2023 IL App (4th) 220777-U

NO. 4-22-0777

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 25, 2023
Carla Bender
4th District Appellate
Court, IL

In re N.E., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Livingston County
Petitioner-Appellee,	)	No. 21JA1
v.	)	
Laterrica H.,	)	Honorable
Respondent-Appellant.)	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice DeArmond and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding respondent was not deprived of her due process rights and the circuit court did not err in denying her motion for a new trial.

¶ 2 Respondent, Laterrica H., appeals the Livingston County circuit court's order terminating her parental rights. Respondent argues (1) that the circuit court violated her procedural due process rights under the United States Constitution when it conducted the termination and best interest proceedings in her absence and (2) the court abused its discretion by refusing to inquire into the merits of newly discovered evidence presented in her posttrial motion for a new trial. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Case Opening

¶ 5 On January 19, 2021, the State filed a petition for adjudication of wardship as to N.E. (born September 21, 2020). The petition alleged that N.E. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2020)) because her environment was injurious to her welfare based on (1) the history of domestic violence between respondent and N.E.'s father, Gene E., (2) respondent and Gene E. engaged in domestic violence in the presence of N.E., (3) Gene E. was convicted of involuntary manslaughter of N.E.'s sibling, and (4) Gene E. "failed to correct the conditions that led to the removal of [N.E.'s] siblings from his care." Gene E. is not a party to this appeal. On the same day the petition was filed, the circuit court conducted a shelter care hearing. The court found that there was probable cause to believe that N.E. was neglected and placed temporary custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 6 The allegations in the petition stemmed from a hotline report DCFS received regarding N.E. According to the shelter care report, on December 1, 2020, an anonymous report was made concerning respondent's relationship with Gene E. and ongoing issues of domestic violence during which N.E. was present. In addition, the anonymous reporter alleged Gene E. was "a known gang member" and had previously been incarcerated in the Illinois Department of Corrections for "murder." During the course of the investigation, Gene E. provided investigators with incorrect information regarding his legal name and denied any instances of domestic battery, gang affiliation, previous incarceration in the Illinois Department of Corrections, or any involvement in previous DCFS investigations. Respondent confirmed to the investigator that what Gene E. had reported was true. Respondent denied any history of domestic violence, denied that Gene E. had any history of arrests or incarcerations, and further denied that Gene E. had ever "harmed her or stabbed her in the eye."

¶ 7 A full background check on Gene E. revealed he was previously convicted of involuntary manslaughter in the starving death of his child M.E. Gene E. also had several other children not in his care due to DCFS involvement. When presented with this new information, respondent "confirmed that she was fully aware of [Gene E.'s] identity and lied to the [child protective investigator] to conceal [Gene E.'s] past because [respondent] does not believe that [Gene E.] was responsible for the death of [M.E.]."

¶ 8 The circuit court held an adjudicatory hearing on May 25, 2021. Respondent admitted the allegations contained in counts III and IV of the petition for adjudication of wardship. The court entered a written order finding N.E. was a neglected minor. On the same date, the court entered a written dispositional order placing custody and guardianship of N.E. with the DCFS guardianship administrator. The court also ordered respondent to cooperate with DCFS, complete recommended services, and comply with all court orders.

¶ 9 Following a February 8, 2022, permanency hearing, the circuit court found respondent had not made reasonable or substantial progress towards the goal of returning N.E. to respondent's care and changed the permanency goal to substitute care pending a determination on the termination of respondent's parental rights.

¶ 10 On February 28, 2022, the State filed a petition to terminate the parental rights of both respondent and Gene E. The State alleged that respondent was unfit on three grounds: (1) she failed to maintain a reasonable degree of interest, concern, or responsibility as to N.E.'s welfare (750 ILCS 50/1(D)(b) (West 2020)); (2) she failed to make reasonable efforts to correct the conditions that caused N.E. to be removed during a nine-month period following an adjudication of neglect, specifically the time frame from May 25, 2021, to February 25, 2022 (750 ILCS 50/1(D)(m)(i) (West 2020)); and (3) she failed to make reasonable progress toward

the return of N.E. during a nine-month period following adjudication of neglect, specifically the time frame from May 25, 2021, through February 25, 2022 (750 ILCS 50/1(D)(m)(ii) (West 2020)). The State's petition further contended termination of respondent's parental rights served N.E.'s best interest and asked for custody and guardianship to remain with DCFS, giving it the authority to consent to adoption.

¶ 11 On March 29, 2022, at the arraignment on the State's petition, respondent's attorney informed the circuit court that respondent "reported to me that she has no way to court and requested that I ask for a continuance." Counsel further indicated "[respondent] had a new phone set up which has been messed up for weeks; and basically she's stranded in Champaign is what she's indicated." The court then denied respondent's motion to continue. However, at the State's request, the court continued the matter until April 26, 2022, "for case management conference slash arraignment if either of the parents show up."

¶ 12 On April 26, 2022, respondent again failed to appear. When asked by the court whether he had any communication with respondent, counsel indicated, "I have not, Judge. [Respondent] has emailed me sporadically and always requests a continuance and says that she has difficulty getting transportation here." The court then asked, "Are you ready to set the petition for hearing?" Counsel responded "I suppose so. *** I haven't heard anything from [respondent], Judge. There is nothing else to do. So, I really can't in good faith ask for another case management conference." The court then scheduled the matter for termination proceedings.

¶ 13 On May 17, 2022, the circuit court conducted the termination hearing. Respondent was not present, but respondent's attorney appeared on her behalf. When asked whether he was ready to proceed, counsel stated,

> "Judge, I am not. My client does not appear here. Just as an officer of the court, I would tell the judge I have not heard anything from my client since the last time we were in court after sending out responses to her e-mails and letters to her. We would ask, therefore, to continue this hearing so I could get ahold of her."

¶ 14 The court denied counsel's oral motion to continue stating "I do believe [respondent] had proper notice of today's hearing and has failed to appear or be in contact with [her counsel]."

¶ 15 B. The Fitness Hearing

¶ 16 Andrea Myers testified that she worked for The Baby Fold and was the caseworker for the family since November 2021. Myers testified she had the opportunity to discuss the case with a prior casework supervisor to determine what services respondent and Gene E. had engaged in prior to her assignment to the case.

¶ 17 Myers testified that the service plan for respondent required her to (1) complete domestic violence counseling, (2) engage in mental health counseling, (3) complete a parenting class, (4) obtain stable and appropriate housing, and (5) obtain and maintain a legal means of income. Myers testified respondent started a domestic violence class in January 2022, but was discharged in April 2022, due to four or five unexcused absences. Myers confirmed respondent had previously completed a domestic violence course, however, the agency was concerned that she was still in contact with Gene E. When asked what specific concerns the agency had, Myers responded that "[Respondent] was still having a relationship with [Gene E.] and she was living at the domestic violence shelter and she was saying that she was going to work, but she was really going to hang out with [Gene E.]." Myers noted additional domestic violence incidents between

respondent and Gene E. and that respondent was told she needed to cease contact with Gene E. "in order to work towards getting [N.E.] back."

¶ 18 Myers stated respondent had not attended mental health counseling sessions since July 2021 and was unsuccessfully discharged due to lack of attendance. Respondent did complete a parenting class, however, Myers indicated there were ongoing concerns because respondent would allow Gene E. to be around N.E. "and there would be ongoing domestic violence incidents between the two of them while [N.E.] was there." Myers testified respondent was not honest about marrying Gene E. in September 2021, indicating respondent still denied the relationship even after being presented with a copy of the marriage certificate from Champaign County. Additionally, Myers had asked respondent multiple times "in person, through text messages, and through a phone call" for an updated address. However, each time respondent would avoid the question. When asked about respondent's cooperation with The Baby Fold during the course of the case, Myers stated "I think she was initially engaged, but at this point, it seems that she's kind of given up," noting respondent was only participating in monthly visits with N.E.

¶ 19 The circuit court found the State had proved by clear and convincing evidence that respondent was unfit because (1) she failed to maintain a reasonable degree of interest, concern, or responsibility for N.E.'s welfare; (2) she failed to make reasonable efforts to correct the conditions that led to N.E.'s removal during the relevant nine-month period; and (3) she failed to make reasonable progress toward the return of N.E. during the relevant nine-month period.

¶ 20 C. Best Interest Hearing

¶ 21 Following the determination of unfitness, the case proceeded to a best interest hearing on the same date.

¶ 22 The State requested that the court take judicial notice of the evidence presented at the unfitness hearing. The best interest report was admitted into evidence without objection.

¶ 23 The best interest report indicated respondent was not presently engaged in any services. Respondent had not attended mental health counseling since July 2021. However, respondent had successfully completed a parenting course on April 16, 2021. Respondent attended almost all of her scheduled visits with N.E. The report stated concerns with respondent's dishonesty regarding her relationship with Gene E., noting respondent married him in September 2021 after the opening of this case and respondent was "still legally married to him." The report noted N.E. felt attachment with her foster parents, sought them out for comfort, and stayed close to them when "meeting new people for the first time." Conversely, N.E. did "not appear to feel as safe and secure during visits with [respondent]." Indicating N.E. would become "fussy during visits and will seek out the worker when upset or needs help with something rather than [respondent]." The report reviewed each of the statutory best interest factors and concluded termination of respondent's parental rights was in N.E.'s best interest.

¶ 24 After hearing argument from the parties, the circuit court concluded the State had proven by a preponderance of the evidence that it was in the best interest of N.E. that respondent's parental rights be terminated.

¶ 25 D. Motion for New Trial

¶ 26 On June 16, 2022, respondent filed a motion for a new trial pursuant to section 2-1203 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1203 (West 2020)), asserting the court's decision to terminate her parental rights was "overwhelmingly against the manifest

weight of the evidence." Additionally, respondent alleged she "was not in touch with her case worker because she was in a domestic violence shelter and unable to contact her case worker or her attorney." She also asserted she did not have transportation to attend the hearing on May 17 and that she had been "participating in her services and has evidence to submit concerning what is in the best interests of the minor child." Finally, respondent asserted "supporting affidavits will be provided and incorporated thereby in support of [her] motion." No affidavit was filed.

¶ 27 On August 23, 2022, the circuit court conducted a hearing on respondent's motion for a new trial. Respondent's counsel requested the court grant respondent a new trial "mainly for the reason that she wasn't here at the, when that judgment was entered terminating her parental rights."

¶ 28 In pronouncing its decision, the circuit court stated,

> "Well, I have to say that I think [respondent] has a history of lying in this case. She lied to her caseworker many times concerning housing, relationships and many other things. So I don't think that [respondent] can be taken on her word, first of all.
>
> But notwithstanding that, we do have proper notice to [respondent] that was afforded to her; and she was in communication with the caseworker during the time period in question and was exercising visitation with the minor. So she did have some communication with the outside world and, in fact, was in a position to tell Miss Myers that she needed rides or that she lost a phone number or that she couldn't reach her attorney, that she couldn't get here. It's been my experience that caseworkers are

always able to provide transportation. We have done that on or I've seen that on multiple occasions.

Moreover, I am certain that being in a shelter, while I agree with Miss Boggs, while that may make it a little more difficult, it certainly doesn't make it impossible; and again *** it doesn't cut you off from the entire world. The shelter at the very least would be able to assist in communicating with someone, whether it's the Court, your mother who could reach the Baby Fold or the [guardian *ad litem*] or the court secretary or something like that."

The court iterated respondent failed to "communicate the situation" despite "having the ability to do so," noting she had been in contact with The Baby Fold during the relevant period of time. The court determined based on the information before it, "I don't think that rises to the level that would require this Court to grant a new trial." The court further noted respondent missed multiple court dates during the pendency of the case. The following colloquy then ensued,

"[RESPONDENT]: Can I say something, Your Honor?

THE COURT: No. Not at this point. I can't take new evidence; and based on what I've seen, there is just simply not enough that you would be entitled to a new trial on this petition.

So the motion for new trial is denied."

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 A. Procedural Due Process

¶ 32 On appeal, respondent contends the circuit court violated her procedural due process rights when it denied her motion to continue and proceeded with the unfitness and best-interest hearings in her absence.

¶ 33 The right of natural parents to the care and custody of their children is a fundamental liberty interest protected by the due process clause of the fourteenth amendment to the United States Constitution. U.S. Const., amend. XIV; *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). "Due process is not a fixed, hypertechnical mold, but a flexible concept that affords procedural protections as demanded by specific situations." *In re J.S.*, 2018 IL App (2d) 180001, ¶ 18. Due process claims arising out of parental termination cases are analyzed by balancing the three factors outlined by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): "(1) [t]he private interest affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the government's interest, which includes the function involved as well as the fiscal and administrative costs of any additional or substitute procedures." *J.S.*, 2018 IL App (2d) 180001, ¶ 18.

¶ 34 Applying these factors, the first favors respondent. She clearly had an important interest in the outcome of the termination proceedings, specifically, her interest in maintaining a parental relationship with N.E. *In re D.R.*, 307 Ill. App. 3d 478, 483 (1999).

¶ 35 The second factor requires that we look to the procedures employed by the circuit court and assess the potential that they erroneously deprived respondent of her parental relationship with N.E. We note that while a parent has a right to be present at termination proceedings, parental presence is not mandatory. *In re M.R.*, 316 Ill. App. 3d 399, 402 (2000). While respondent was not present in court, she was represented by her attorney. As the State notes, the circuit court "essentially continued [the case] on two occasions." Indeed, the court did

not proceed with arraignment on March 29, 2022, and rather, at the State's request, set the matter for a case management conference or in the alternative "arraignment if either of the parents show up" on April 26, 2022. When respondent again failed to appear on April 26, 2022, the court again continued the arraignment hearing to May 17, 2022. Undoubtedly, the court made efforts to afford respondent the opportunity to participate in the termination proceedings. In light of the strength of the evidence presented against respondent, it is highly unlikely that her presence would have made any difference in the outcome. The State presented evidence that respondent had not been engaged in services and was only participating in visits with N.E. In addition, Myers had ongoing concerns that respondent was still maintaining a relationship with Gene E. and was still legally married to him. Moreover, respondent had a history of being untruthful to the agency and evasive when asked about her current residence. Thus, while respondent might have been deprived of the opportunity to testify, it was through her own failures and not due to any error in court procedure.

¶ 36 As to the third factor, it is the government's interest to adjudicate the matter as expeditiously as possible. *In re C.J.*, 272 Ill. App. 3d 461, 466 (1995). "A delay in these types of proceedings 'imposes a serious cost on the functions of government, as well as an intangible cost to the lives of the children involved.' " *J.S.*, 2018 IL App (2d) 180001, ¶ 25 (quoting *M.R.*, 316 Ill. App. 3d at 403). N.E. was three months old at the time she was taken into protective custody on January 15, 2021. At the time of the best-interest proceedings, N.E. was 18 months old. The best interest report indicated N.E. was thriving with her foster family. N.E. appeared to feel love and attachment to her foster parents and sought them out for comfort. The report further indicated, "[r]emaining in substitute care delays permanency for [N.E.], which could lead to adjustment and attachment issues." The Baby Fold reported the foster family was willing to

adopt N.E. Without a doubt, the government's interest weighed against further delay, particularly when the delay would be for an undetermined period given respondent's lack of contact with her attorney and her caseworker.

¶ 37 Respondent cites *In re C.J.*, 272 Ill. App. 3d 461 (1995), in support of her contention that her due process rights were violated. In *C.J.*, the appellate court determined that a violation of due process occurred when the circuit court denied the incarcerated respondent's request to participate in the termination proceedings by alternative means rather than actual presence. *C.J.*, 272 Ill. App. 3d at 466. Initially, the respondent asked the court to continue the matter for a year until her release from prison. *C.J.*, 272 Ill. App. 3d at 463. Anticipating a denial of that motion to continue, the respondent alternatively asked the court for a continuance of the unfitness hearing at the close of the State's evidence, "so she could review the transcripts from the proceeding and respond accordingly." *C.J.*, 272 Ill. App. 3d at 463.

¶ 38 *C.J.* is distinguishable from the present case. The respondent there was requesting a continuance until after her release at a known date from an out of state prison. *C.J.*, 272 Ill. App. 3d at 463. Here, no such definitiveness could be ascertained from continuing the case after respondent's failure to appear at two previous hearings and complete lack of communication with her attorney and Myers. Moreover, the respondent in *C.J.*, offered an alternative means of participating in the hearing. Notably, no such alternative was proposed by respondent's counsel in this case.

¶ 39 Therefore, based on the foregoing reasons, the circuit court did not violate respondent's procedural due process rights.

¶ 40 B. Motion for New Trial

¶ 41 Respondent next argues the circuit court erred in denying her motion for a new trial. Specifically, respondent argues the court "failed to allow presentation of evidence."

¶ 42 "The purpose of a motion to vacate under section 2-1203 is to alert the trial court to errors it has made and to afford an opportunity for their correction." *In re Marriage of King*, 336 Ill. App. 3d 83, 87 (2002). The court "may act on *any error* which it perceives must be remedied in order to do justice between the parties." (Emphasis in original.) *In re Marriage of Stuart*, 141 Ill. App. 3d 314, 317 (1986). "A section 2-1203 motion invokes the sound discretion of the trial court." *Regas v. Associated Radiologists, Ltd.*, 230 Ill. App. 3d 959, 967 (1992). We review the court's denial of a section 2-1203 motion for an abuse of discretion. *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 715 (2010). "In deciding whether the trial court abused its discretion in this context, the question is not whether we agree with the trial court." *Steiner v. Eckert*, 2013 IL App (2d) 121290, ¶ 16. Rather, the question at bar is "whether the trial court acted arbitrarily without conscientious judgment, or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law such that substantial prejudice resulted." *Eckert*, 2013 IL App (2d) 121290, ¶ 16.

¶ 43 In this case, respondent failed to assert what new evidence she would have presented had she been present at the May 17 hearing. Notably, respondent's counsel stated the crux of the motion for a new trial was based on respondent's absence from the termination proceedings. The court also noted respondent had "a history of lying in this case," observing respondent had not been truthful with her caseworker previously regarding "housing, relationships and many other things." Further, the court indicated respondent had received proper notice of the proceedings and that she was in contact with her caseworker and exercising her

visitation during the period in question, which belied her contention that respondent had no contact with the outside world while in a domestic violence shelter.

¶ 44 Respondent contends the circuit court "acted arbitrarily and unreasonably in refusing to permit [respondent] to make a statement at the hearing on the Motion for a New Trial." Additionally, respondent takes issue with the court's reference to previous experiences when dealing with litigants living in domestic violence shelters. Respondent's contention appears to ignore the context in which the court declined to hear her statement, which occurred after the court stated its reasons for denying respondent's motion for new trial. Indeed, the court may consider newly discovered evidence. *In re Marriage of Stuart*, 141 Ill. App. 3d at 317. Newly discovered evidence for the purposes of a new trial requires that, (1) "the party seeking to overturn the order must show due diligence in discovering the evidence," (2) "the party must also show that he could not have produced the evidence at the first trial by exercising due diligence," (3) "the party must demonstrate that the evidence is so conclusive that it would probably change the trial result," (4) "the evidence must be material and relate to the issues," and (5) the evidence cannot be merely cumulative or serve the sole purpose of impeachment." *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 409-10 (2005). "A rehearing is not warranted unless the newly discovered evidence is of such conclusive or decisive character as to make it probable that a different judgment would be reached in another trial." *Sanborn v. Sanborn*, 78 Ill. App. 3d 146, 151 (1979).

¶ 45 Indeed, no such evidence was presented except for bare bones allegations in respondent's motion for new trial. Respondent's contention that she "was participating in her services and has evidence to submit concerning what is in the best interests of the minor child" does not demonstrate that she could not have produced this information at the termination

proceedings. Regarding respondent's contention "it is wholly inappropriate to base a ruling in a *sui generis* case on conjecture and hypotheticals grounded in other unrelated cases" again ignores the context with which these statements were made. It is axiomatic that "[a] trial judge does not operate in a bubble; she may take into account her own life and experience in ruling on the evidence." *People v. Thomas*, 377 Ill. App. 3d 950, 963 (2007). In this instance, the court appeared to take into account respondent's history of untruthfulness and its own knowledge of the function of domestic violence shelters in determining the veracity of respondent's claim she had no ability to contact anyone. Therefore, in light of the foregoing, the court did not abuse its discretion in denying respondent's motion for a new trial.

¶ 46 III. CONCLUSION

¶ 47 For the reasons stated, we affirm the trial court's judgment.

¶ 48 Affirmed.