Circuit Court for Cecil County
Case Nos.: C-07-JV-20-000010
C-07-JV-20-000011
C-07-JV-20-000012
C-07-JV-20-000013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2038

September Term, 2021

IN RE: B.G., D.G., C.B., AND CH.B.

Kehoe,
Leahy,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: October 19, 2022

*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.

M.S. appeals a judgment of the Circuit Court for Cecil County, sitting as the juvenile court, that terminated her parental rights relating to her four biological children: B.G., D.G., C.B., and Ch. B. On appeal, Ms. S. does not challenge the sufficiency of the evidence sustaining the termination of her parental rights.[1] Instead, she presents one question for our review, which we have reworded slightly:

> Did the juvenile court err or abuse its discretion in denying Ms. S.'s counsel's request for a postponement, and in conducting the hearing in the absence of Ms. S.?

Finding no error or abuse of the court's discretion, we shall affirm the judgment.

BACKGROUND

Ms. S. and the children first came to the attention of the Cecil County Department of Social Services (the "Department") in 2017 due to abuse allegations by the children against Ms. S.'s husband. Ms. S.'s husband, who is not biologically related to any of the children, was subsequently convicted of offenses and incarcerated. In May 2018, and as a result of the investigation into the abuse allegations, the Department opened an in-home services case "to offer continuing services within the home in an attempt to preserve [the children's] status in the home with [Ms. S.]."

Several months later, the Department received a referral about possibly unhealthy conditions within the home. Departmental and law enforcement personnel conducted a

[1] The juvenile court analyzed the evidence presented at trial in great detail in a twenty-six page written memorandum opinion and order and concluded that the Department had shown by clear and convincing evidence that termination of Ms. S.'s parental rights was in the best interests of the children.

visit, which resulted in the filing of a shelter care petition. On October 16, 2018, the juvenile court ordered that the children be placed in shelter care. The court's decision was based on the home's unsanitary conditions, Ms. S's substance abuse problem, and the Department's assessment that the in-home services it had previously provided to Ms. S had not increased her ability to meet the needs of her children. The children were found to be children in need of assistance on November 27, 2018. In July 2019, Ms. S. was convicted of offenses related to the neglect of her children.

Services Provided by the Department

In September 2019, Ms. S. was hospitalized after a neighbor witnessed her exhibiting what was termed "bizarre behavior." While in the hospital, Ms. S. tested positive for three separate controlled dangerous substances. The Department arranged for Ms. S.'s placement in a residential substance abuse treatment facility. For reasons unclear from the record, Ms. S.'s stay at the facility was prematurely terminated. Ms. S. later sought treatment at another residential facility, but again was unsuccessful in completing the program.

After the children were removed from Ms. S's home, the Department attempted to provide family reunification services. Ms. S. was permitted monthly visits with the children. According to uncontested testimony at the November 2021 termination of parental rights hearing, Ms. S.'s last face-to-face contact with the children had been in March 2020. Ms. S. participated in monthly phone calls with the children in August, September, and October 2020, but missed her November phone call and had no further

contact with the children. By late 2020, Ms. S. and the Department had executed several service agreements,[2] but Ms. S had failed to complete her required tasks.[3]

Legal Proceedings Following the Removal of the Children

In January 2020, the Department filed petitions for adoption/guardianship for each of the children, to which Ms. S.'s counsel filed objections. The court scheduled the guardianship hearing for May 8, 2020. (T. 4.) That hearing was postponed due to the COVID-19 pandemic, which also resulted in two additional postponements. The case was then scheduled for trial on June 11, 2021. The court postponed trial to September 24, 2021, to allow the Department to obtain alternate counsel, because the new attorney for the Department had previously represented Mother.

On September 24, 2021, Mother failed to appear. The court again continued the case to November 12, 2021. The court further ordered that a notice of the new trial date be mailed to Mother's last known address and published in the *Cecil Whig*, a local newspaper.

On November 12, 2021, Ms. S. did not appear. At the outset of the hearing, Ms. S.'s counsel moved for a postponement. Ms. S.'s counsel noted that Ms. S. was not present and represented to the court that Ms. S. had not provided guidance as to her current

[2] A Department employee testified that "[w]ith every in-home services case[,] there is a service agreement drafted to provide services to the family."

[3] A Department employee explained that "several of the tasks from the service agreement include substance abuse treatment, which [Ms. S.] has initiated but not often successfully completed."

position on the matter. Ms. S.'s counsel stated that his last communication with Ms. S. had been in November of 2020, approximately one year prior to trial.

Counsel for the minor children and the Department's counsel both objected to the request for postponement. Counsel for the minor children asserted that the matter had already been postponed several times and that the children needed finality. The Department's counsel stated that Ms. S. had actual notice of the hearing and called Kimberly Compton, a Departmental supervisor, as a witness to address this issue. Ms. Compton testified that when Ms. S. learned of the order of publication in the newspaper, she came to the Department and said that she did not want her parental rights terminated. Ms. Compton further testified that she wrote the date of the hearing on a business card, gave the card to Ms. S., and instructed Ms. S. to contact her attorney.

The court concluded that Ms. S. had sufficient notice of the hearing and declined to postpone the hearing:

> The court is aware that there was a previous hearing scheduled in September of 2021. At that time, I believe it was Judge Jensen, [who] had postponed this matter. There was a request for service of [Ms. S.] via publication. The allegations in the motion indicated that the Department of Social Services had had no contact with [Ms. S.] regarding the upcoming hearing and did not have an address where she could be located. The court permitted publication, and the court received a notice filed by the Department of Social Services which indicates that a notice was published in the *Cecil Whig*[, a] local newspaper advising parties that a hearing would be conducted on today's date.
>
> The court[] also heard today from Ms. Compton. She indicates that she met with [Ms. S.], who had seen — or had information about this newspaper publication. She expressed that she did not want termination of parental rights to occur. Based on the testimony offered by Ms. Compton, [Ms. S.]

> indicated that she gave her the exact date when this hearing would be conducted. She believed [Ms. S.] knew when the proceeding was going to be conducted. [Ms. S.] fails to appear.
>
> The court believes that she has had sufficient notice so that the court may move forward in connection with the petition today. So the court will deny the postponement request on behalf of [Ms. S.].

In an order entered January 13, 2022, the court terminated Ms. S.'s parental rights.[4] Ms. S. timely filed this appeal.

THE STANDARD OF REVIEW

Maryland Rule 2-508 states in pertinent part:

> (a) Generally. On motion of any party or on its own initiative, the court may continue a trial or other proceeding as justice may require.

"The granting or denial of a continuance or postponement is within the sound discretion of the trial court." *Touzeau v. Deffinbaugh*, 394 Md. 654, 667 (2006). Accordingly, this Court will not disturb a trial court's denial of a motion to postpone "except on a clear showing of abuse of discretion[.]" *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003) (quotation marks and citation omitted); *see also Touzeau*, 394 Md. at 669 ("Absent an abuse of that discretion we historically have not disturbed the decision to deny a motion for continuance.") An abuse of discretion occurs when the judicial ruling in question is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Jenkins*, 379 Md. at 165 (quotation marks and citation omitted).

[4] The court also terminated the parental rights of the children's biological fathers. The fathers are not parties to this appeal.

ANALYSIS

Ms. S. contends that the court erred by denying her request for postponement and in holding the hearing in her absence. Specifically, she asserts that the court "conducted no investigation" as to whether Ms. S.'s right to be present had been knowingly and voluntarily waived. The Department responds that the juvenile court's judgment should be affirmed because Ms. S. was notified of the hearing by publication and by Ms. Compton, the Department's supervisor who met with Ms. S.

It is without question that "a parent's interest in raising a child is a fundamental right." *In re Maria P.*, 393 Md. 661, 675 (2006). Accordingly, when "a state seeks to change the parent-child relationship, 'the due process clause is implicated.'" *Id.* at 676 (quoting *Wagner v. Wagner*, 109 Md. App. 1, 25 (1996)); *see also Green v. North Arundel Hosp. Ass'n, Inc.*, 366 Md. 597, 618 (2001) (noting that a civil litigant's right to be present for trial on his or her case "emanates, at least, from the common law of Maryland, from the due process clause of the Fourteenth Amendment to the U.S. Constitution, from the Maryland equivalent of that clause, Article 24 of the Declaration of Rights, and from Article 19 of the Declaration of Rights.")

However, "'[d]ue process is flexible and calls for such procedural protections as the particular situation demands.'" *In re Blessen H.*, 163 Md. App. 1, 19 (2005), *aff'd*, 392 Md. 684 (2006) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)). Accordingly, "there are circumstances in which a civil case may proceed without the attendance of a party[.]" *Green*, 366 Md. at 618-19. Indeed, the Court of Appeals has made clear that a

parent's fundamental right in raising his or her child "is not absolute, and is subject to the best interests of the child standard." *In re Maria P.*, 393 Md. at 675.

Ms. S. cites *In re Maria P.* in support of her position that the motion to postpone was erroneously denied. We will discuss *Maria P.* in more detail later in our analysis; at this point, it is sufficient to say that the issue before the Court in *Maria P.* was whether the trial court abused its discretion in excluding a parent from the courtroom while her child testified.[5] The Court of Appeals concluded that there was "no indication on the record that the hearing judge considered [Ms. P.'s] due process rights." *In re Maria P.*, 393 Md. at 676. The Court reversed the judgment and remanded for further proceedings, explaining that it was "unable to discern the judge's exercise of discretion if he or she does not state, or there does not exist, on the record, the factual basis for his or her decision." *Id*. at 676-77. The Court noted that "[n]o testimony was placed on the record, and no inquiries were made of the Department as to the specific reasons for [Ms. P.'s] exclusion[.]" *Id*. at 676.

In the present case, the court both took testimony and stated the factual basis for its decision on the record. The court pointed to the fact that the Department had not had recent contact with Ms. S. and did not have an address where Ms. S. could be located. The Court noted that publication was ordered, and that the Department filed a notice indicating that notification of the hearing was in fact published in the local newspaper.

[5] As we will explain, the facts in *Maria P*. are very different from those presented in this current case.

Additionally, the court relied upon Ms. Compton's testimony that she had given Ms. S. the date of the scheduled hearing when Ms. S. came to the Department's office prior to the hearing. Based on the facts and the testimony before it, the court found that Ms. S. had "sufficient notice so that the court may move forward[.]" In contrast to *Maria P.*, the court in the present case permitted the parties to present evidence as to the reasons for Ms. S.'s absence and then explained why it was denying the request for a postponement.

Ms. S. further asserts that the court was required to conduct an "investigation into [Ms. S.'s] whereabouts prior to denying the request for postponement." In support, Ms. S. again cites *In re Maria P.*, as well as *Pinkney v. State*, 350 Md. 201 (1998) and *In re McNeil*, 21 Md. App. 484, 498 (1974). None of these decisions provide significant support to Ms. S.'s contention.[6]

Pinkney was a criminal case in which the defendant was tried *in absentia* after he failed to appear for trial. 350 Md. at 206–07. The Court of Appeals reversed the defendant's conviction, holding that the trial court did not have a "sufficient basis to conclude that [the defendant's] absence was the product of voluntary choice" to satisfy

[6] In *Touzeau*, the Court of Appeals addressed whether a trial court abused its discretion in denying a parent's day-of-trial motion for a continuance in a child custody case to obtain counsel. 394 Md. at 559–60. The Court held that the trial court did not deny the parent's due process rights by denying the motion. *Id.* at 678. However, the Court made it clear that "[t]he fundamental nature of the right to parent, however, does not necessarily implicate the range of due process protections statutorily afforded to parents in Child In Need of Assistance ("CINA") proceedings and involuntary termination of parental rights proceedings." *Id.* at 676. In her brief, Ms. S. does not point to any statutory provision in Title 5, Subtitle 3, Part II of the Family Law Article that supports her contention that the juvenile court abused its discretion in the present case.

the requirements of Md. Rule 4-231(c).[7] *Id*. at 223. The Court held that, before a court could permit a criminal trial *in absentia*, the court had to satisfy the requirements of Md. Rule 4-231(c)(3), namely, that the defendant's "non-appearance was both knowing and sufficiently deliberate to constitute an agreement or acquiescence to the trial court proceeding in his or her absence." *Id*. at 215-216. Moreover, the Court noted that "an additional factor, of great significance" to its decision was the fact that appellant was self-represented, and that accordingly, "no one was present on his behalf[.]" *Id.* at 223. The Court's analysis in *Pinkey* was based on Md. Rule 4-231(c). There is no analogous rule pertaining to termination of parental rights proceedings. Additionally, unlike Mr. Pinkney, Ms. S. was represented by counsel who was present at trial.

At issue in *In re McNeil* was a juvenile court's decision to deny a parent's request for a continuance because her child was ill. We noted that the court had failed to make "a

[7] At the time that *Pinkney* was decided, Md. Rule 4-321 stated:

> (a) When Presence Required.—A defendant shall be present at all times when required by the court....
> (b) Right to Be Present—Exceptions.—A defendant is entitled to be present at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4–247 and 4–248; or (3) at a reduction of sentence pursuant to Rules 4–344 and 4–345.
> (c) Waiver of Right to Be Present.—The right to be present under section (b) of this Rule is waived by a defendant:
> (1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or
> (2) who engages in conduct that justifies exclusion from the courtroom, or
> (3) who, personally or through counsel, agrees to or acquiesces in being absent.

realistic inquiry into the circumstances of [Ms. McNeil's] absence, or ascertaining whether she had been guilty of a pattern of unconcern." 21 Md. App. at 498. We found especially relevant Ms. McNeil's counsel's "uncontradicted statement" that she was unable to appear due to the illness of her child, as well as Ms. McNeil's extensive involvement in the proceedings leading up to the hearing:

> The record before the judge made it readily apparent that throughout the entire proceedings involving her children, [Ms. McNeil] had acted in a responsible manner. It was she who had filed the original petition seeking assistance for those children, which resulted in their commitment to Social Services on February 9, 1973. Although she consented to that commitment, it is obvious that she did not do so from any desire to be rid of the children or to shirk the responsibilities of parenthood because it was she who filed the Petition for Review of Commitment, asking that her children be returned to her. When a hearing on that Petition was set for August 30th, it was not [Ms. McNeil] but Social Services who requested a postponement of that proceeding, and [Ms. McNeil] appeared and testified when the hearing before the Master was finally heard on September 27th. It is ironic that [Ms. McNeil's] Petition for the return of her children was dismissed at a hearing which she was unable to attend because at that very time, according to the uncontradicted statement of her counsel, she was caring for one of those selfsame children, who had become ill.

Id.

We concluded that the case was one of the "exceptional instances where refusal to grant a continuance was so arbitrary as to constitute a denial of due process." 21 Md. App. at 499. Nonetheless, we noted that "[w]e do not hold that it is never permissible to hold a custody hearing in the absence of one or both parents." *Id*. at 499.

Maria P. was a CINA case. The Department of Social Services asserted that the child had been the victim of sexual abuse and that her mother, Ms. R., had failed to provide

appropriate care and support for the child. At the adjudicatory hearing, the Department moved to close the courtroom "to everyone except court personnel, [child's] counsel, certain social workers, and [Ms. R.'s] counsel. The Department specifically requested to exclude [Ms. R.] from the courtroom during [the child's] testimony." 393 Md. at 670. The trial court granted the motion. In explaining why it was reversing the judgment of the CINA court, the Court of Appeals explained;

> The motion to exclude [Ms. R.] occurred immediately after the parties' opening statements but prior to any testimony on the part of [any] social worker familiar with the case. . . . The juvenile court also found that it was in the best interests of [the child] "not [to] be subjected to any type of influence that may cause her to shade her testimony." We hold that the juvenile court abused its discretion in excluding [Ms. R.] from the hearing without conducting any inquiry as to the reasons for [Ms. R.]'s exclusion. There is no indication on the record that the hearing judge considered [Ms. R.]'s due process rights. No testimony was placed on the record, and no inquiries were made of the Department as to the specific reasons for [Ms. R.]'s exclusion during [the child's] testimony. In this situation, we are unable to discern the judge's exercise of discretion if he or she does not state, or there does not exist, on the record, the factual basis for his or her decision.

393 Md. at 676–77.

Returning to the case before us, we reiterate that the juvenile court in the present case did what the trial courts in *Maria P.* and *McNeil* failed to do: The court undertook a focused inquiry as the steps taken by the Department to notify Ms. S. of the trial date. This included testimony under oath by Ms. Compton, who was subject to cross-examination by Ms. S.'s counsel. Additionally, the juvenile court considered the procedural history of the case. The evidence indicated that, on the day of trial, Ms. S. had

not had contact with the children since October 2020, nor with the Department since December 2020. Ms. S. had no contact with her own counsel in a year. Ms. S. failed to appear on September 24, 2021, which was the previously-scheduled trial date. There was no indication as to why Ms. S. failed to appear, or whether she intended to appear at any future proceeding. Moreover, Ms. S.'s contacts with the children in the period that they were in the care of the Department were, in the juvenile court's words, "sporadic and minimal."

We are fully aware the importance of Ms. S.'s constitutionally-protected parental interests in her children. But we are also mindful that the best interest of the children is "the transcendent standard in adoption, third-party custody cases, and TPR proceedings." *In re Adoption of Ta'Niya C.*, 417 Md. 90, 112–13 (2010). Based on the record before us, we are not persuaded that the juvenile court's decision to deny the request for a postponement under the circumstances of this case was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Jenkins*, 379 Md. at 165.

For these reasons, we affirm the juvenile court's judgment.

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