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2023 IL App (3d) 220425-U

Order filed March 2, 2023

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

<i>In re</i> K.W,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
a Minor)	Will County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-22-0425
)	Circuit No. 19-JA-164
v.)	
)	
Perrisha E.)	Honorable
)	Paula Gomora,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE ALBRECHT delivered the judgment of the court.
Presiding Justice Holdridge and Justice Peterson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court erred when it entered a default judgment against respondent and proceeded to conduct a hearing to terminate parental rights when it failed to reappoint counsel after respondent later appeared for the proceedings.
- ¶ 2 Respondent, Perrisha E., appeals from an order terminating her parental rights of the minor K.W. On appeal, respondent contends that the Will County circuit court erred when it

entered default judgment against her and then failed to reappoint counsel when she next appeared for the proceedings. We reverse.

¶ 3

I. BACKGROUND

¶ 4

On October 2, 2019, the State filed a petition requesting the court find K.W. neglected and make him a ward of the court. The petition alleged K.W. was a neglected minor because of his injurious environment in that the minor's siblings were already wards of the court with termination petitions pending, the minor's father was a registered sex offender, and respondent had not completed any of the services required of her in the proceedings related to her other children. K.W. was one week old when the State filed its petition.

¶ 5

On October 3, 2019, the court held a shelter care hearing and appointed the public defender's office to represent respondent. At the hearing, the parties stipulated that probable cause existed to believe K.W. was neglected due to an injurious environment. The basis for the removal was that K.W.'s two older siblings had already been removed from respondent's care due to fractured bones and other unexplained injuries and that respondent had not completed services. The father of those two children had been incarcerated for his participation in causing the injuries. The court entered an order finding there was an immediate need to protect the minor and placed K.W. in shelter care. The court admonished both parents that they were to cooperate with DCFS and the assigned caseworkers and that K.W. would not return to the home until the court found that shelter care was no longer necessary.

¶ 6

Respondent next appeared in court on October 31, 2019, for status on visitation and placement. Her attorney reported that K.W. had been placed with his paternal grandmother and that respondent had visited twice. Counsel indicated that respondent planned to visit twice a week for two-hour periods.

¶ 7 The court held an adjudication hearing on February 3, 2020. Respondent was present with her attorney. After reading the reports prepared by the caseworker and hearing testimony and argument from the parties, the court found that K.W. was neglected. Testimony at the hearing revealed that the respondent's two older children had been seriously abused by their father on separate occasions. The second incident of serious abuse occurred after the respondent was told to stay away from and keep the children away from the abuser. Further, the father of K.W., with whom respondent maintained a relationship, was a registered sex offender, convicted of abusing a young minor when he was a teenager. As a result, DCFS was awarded custody of K.W., and he was placed with his paternal grandmother as the foster parent pending a dispositional hearing. The court advised K.W.'s parents to comply with any service plan implemented by K.W.'s caseworkers or risk termination of their parental rights. When the court asked whether respondent understood, she stated that she did.

¶ 8 The dispositional hearing took place on March 10, 2020. Respondent and her attorney were both present. At the hearing, the State submitted the caseworker's report and service plan to the court as evidence. It also requested that infant K.W. be made a ward of the court. Further, at the time of the hearing, respondent had not completed any services in her plan. Respondent had also tested positive for marijuana after giving birth to K.W., and the State argued that these issues should be addressed before returning K.W. to the home. Respondent's attorney argued that she continued to visit K.W. and was making efforts with the caseworker to begin the services requested of her. The court entered an order finding respondent had not completed any services in her plan and making K.W. a ward of the court. The court admonished K.W.'s parents of their appeal rights and to comply with the terms of the service plans and to cooperate with the caseworkers. All parties agreed that the goal in the proceeding was to return K.W. home.

¶ 9 On September 1, 2020, the court held a permanency hearing. Respondent appeared in court. Respondent's counsel was not present, but another attorney from the public defender's office appeared on her behalf. Counsel informed the court that respondent was regularly visiting with K.W. and showing some effort. She was ready to begin working toward compliance with her service plan, thus counsel requested the court find reasonable efforts were being made. The State requested that the court find that K.W.'s parents had not made reasonable progress or efforts toward returning K.W. home. While services had been referred, neither parent had finished or made efforts to complete the services. The caseworker's report also indicated that due to respondent's intellectual and cognitive deficits, there was concern whether respondent could parent independently. Based on the caseworker's report and the arguments made, the court found that neither parent had made reasonable progress or efforts. The goal remained to return K.W. home within twelve months. The court continued the matter six months for review.

¶ 10 On March 23, 2021, the matter was before the court for permanency review. Respondent did not appear. The caseworker's report indicated that no efforts had been made by either parent to complete the service plan. Neither parent had finished the recommended parenting courses or drug evaluations. CASA requested that the case go to legal screening, and the matter was continued for status as to the screening.

¶ 11 On April 19, 2021, respondent's counsel filed a motion to withdraw. The motion alleged that respondent was no longer in communication with counsel. The motion also provided notice to respondent that failure to file an appearance within 21 days after the entry of a withdrawal order may result in a default judgment against her. Counsel sent respondent the motion by certified mail, return receipt requested, to her last known address. On June 14, 2021, counsel appeared in court on her motion to withdraw and for status. Counsel informed the court that

notice of the motion had been mailed to respondent, but that her office had not received the return receipt back yet. Counsel also told the court that she had not heard from respondent since March 2020. The court continued the motion to withdraw until counsel received the return receipt on her mailing.

¶ 12 Counsel filed another motion to withdraw on July 21, 2021, and again sent the motion to respondent by certified mail, return receipt requested. The receipt was returned; however, it was not signed. On August 30, 2021, counsel appeared in court on the motion and stated she still had no contact with respondent and had not seen her since approximately March 2020. The court asked the caseworker if respondent was still living at the residence listed on the motion and accompanying notice. The caseworker indicated that it was still the most recent address for respondent and that the caseworker did not have another address for her. The court found that, because respondent had not been in contact with counsel in several months and counsel had no alternative means to contact her, counsel could withdraw. The next day, counsel filed a proof of service, indicating that she mailed the order of withdrawal to respondent via regular U.S. mail.

¶ 13 The matter was next in court on October 19, 2021. Respondent did not appear. The legal screening had not been completed, and the court noted that the parents had not made any effort to make reasonable progress in their service plans. The caseworker indicated that respondent's status was unknown. She did not appear to be living at the last known address, and the caseworker had not been able to contact her. The court requested that the State review the file for consideration of a petition to terminate parental rights.

¶ 14 On April 19, 2022, the State filed a motion to terminate parental rights against both parents. The court found that neither parent had made reasonable efforts to return K.W. to their home and therefore changed the goal for K.W. to substitute care pending its determination on

termination of parental rights. K.W.'s caseworker informed the court that respondent no longer answered her phone calls but that they knew respondent was still in the area, as she was still in contact with K.W.'s caregivers.

¶ 15 The petition alleged that respondent, K.W.'s father, and "All Whom It May Concern" were unfit as parents in that they failed to maintain a reasonable degree of interest in K.W.'s welfare, failed to protect him from an injurious environment, and failed to make reasonable progress toward the returning K.W. to the home. The parents failed to make reasonable efforts to correct the conditions which were the basis for K.W.'s removal and to return him to the home for over two years. It further alleged that it was in K.W.'s best interest to remain in DCFS custody, with the ability for him to later be adopted. Notice was provided to the parties through publication and by personal service. An affidavit of service filed on May 17, 2022, stated that the Will County Sheriff's Office personally served respondent at her residence on May 9, 2022.

¶ 16 On May 17, 2022, the date the summonses directed the parties to appear in person or risk default, K.W.'s father appeared with counsel. Respondent was not present. The State informed the court that respondent was personally served with its motion to terminate her parental rights and asked the court to find her in default. According to the affidavit of service, respondent was served in a timely manner at the same address as that which the public defender's office used to attempt service of the motion to withdraw. The court granted the State's request to enter judgment against respondent.

¶ 17 Respondent did not appear in court again until September 8, 2022, for a hearing on the State's motion to terminate parental rights. The court noted respondent had been served with the original motion to terminate, had been defaulted, and that no motion had been filed to cure the

default. The matter was continued to October 7, 2022, for hearing on the State's motion to terminate the father's parental rights.

¶ 18 Respondent appeared on the October 7 hearing date, wherein the court again informed her that it had entered a default judgment against her and that no motion to vacate had been filed. It further noted that respondent had not appeared in court for nearly two years and no other counsel had filed an appearance on her behalf. When the court asked respondent why she had not been coming to court, respondent stated that she had surgery in February 2021 and had not been working. She stated that she was served with the May 2022 hearing date on the State's motion but did not provide a reason for not appearing. Rather than appoint new counsel to address the reasons why the respondent failed to timely appear or to file a motion to vacate the default judgment against her, the court told respondent that counsel represented her up until May 2022 when the court defaulted her on the State's motion to terminate her parental rights. The State corrected the court's assertion that respondent was represented by counsel when she was defaulted, but the court reiterated that respondent was personally served with the motion and failed to appear. It refused to vacate the default finding and proceeded with the hearing. The court directed respondent to either leave the courtroom or sit in on the hearing, but that she was not allowed to participate in the proceedings. Neither did the respondent ask for an attorney, nor did the court appoint one for her.

¶ 19 After a hearing on the motion to terminate parental rights, the court found that "[respondent] and all whom it may concern" were unfit. The matter proceeded to a best interest hearing, where the court found that it was in K.W.'s best interest to terminate his parents' parental rights and for him to remain with his current caregivers. The court entered an order finding that respondent was unfit for failure to maintain a reasonable degree of interest in the

child's welfare and for failure to make reasonable progress toward the return of K.W. It then informed respondent that she could file a motion to reconsider or appeal the decision.

¶ 20 On October 13, 2022, respondent filed a motion stating she wanted to work to get K.W. back into the home. The court treated respondent's motion as a notice of appeal and continued the matter accordingly.

¶ 21 II. ANALYSIS

¶ 22 On appeal, respondent argues that the circuit court erred in allowing counsel to withdraw in the absence of counsel's compliance with Illinois Supreme Court Rule 13 (eff. July 1, 2017) requirements for the withdrawal of counsel. Respondent further argues that the court erred by not appointing new counsel prior to the termination hearings. Respondent acknowledges that she did not raise either issue in the circuit court, thus forfeiting the arguments on appeal. See *In re M.W.*, 232 Ill. 2d 408, 430 (2009). She argues, however, that this court should review the issues under the plain error doctrine.

¶ 23 The plain error doctrine allows errors or defects affecting substantial rights to be reviewed even though the error or defect was not properly preserved for appeal. *In re D.D.*, 2022 IL App (4th) 220257, ¶ 31; *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). An otherwise unpreserved error may be noticed under the plain error doctrine if the respondent first demonstrates that a clear or obvious error occurred and that either (1) the evidence was closely balanced or (2) the error was so egregious as to challenge the integrity of the judicial process, regardless of the closeness of the evidence. *In re D.D.*, 2022 IL App (4th) 220257, ¶ 31. The first step in a plain error analysis is to determine whether an error occurred. *Id.*

¶ 24 A respondent parent has a right to counsel in both a neglect proceeding and in any subsequent termination proceeding that may arise from the underlying finding of neglect. *In re*

Kr. K., 258 Ill. App. 3d 270, 280 (1994). Supreme Court Rule 13 prevents an attorney from withdrawing without leave of the court and requires proper notice to the client. Ill. S. Ct. R. 13(c)(2). Rule 13(c)(4) further requires that a copy of the order granting an attorney leave to withdraw be served upon the client within three days of entry. Ill. S. Ct. R. 13(c)(4).

¶ 25 Respondent contends that her counsel did not comply with Rule 13(c)(4) (eff. July 1, 2013). Specifically, Rule 13(c)(4) provides:

“If the party does not appear at the time the motion for withdrawal is granted, either in person or by substitute counsel, then, within three days of the entry of the order of withdrawal, the withdrawing attorney shall serve the order upon the party in the manner provided in paragraph (c)(2) of this rule and file proof of service of the order.” *Id.*

Paragraph (c)(2) requires service be made “by personal service, certified mail, or a third-party carrier.” Ill. S. Ct. R. 13(c)(2). While counsel filed proof of service stating she mailed the order to respondent through regular mail, nothing in the record shows counsel complied with the requirements of service under Rule 13(c)(2) to serve her personally or through certified mail. The State concedes that counsel did not strictly comply with Rule 13. Therefore, we find that error occurred where respondent did not receive proper notice after entry of the withdrawal order.

¶ 26 The second step in plain error analysis is to determine whether the evidence was closely balanced or whether the error was so egregious as to challenge the integrity of the judicial process. *In re D.D.*, 2022 IL App (4th) 220257, ¶ 31. Respondent argues the latter. The State argues that any error was harmless because the proceedings to terminate respondent's parental rights arose due to respondent's own acts or omissions, namely her failure to make reasonable

progress toward the return of her child and her lack of cooperation with her attorney and caseworker. In addition, the State alleged as grounds of unfitness the failure to make reasonable progress during specific nine-month periods of time. The record demonstrates that respondent failed to make reasonable progress during any nine months of the multi-year period that this case was pending, including periods when she was represented by counsel. Therefore, the State argues, respondent's lack of representation at the hearing did not affect the court's ultimate finding of unfitness.

¶ 27 The record shows that respondent appeared at several court dates prior to her attorney's withdrawal and was clearly aware of the proceedings regarding her child. Respondent had received a service plan and had been admonished by the court to comply with the terms of the service plan or risk termination of her parental rights. She then failed to make herself available to the caseworker and her attorney. Respondent's counsel withdrew on August 30, 2021. On April 19, 2022, the State filed its petition to terminate respondent's parental rights. Respondent received this petition via personal service, as evidenced by the proof of service filed on May 17, 2022. Respondent had already suffered the consequences of a termination petition when she lost parental rights to her older children and therefore knew the significance of the petition and that she was to be in court at the initial hearing date.

¶ 28 Respondent then appeared at the next hearing date of September 8, 2022, even when she had not been served with notice of that date. She provided no excuse for failing to appear after she had been served with the petition. Illinois law permits default judgments against parents who fail to appear. 705 ILCS 405/2-21(1) (West 2022). Further, this court has previously refused to overturn a default order entered against a father who failed to appear after being served with a termination petition even though the reason he failed to appear was his imprisonment in

Colorado. *In re A.M.* 402 Ill. App. 720, 724 (2010). Based on this record, we conclude that there was minimal risk of harm because of counsel’s failure to comply with Rule 13(c)(4). See *In re S.P.*, 2019 IL App (3d) 180476, ¶ 44.

¶ 29 However, our analysis does not stop there. Respondent also argues that the circuit court erred by failing to reappoint counsel after respondent’s attorney withdrew, violating her due process rights. The right to counsel in proceedings under the Juvenile Court Act is provided by statute. Section 1-5(1) of the Act states:

“[T]he minor who is the subject of the proceeding and his parents *** have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and also, although proceedings under this Act are not intended to be adversary in character, the right to be represented by counsel.” 705 ILCS 405/1-5(1) (West 2022).

¶ 30 “Neither the statute nor judicial precedents specify how many times a trial court must appoint counsel in the event that counsel withdraws or an indigent parent no longer desires their particular services.” *In re Travarius O.*, 343 Ill. App. 3d 844, 851 (2003). While it is not uncommon for a court to appoint new counsel at least once, there is no mandate or guarantee that new counsel will be appointed. *Id.*

¶ 31 Courts in Illinois commonly analyze the potential deprivation of a parent’s due process rights in termination proceedings due to the court failing to appoint new counsel by balancing the factors set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). See *In re Travarious O.*, 343 Ill. App. 3d at 851. These factors are: (1) the private interests affected by the State’s action; (2) the risk of an erroneous deprivation of the parent’s interest and the probable value of additional safeguards; and (3) the State’s interest. *Mathews*, 424 U.S. at 335.

¶ 32 Regarding the first factor, respondent’s interests cannot be denied. Her interest in the custody and care of K.W. is a fundamental one, and reappointing counsel would have enabled her to file whatever motions counsel deemed appropriate to address the respondent’s absence at the return date on the summons with the termination petition. Although the time for respondent to work toward getting her child back, as she requested in her motion to the court, had expired even before her attorney withdrew, she should have had an opportunity to present her case to the court. Instead, it defaulted her.

¶ 33 Although other parents might be expected to read and comprehend the import of the termination petition and the consequences of her failure to appear at the designated court date, this respondent likely did not. The permanency review reports admitted at the termination hearing include multiple references to the respondent’s diminished cognitive ability. Further, the effort and resources it would have taken for the trial court to appoint counsel or refuse to allow her previous attorney to withdraw pales in comparison to the long-term consequences of the termination.

¶ 34 The second factor requires review of the risk of an erroneous deprivation of respondent’s interest under the procedures employed by the circuit court and the value of additional safeguards. *In re J.M.*, 2020 IL App (2d) 190806, ¶ 44. We cannot say that the procedures of the circuit court “properly safeguarded respondent’s rights.” *In re Bernice B.*, 352 Ill. App. 3d 167, 177 (2004). Indeed, it did the opposite. Respondent was not represented by counsel, and the court prohibited her from participating in the proceedings entirely. Because the court did not safeguard her interest in any way, this factor must weigh in favor of respondent.

¶ 35 As to the third factor, although the State’s interest in K.W.’s welfare is obvious, the delay to the proceeding associated with appointing new counsel for the purpose of addressing her

failure to appear on the return date of the termination petition is nominal. On balance, we believe respondent's due process interests outweigh the State's. See *Travarious O.*, 343 Ill. App. 3d at 852.

¶ 36 Given respondent's limitations as reported in the permanency reviews, and despite her failure to cooperate with counsel and her absence from proceedings for over two years, we conclude that the court abused its discretion by not appointing new counsel for respondent. See *Travarious O.*, 343 Ill. App. 3d at 852. We further find that the failure to appoint new counsel was plain error, and the cause must be remanded for new counsel to be appointed.

¶ 37 III. CONCLUSION

¶ 38 The judgment of the circuit court of Will County is reversed and remanded for the court to reappoint counsel to represent respondent in termination proceedings.

¶ 39 Reversed and remanded.