

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1737

September Term, 2014

IN RE: ADOPTION/GUARDIANSHIP OF
JAMARI S.

Zarnoch,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: June 3, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Chikyra S., appellant, appeals the judgment of the Circuit Court for Talbot County, sitting as the juvenile court, terminating her parental rights with respect to Jamari S., her biological son. She presents a single question for our review:

Was appellant's consent to the termination of her parental rights invalid because it was involuntary?

For the reasons which follow, we shall affirm the judgment of the court.

FACTS AND PROCEEDINGS

On September 3, 2013, the Talbot County Department of Social Services (“the Department”) filed, in relation to Jamari S., a Petition for Guardianship with the Right to Consent to Adoption or Long-Term Care Short of Adoption. Jamari S.’s biological parents, Chikyra S. and Cornell R., filed objections to the petition.

On August 25, 2014, a hearing was held in which both parents gave their consent, orally and in writing, to the termination of their parental rights and the grant of guardianship of Jamari S. to the Department. Specifically, the inquiry into Chikyra S.’s consent to the termination of her parental rights was as follows:

[APPELLANT’S COUNSEL]: And you’re aware that we’re here today in court as a result of the Department . . . filing a petition to terminate your parental rights asking for guardianship of your son, is that correct?

[CHIKYRA S.]: Yes.

[APPELLANT’S COUNSEL]: And am I also correct in representing to the Court that you and I have had several days and many hours to discuss your case?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: We've also discussed all these papers that you signed here today, is that correct?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: . . . do you understand that as of today you have a right to have a contested trial?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: And do you understand by that I mean that the Department . . . would have the job and responsibility of putting their case on before the judge where they could call witnesses and attempt or get into evidence documents in order to convince the judge that your parental rights should be terminated[?] Do you understand that?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: And during that trial we would have the right to cross examine those witnesses and perhaps also to call our own witnesses and put our own testimony on. Do you understand that?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: Do you understand that by signing these papers today including the consented post adoption agreement you are waiving your right, or giving up your right to have this trial, do you understand that?

[CHIKYRA S.] Yes.

[APPELLANT'S COUNSEL]: That means that we will not have a contested trial.

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: Do you understand that by signing this consent and not agreeing to a contested trial you will retain a few rights with regards to your son, do you understand that?

[CHIKYRA S.]: Yes.

* * *

[APPELLANT'S COUNSEL]: We've gone over the consent and the instructions do you understand today that in signing this you are giving up your rights to your son with the exception of the rights that you kept in the post adoption agreement[?] Do you understand all of that?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: Do you understand you are signing consent telling the Department that they have the right to place your son with a home that is determined to be appropriate for him, do you understand that?

[CHIKYRA S.]: Yes.

* * *

[APPELLANT'S COUNSEL]: Do you also understand that today by signing and filing this in court today that you will not have a right to revoke your consent[?] In other words you won't be able to say to the Court ^["I change my mind I want to take back the consent."] Do you understand that?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: And we talked about the fact that because it was being filed today you had to give up your right to revoke your consent or take it back. Did you understand that?

[CHIKYRA S.]: Yes.

* * *

[APPELLANT'S COUNSEL]: Okay, good. We also talked about the fact that in signing this consent once it is signed that at that point the CINA case will be closed, do you understand that?

[CHIKYRA S.]: Yes.

* * *

[APPELLANT'S COUNSEL]: And are you currently under, did you today take any drugs or alcohol?

[CHIKYRA S.]: No.

[APPELLANT'S COUNSEL]: Did you take any prescription medications?

[CHIKYRA S.]: No.

* * *

[APPELLANT'S COUNSEL]: Do you feel as if you've understood what is happening today?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: I know this is not the greatest of outcomes and it's not one that you necessarily like but do you feel as if you have signed this consent and not been forced to do that? Nobody has threatened you or coerced you or otherwise done anything to you to make you sign it other than talking about what's going to happen in your case today. We talked about that remember?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: And then what was in the post adoption agreement, am I correct on that?

[CHIKYRA S.]: Yes.

[APPELLANT'S COUNSEL]: So you believe that this is free and voluntary?

[CHIKYRA S.]: I have no choice.

[APPELLANT'S COUNSEL]: And it's no choice because we talked about what would happen in this case should we go forward, is that right?

[CHIKYRA S.]: Yes.

[APPELLANT’S COUNSEL]: Do you feel as if you have received proper services from the Office of the Public Defender and from me?

[CHIKYRA S.]: Yes.

[APPELLANT’S COUNSEL]: Do you have any questions either of me or the Court that you need to have answered today?

[CHIKYRA S.]: No.

* * *

[THE COURT]: Well let me just follow up on the one answer. When you say you have no choice I think I understand what you mean but I want to clarify that. You do have a choice. You can sign this thing or not sign it, consenting or not consenting. But if you don’t consent there is going to be a trial and there’s going to be a lot of evidence presented. And I take it that your attorney has reviewed with you what the evidence is?

[CHIKYRA S.]: Yes.

[THE COURT]: And a lot of it is uncontested meaning everybody agrees that certain things happen as I understand it. Is that your understanding?

[CHIKYRA S.]: Yes.

[THE COURT]: So when you say you have no choice I take it what you mean is that after consulting with your attorney you thought it was in the best interest of your child to agree to this because the outcome was in all likelihood going to be adverse to you. Would that be a fair assumption on my part?

[CHIKYRA S.]: Yes.

[THE COURT]: All right, I think there’s been a knowing and voluntary decision on the part of the mother to consent to this. . . .

Ultimately, the court accepted the consent of both parents and, later, entered orders which granted the Department’s petition for guardianship of Jamari S. and terminated the parental rights of Chikyra S. and Cornell R.

Additional facts will be provided below as our analysis requires.

DISCUSSION

Chikyra S. contends that her answers during the noted consent inquiry “belie[d] [the] assertion” that she consented voluntarily to the termination of her parental rights.

Specifically, she cites the following portion of the hearing transcript in support of her claim:

[APPELLANT’S COUNSEL]: I know this is not the greatest of outcomes and it’s not one that you necessarily like but do you feel as if you have signed this consent and not been forced to do that? Nobody has threatened you or coerced you or otherwise done anything to you to make you sign it other than talking about what’s going to happen in your case today. We talked about that remember?

[CHIKYRA S.]: Yes.

* * *

[APPELLANT’S COUNSEL]: So you believe that this is free and voluntary?

[CHIKYRA S.]: I have no choice.

Chikyra S. insists that her answers to the noted questions: (1) indicated that she merely recalled speaking with her counsel about threats and coercion, and did not confirm that she had not been threatened or coerced, and (2) established that she believed she had no choice but to consent to the termination of her parental rights. She contends that none

of her subsequent statements countered the fact that “she believed she had no choice but to consent to the termination[,]” and so her consent was involuntary, rendering it invalid. Accordingly, she asserts that the court erred by terminating her parental rights and, therefore, reversal is required.

“Where a trial court interprets and applies Maryland case or statutory/regulatory law, we determine on appellate review, under a non-deferential standard of review, whether the trial court’s conclusions are ‘legally correct.’” *In re: Sean M.*, 430 Md. 695, 702 (2013) (quoting *Garfink v. Cloisters at Charles*, 392 Md. 374, 383 (2006)). Given the issue presented in this case, we shall determine, independently, whether the trial court erred by concluding that Chikyra S.’s consent, to the termination of her parental rights, was voluntary and, thus, valid.

“Certain fundamental rights are protected under the U.S. Constitution, and among those rights are a parent’s Fourteenth Amendment liberty interest in raising his or her children as he or she sees fit, without undue interference by the State.” *In re: Yve S.*, 373 Md. 551, 565 (2003) (footnote omitted). With respect to the statutory conditions which must be satisfied before a court may grant guardianship of a child, Md. Code Ann. (2012 Repl. Vol.), § 5-320 of the Family Law Article (“F.L.”), provides, in pertinent part:

§ 5-320. Authority to grant guardianship.

(a) *Consent and acquiescence or best interests.* – A juvenile court may grant guardianship of a child only if:

- (1) (i) the child does not object;
- (ii) the local department:
 - 1. filed the petition; or
 - 2. did not object to another party filing the petition; and
- (iii) 1. each of the child’s living parents consents:
 - A. in writing;
 - B. *knowingly and voluntarily, on the record before the juvenile court*; or
 - C. by failure to file a timely notice of objection after being served with a show-cause order in accordance with this subtitle;

(Emphasis added).

This Court has recognized that the terms “knowingly” and “voluntary” have the following meanings:

The Court of Appeals in *State v. Zimmerman*, 261 Md. 11, 13 n. 1 (1971), regarded “knowingly” as synonymous with “intelligently,” and referencing Black’s Law Dictionary 888 (8th ed. 2004), defined “knowingly” as “having or showing awareness or understanding.” The Court did so again in *Nalls v. State*, 437 Md. 674, 689 (2014). As to “voluntary,” citing *Wills v. Jones*, 340 Md. 480, 495 (1995), the *Nalls* Court stated that a voluntary action is “an exercise of ‘unconstrained will’ and is ‘intentional.’” *Nalls*, 437 Md. at 689.

Westray v. State, 217 Md. App. 429, 448, *cert. granted*, 440 Md. 225 (2014) (internal parallel citation omitted).¹

In the instant case, Chikyra S. furnished her written consent to the termination of her parental rights, via a document titled “Consent of Parent to Guardianship with the Right to Consent to Adoption of Jamari [S.] by the Talbot County Department of Social Services.” This document was accompanied by an affidavit from Chikyra S.’s counsel which stated that counsel had “reviewed the contents of the foregoing [c]onsent with [Chikyra S.]” and that Chikyra S. “consent[ed] knowingly and voluntarily.” *See* F.L. § 5-321(a)(3)(iv) (valid written consent must be “accompanied by an affidavit of counsel stating that: 1. counsel reviewed the consent with the parent; and 2. the parent consents knowingly and voluntarily[.]”).

Prior to the court’s acceptance of Chikyra S.’s oral consent, however, she was subjected to an extensive inquiry with respect to the knowing and voluntary nature of her decision. During that inquiry, Chikyra S. indicated, unambiguously, that: (1) she had days to consider her decision to give or withhold her consent with respect to the termination of her parental rights, and to discuss the same with her counsel; (2) the consent agreement, which she signed, was explained to her and she understood the consequences of signing it; (3) she understood that her decision to give consent was irrevocable, per the agreement; (4)

¹We are satisfied that there is no substantive difference between the terms “voluntarily,” as used in F.L. § 5-320(a)(1)(iii)(B), and “voluntary,” as defined in *Westray*, 217 Md. App. at 448.

she understood that she had a right to withhold consent and have a contested trial and, further, was aware of what such a proceeding would entail; and (5) she was not under the influence of drugs, alcohol, or medication.

When, as Chikyra S. points out, she was asked whether she made the decision to sign the consent agreement without being forced to do so, such was, effectively, part of a two-pronged question wherein she was also asked if she remembered discussing, with her counsel, the fact that her decision was not the result of coercion. Although the compound nature of counsel's question made it unclear which inquiry was being answered, we are not persuaded that such uncertainty invalidated Chikyra S.'s consent or meant that there was reason to believe she had been coerced in the course of the relevant proceedings. Moreover, we are not convinced that Chikyra S.'s statement that she "[had] no choice" meant that she did not understand that she did, in fact, have a choice as to whether, or not, to consent to the granting of guardianship of Jamari S. to the Department. Indeed, the court made sure to have Chikyra S. clarify, for the record, that her stated impression that she believed she had "no choice" was, more accurately, her belief that the proceedings which would follow if she did not give her consent were, in her opinion, much less desirable because they were likely to yield an outcome which would be adverse to her. In our view, it is clear that Chikyra S. was aware of her options and intentionally elected to consent to the granting of guardianship of Jamari S. to the Department, thereby terminating her parental rights, in order to avoid the consequences of withholding consent. Accordingly, we must hold that the court did not err

by granting the Department's petition, after concluding that Chikyra S. knowingly and voluntarily consented to the termination of her parental rights.

**JUDGMENT OF THE CIRCUIT
COURT FOR TALBOT COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**