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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-755

No. COA22-327

Filed 15 November 2022

Guilford County, Nos. 18 JT 97, 99

IN THE MATTER OF: I.B.M. & P.J.S.

Appeal by respondent-father from order entered 11 January 2022 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 24 October 2022.

*Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.*

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for Guardian ad Litem.*

*Richard Croutharmel for respondent-appellant father.*

PER CURIAM.

¶ 1

Respondent-father appeals from an order terminating his parental rights in I.B.M. (Irma)<sup>1</sup> and P.J.S. (Patsy) (collectively “the children”). Respondent-father’s

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<sup>1</sup> We use the parties’ stipulated pseudonyms to identify the children.

sole argument is that the trial court abused its discretion in denying his motion to testify by telephone. The Record before us reflects the following:

**Factual and Procedural Background**

¶ 2 On 21 September 2018, Guilford County Department of Health and Human Services (DHHS) filed juvenile petitions alleging Patsy and Irma to be abused, neglected, and dependent juveniles. The petitions alleged that on 19 September 2018, respondent-parents were arrested after police found a methamphetamine lab in the hotel room they had been living in with Irma. Respondent-mother<sup>2</sup> was nine-months pregnant with Patsy at the time.

¶ 3 Following a hearing on 8 November 2018, the trial court entered orders on 25 March 2019 adjudicating the children abused, neglected, and dependent juveniles. Respondent-father was ordered to enter into a case plan with DHHS and to comply with its terms if he desired reunification with the children.

¶ 4 Following a permanency planning hearing on 28 March 2019, the trial court entered an order on 27 June 2019 finding respondent-father was incarcerated at the Guilford County Detention Center on the following charges: Possession of Methamphetamine, Felony Manufacture of a Schedule II Controlled Substance, and Felony Maintaining a Vehicle or Dwelling Place for the Keeping of Controlled

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<sup>2</sup> Respondent-mother is not a party to this appeal.

Substances. Respondent-father verbally agreed to enter into a “jail/prison” case plan with DHHS but had not returned the signature page of his case plan. The permanent plan was set as reunification with a secondary concurrent plan of adoption.

¶ 5 At the permanency planning hearing held on 10 October 2019, respondent-father returned the signature page of his case plan to DHHS. Respondent-father was required to complete any parenting classes available to him in prison, to provide DSS with proof of completion of the parenting classes, and to send weekly letters to the children. The trial court found that while respondent-father had completed the PRIDE Program, “which offers classes on life skills and substance abuse” and sent some letters to his children, he was not in compliance with the components of his case plan. At the time of the hearing, respondent-father was incarcerated in North Carolina, and upon the completion of his active sentence, he would be extradited to Pennsylvania to resolve outstanding criminal charges. The permanent plan was changed to adoption with a secondary concurrent plan of reunification.

¶ 6 On 27 November 2019, DHHS filed a petition to terminate respondent-father’s parental rights in Irma and Patsy.<sup>3</sup> DHHS alleged grounds existed to terminate respondent-father’s parental rights for neglect, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1); willfully leaving the children in foster care of placement outside the home

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<sup>3</sup> DHHS also sought to terminate the parental rights of the children’s mother and her rights were terminated by order entered 11 January 2022.

for more than twelve months without making reasonable progress to correct the conditions that led to their removal, pursuant to N.C. Gen. Stat. § 7B-1111(a)(2); and dependency, pursuant to N.C. Gen. Stat. § 7B-1111(a)(6).

¶ 7 On 17 February 2020, respondent-parents filed a joint motion to continue the hearing on DHHS’s petition to terminate their parental rights. Respondent-father was incarcerated in Pennsylvania on pending criminal charges and was scheduled for court on 26 February and 7 April 2020. The trial court granted the joint motion to continue, and the termination hearing was set for 30 March 2020.

¶ 8 Thereafter, the termination hearing was continued five additional times “due to Covid 19 local protocols” and for “extraordinary circumstances” pursuant to N.C. Gen. Stat. § 7B-803.<sup>4</sup> By order entered 8 February 2021, the trial court again continued the termination hearing due to extraordinary circumstances and found that respondent-father’s attorney had requested a continuance “due to difficulties with Covid 19 and getting his Client on WebEx from his current detention facility in Pennsylvania.” On 17 March 2021, the trial court again continued the termination

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<sup>4</sup> N.C. Gen. Stat. § 7B-803 provides that “[t]he court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile. . . .” N.C. Gen. Stat. § 7B-803 (2021).

hearing for extraordinary circumstances, finding that respondent-father's attorney had moved for a continuance "based on the [respondent-]father's recent move to a new detention facility and being unable to attend today's hearing while in quarantine."

¶ 9

A permanency planning hearing was held on 22 April 2021. The trial court entered an order on 8 July 2021 finding respondent-father had been convicted in Pennsylvania in 2020 for Operating a Methamphetamine Laboratory, Delivery of Controlled Substances, Unauthorized Use of an Automobile, and two counts of Conspiracy to Commit Access Device Fraud. At the time of the hearing, his projected release date was unknown. The court also found that respondent-father had not written letters to the children on a weekly basis but had sent "letters in batches a few times per year with an average of approximately three to four letters in each batch."

¶ 10

On 7 May 2021, the trial court continued the hearing on DHHS's petition to terminate parental rights for extraordinary circumstances finding, as follows:

On Court's own motion, the matter was continued after Court inquired of [respondent-father's counsel] when he last spoke with [respondent-father] and indication from [respondent-father's counsel] was that the last time that occurred was unknown. Information from Social Worker Tania Fox indicated that the detention facility in Pennsylvania where the father is imprisoned allows Attorney/Client meetings every Tuesday of the week.

In its order granting the continuance, the trial court directed respondent-father's attorney to "make arrangements" with the Pennsylvania detention center to speak with respondent-father and "prepare with his client's assistance for trial of this

matter on the next scheduled court date.” The hearing was further continued until September 2021, after respondent-mother’s attorney had a family emergency.

¶ 11 The petition to terminate parental rights came on for hearing on 13 September 2021. At the beginning of the hearing, counsel for respondent-father made the following oral motion:

The only motion I’m going to have, Your Honor, is to request that my client—we can call the Pennsylvania prison and allow him to testify by telephone. We can identify and know who he is being in the prison system. There’s no question like on a cellphone that we don’t know who it is. I’ve inquired about video. Pennsylvania has their own version of WebEx they use, and we have our own system. Each one tells me “make them use the system we know,” and I can’t get them to use WebEx or they don’t use WebEx and I can’t get into any of these things that they use.

The trial court denied respondent-father’s request to testify by telephone because it was “not able to recognize [respondent-father’s] voice[.]” Respondent-father was permitted to listen to the hearing by telephone.

¶ 12 The trial court entered its order on 11 January 2022. Regarding respondent-father’s motion to testify by telephone, the court’s written findings of fact included that it had:

provided numerous continuances in this matter in order to allow sufficient time for the father to be deposed or to otherwise prepare and appear for this hearing. The Court is unable to recognize the father’s voice nor see the father and observe the father’s demeanor visually via telephone and therefore the motion to testify via telephone is denied. [Respondent-father] will be able to listen to the proceedings by telephone. Attorney [for

respondent-father] advised the Court of his intention to make a proffer of the evidence [respondent-father] would testify to which included his completion of prison programs/classes and his projected date of release from prison.

The trial court adjudicated the existence of all three grounds for terminating respondent-father's parental rights alleged by DHHS. The court concluded that it was in the children's best interests that respondent-father's parental rights be terminated and terminated his rights. Respondent-father filed timely notice of appeal.

### **Issue**

¶ 13 Respondent-father's sole argument on appeal is that the trial court abused its discretion in denying his motion to testify by telephone during the hearing on DHHS's petition to terminate his parental rights.<sup>5</sup>

### **Analysis**

¶ 14 “ [T]he trial judge has inherent authority to supervise and control trial proceedings. The manner of the presentation of the evidence is largely within the sound discretion of the trial judge and [their] control of a case will not be disturbed absent a manifest abuse of discretion.” *In re J.L.*, 264 N.C. App. 408, 415, 826 S.E.2d

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<sup>5</sup> To the extent the trial court's ruling raises constitutional issues, Respondent-father concedes he did not raise constitutional grounds at trial and has waived any challenge on appeal based on constitutional arguments. As such, we do not reach the constitutional implications of a trial court's denial of respondent-father's motion to testify telephonically and express no opinion on such a challenge.

258, 264 (2019) (quoting *State v. Davis*, 317 N.C. 315, 318, 345 S.E.2d 176, 178 (1986)). “[A]buse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015) (internal citation and quotation marks omitted).

¶ 15 “[D]uring the adjudication stage of a termination proceeding, the trial court must apply the provisions of the North Carolina Rules of Evidence that apply in all civil cases.” *In re R.D.*, 376 N.C. 244, 250-51, 852 S.E.2d 117, 124 (2020). Pursuant to Rule 611(a) of the Rules of Evidence, the trial court “shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.” N.C. Gen. Stat. § 8C-1, Rule 611(a) (2021).

¶ 16 The record here does not support respondent-father’s argument that the trial court abused its discretion in denying his motion to testify by telephone. The trial court continued the hearing on DHHS’s petition to terminate respondent-father’s parental rights numerous times. On 8 February 2021, the trial court continued the hearing after respondent-father’s attorney reported difficulties “getting his Client on WebEx from his current detention facility in Pennsylvania.” On 17 March 2021, the trial court continued the hearing after finding that respondent-father’s attorney had



moved for a continuance “based on the [respondent-]father’s recent move to a new detention facility and being unable to attend today’s hearing while in quarantine.” In its 7 May 2021 continuance order, the trial court ordered respondent-father’s attorney to “make arrangements” with the Pennsylvania detention center to speak with respondent-father and “prepare with his client’s assistance for trial of this matter on the next scheduled court date.” The matter came on for hearing on 13 September 2021.

¶ 17 At the outset of the hearing, respondent-father’s attorney explained that respondent-father was unable to testify via WebEx and made an oral motion for respondent-father to testify by telephone. The trial court denied the motion because it would “not [be] able to recognize [respondent-father’s] voice[.]” The trial court found respondent-father had ample opportunity to “prepare and appear” for the termination hearing—including, for example, the opportunity to obtain his deposition testimony for use at trial—and the trial court was “unable to recognize the father’s voice nor see the father and observe the father’s demeanor visually via telephone[.]” The trial court expressed concerns about being able to ensure respondent-father’s identity and being able to observe his demeanor. By denying respondent-father’s motion to testify by telephone and only permitting him to listen to the hearing, the trial court “exercise[d] reasonable control over the mode . . . of . . . presenting evidence so as to . . . make the . . . presentation effective for the ascertainment of the truth[.]”

N.C. Gen. Stat. § 8C-1, Rule 611(a) (2021).

¶ 18           Therefore, we are unable to hold the trial court’s decision was “manifestly unsupported by reason or [was] so arbitrary that it could not have been the result of a reasoned decision.” *T.L.H.*, 368 N.C. at 107, 772 S.E.2d at 455. Thus, the trial court’s decision to deny respondent-father’s motion to testify telephonically at the termination of parental rights hearing did not constitute an abuse of discretion. Consequently, the trial court did not err in entering its order terminating respondent-father’s parental rights.

**Conclusion**

¶ 19           Accordingly, the trial court’s order terminating his parental rights in Irma and Patsy is affirmed.

AFFIRMED.

Panel consisting of Judges DILLON, DIETZ, and HAMPSON.

Report per Rule 30(e).