Father appeals, raising one assignment of error for our review.

The trial court’s denial of the Appellant’s request for a continuance was an abuse of discretion since it effectively denied the Appellant’s right to counsel.

II. Law and Analysis

A. Standard of Review; Continuance of Hearing

{¶ 7} “The grant[ing] or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge, and an appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion.” *In re X.R.*, 8th Dist. Cuyahoga No. 90066, 2008-Ohio-1710, ¶ 22, citing *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981). “The term ‘abuse of discretion’ connotes more than an error of law or of judgment; it implies that the

court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶ 8} In *Unger* at 67-68, the Ohio Supreme Court listed factors a trial court "should note" when evaluating a motion for continuance:

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.

{¶ 9} Pursuant to Juv.R. 23, "[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties." Furthermore, pursuant to Loc.R. 35(C) of the Court of Common Pleas of Cuyahoga County, Juvenile Division,

[n]o 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.

B. The Juvenile Court did not Abuse its Discretion by Denying Father's Request for a Continuance

{¶ 10} Our review of the record in the case at hand shows the following.

{¶ 11} The transcript of the November 15, 2021 hearing indicates that Father's counsel did not request a specific length of the continuance; rather, he merely requested that the hearing be continued.

{¶ 12} Father's counsel did not request any other continuances, although Father's previously appointed counsel requested a joint continuance with A.M.N.'s

mother's counsel on August 10, 2021. The juvenile court granted this continuance the same day.

{¶ 13} The request for continuance was made in court on the day of the hearing. The following people were present at the hearing: the prosecuting attorney representing CCDCFS; the CCDCFS representative; Father's counsel; Father; two attorneys who represented the putative fathers of A.M.N.'s siblings, who were part of this case; the public defender who represented A.M.N.'s mother; the attorney who represented A.M.N. and one of A.M.N.'s siblings; the attorney who represented another of A.M.N.'s siblings; and A.M.N.'s guardian ad litem. At this hearing, three people testified: Victoria Monn, who is a child protection specialist for CCDCFS; Father; and Alix Wintner, who is the guardian ad litem for A.M.N.

{¶ 14} Father's counsel's reason for requesting the continuance was that there was a misunderstanding between him and Father regarding representation and, as a result, they were not prepared for the hearing.

{¶ 15} In applying these facts to the *Unger* test, Juv.R. 23, and Cuyahoga Loc.Juv.R. 35(C), we find that it would be a significant inconvenience to the litigants, witnesses, attorneys, and court if the continuance was granted. *See In re C.W.*, 8th Dist. Cuyahoga No. 109219, 2020-Ohio-3189, ¶ 22 (“[T]he record reflects that a continuance would have caused great inconvenience to the agency witness, opposing counsel, the guardian ad litem, and court personnel who were present and ready to proceed with the hearing.”).

{¶ 16} Father’s counsel was appointed at the end of August 2021, and by “early September,” counsel claims to have been under the impression that Father was going to retain new counsel. Under Loc.Juv.R. 23 of the Court of Common Pleas of Cuyahoga County, Juvenile Division, Father has not shown that a continuance is “imperative to secure fair treatment for the parties.” Additionally, under Loc.Juv.R. 35(C), Father requested the continuance on the day of the hearing. The record is silent as to whether Father and Father’s counsel “used diligence to be ready for trial,” and nothing suggests that the other parties to this case were notified before the hearing date of a possible request for postponement.

{¶ 17} To the extent that Father argues in his appellate brief that the “right to counsel also implies such counsel will be effective in assisting the client at a trial,” we note the following from our review of the transcript of the November 15, 2021 hearing. Father’s counsel gave an opening and a closing statement. On the other hand, the attorneys for the two putative fathers, as well as the attorney for A.M.N. and one of A.M.N.’s siblings and the attorney for the other sibling, waived opening and closing statements. Additionally, Father’s counsel conducted the direct examination of Father and the cross-examination of Monn and Wintner. Furthermore, Father’s counsel lodged several objections throughout the hearing and was the only attorney to object to any testimony or evidence.

{¶ 18} Upon review, we cannot say that the juvenile court abused its discretion by denying Father’s counsel’s eleventh-hour request for a continuance. Accordingly, Father’s sole assignment of error is overruled.

{¶ 19} 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 issue of this court directing 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.

LISA B. FORBES, JUDGE

MICHELLE J. SHEEHAN, P.J., and
EILEEN T. GALLAGHER, J., CONCUR