Rel: January 31, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180339

Ex parte J.W. and R.L.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS

(In re: J.W. and R.L.

v.

Cullman County Department of Human Resources)

(Cullman Juvenile Court, JU-15-471.03; Court of Civil Appeals, 2171075)

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v.

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**(Cullman Juvenile Court, JU-17-18.02;
Court of Civil Appeals, 2171076)**

PER CURIAM.

1180339 -- WRIT QUASHED. NO OPINION.
1180340 -- WRIT QUASHED. NO OPINION.

Parker, C.J., and Bryan, Sellers, Mendheim, and Mitchell, JJ., concur.

Shaw, J., concurs specially.

Bolin, Wise, and Stewart, JJ., dissent.

SHAW, Justice (concurring specially).

I originally dissented to granting these petitions for certiorari review because they did not sufficiently allege grounds under Rule 39(a)(1), Ala. R. App. P. Additionally, they failed to address the two cases cited by the Court of Civil Appeals in its order affirming, without an opinion, the trial court's orders, indicating that the petitioners' claims were not preserved for review or lacked merit.[1] Thus, I saw no probability of merit in the petitions. See Rule 39(f) ("If the Supreme Court, upon preliminary consideration, concludes that there is a probability of merit in the petition and that the writ should issue, the Court shall so order ...."). I thus concur to quash the writs of certiorari. In doing so, I express no approval of the trial court's actions in these cases.

[1]The record, which comes to this Court after it grants a petition for a writ certiorari, Rule 39(f), Ala. R. App. P., confirms the problems indicated by those citations, and the arguments presented in the petitioners' briefs do not show otherwise.

BOLIN, Justice (dissenting).

I dissent from the orders quashing the writs of certiorari because I believe the juvenile court's order terminating J.W.'s and R.L.'s parental rights violated their rights to present their case and to confront witnesses.

Facts and Procedural History

On March 16, 2018, the Cullman County Department of Human Resources ("DHR") filed petitions to terminate the parental rights of J.W. and R.L. (hereinafter referred to collectively as "the parents") to their two children. The juvenile court notified the parents of a preliminary hearing on May 17, 2018, at 9:30 a.m. The juvenile court set the termination-of-parental-rights hearing for August 15, 2018, at 8:30 a.m.

On August 15, 2018, the following exchange occurred at the hearing:

> "THE COURT: Let the record reflect that the parties were notified that this matter was set for 8:30 this day on August 15, 2018. It is now 8:43 a.m., neither the parents nor their attorney have presented themselves in court today. The State is prepared to go forward. And, Ms. Watts, as the guardian ad litem, are you prepared to go forward?
>
> "MS. WATTS: Yes, Your Honor.
>
> "THE COURT: And just for the record, this matter has been set for over two or three months I believe.

> And I will let the record reflect, and to take judicial notice, that the parties were -- or the parents and their attorney were in court yesterday on a district civil case for an unlawful detainer. As part of that agreement that was reached between the parties in that case, the parents have agreed to vacate their premises within 14 days. They have not paid rent in several months. So to the best of the Court's knowledge the parents will be homeless within 14 days because they have not -- as the Court was informed yesterday, they do not have housing at this time. I think that's all we need to take judicial notice of. But the parents, again, were aware of the court that was scheduled this morning at 8:30 and we are now 15 minutes past the time, so we will go forward.
>
> "MR. BAGGETT [COUNSEL FOR DHR]: Thank you, Judge. I will ask you to also take judicial notice that the mother was served with the petitions on May 14, 2018, and the father was served on May 16, 2018, so we are within the 90 days after the service of the last parent.
>
> "THE COURT: It is noted.
>
> "MR. BAGGETT: Your Honor, the State calls Ashley Campbell.
>
> "....
>
> "MR. DRAKE [COUNSEL FOR THE PARENTS]: Judge, let me interpose an objection. As I understand it, you say you've already started.
>
> "THE COURT: The Court was scheduled at 8:30. We started at 8:45.
>
> "MR. DRAKE: I checked with my clerk and he said it started at 9:00. I got him to check twice.

"THE COURT: The order that was entered on June -- I'll tell you here in just a second. I believe it was June 8, the case shall be set for TPR [termination-of-parental-rights] trial on August 15, 2018, and August 16, 2018, at 8:30 a.m.

"MR. DRAKE: Yeah. I would like to take a five-minute break and see what he's referencing. Because I got him to check it twice and there had to be something online to where he told me yesterday and today that it was at 9:00. I would like to take a recess in order to see what document in the court record.

"THE COURT: The court date -- I can show you right here. On the AlaCourt system, there [are] two court dates. Number one, 6/7/2018, the time was 9:30 a.m. for a status conference. And number two listed is 8/15/2018 is 8:30 a.m., and that's the TPR trial.

"MR. DRAKE: No. I don't doubt what the Court is looking at, I'm just saying I need to find out what he was looking at. Because if there's something that's different than that -- I mean, the information I gave my client was to be here based on those representations of my clerk. And I need to see what he's looking at. Because if there is some record that he's reviewing that says to be here at 9:00, then it would--

"THE COURT: I am going to continue to go forward. You are welcome to step out and contact your clerk. But I don't know of anything under the AlaCourt system or any--I'm looking at it, I don't see anything on the official court record that wouldn't say anything for 9:00. It's been--I've been on the bench going on eight years now. And since I started doing juvenile dependency when we start the TPR trials, for the last six years at least, it's been--they've always been set at 8:30.

"MR. DRAKE: Yes, sir. I'll just step out if I can.

"THE COURT: Yes, sir.

"MR. DRAKE: Is the Court denying a request for a five-minute recess?

"THE COURT: I am, because it was scheduled at 8:30. We waited until 8:45.

"MR. DRAKE: Yes, sir.

"....

"MR. BAGGETT: Yes sir. Your Honor, I also have some self-proving records as they are records of--

"MR. DRAKE: You've got to speak up. I can't hear you. I'm sorry.

"MR. BAGGETT: Sorry. [Mr. Drake,] come on up. I have some self-proving records here, records of convictions and fees that are owed on [R.L.] for his theft third conviction. He entered that plea on March 23, 2018. [J.W.]'s theft fourth conviction was on March 12, 2018.

"MR. DRAKE: Judge, could I see any records that have been admitted so far?

"THE COURT: Sure. It's child support on both parents.

"MR. DRAKE: I would like to interpose an objection to these records, Your Honor, that there's improper predicate and foundation that's failed to be laid on these records that -- even though it appears that some of these records are certified, we would object that the -- my clients have a right to confront the witnesses, confront the custodians of these records, cross-examine the custodian of these

records. And it's a violation of the confrontation clause of the United States Constitution and the confrontation clause of the Alabama Constitution. Also, these items--that would be the basis of our objection. And also, it violated the attesting witness rule.

"THE COURT: Your objection is noted and it's overruled. The exhibit will be admitted.

"MR. DRAKE: I believe this is Exhibit 1, Your Honor?

"THE COURT: Correct. That's the child support records on both parents.

"MR. DRAKE: Yes, sir.

"MR. BAGGETT: All right, Your Honor, Exhibit 2 is the criminal convictions for R.L. for the theft of property, third, and R.L. for four counts of negotiating a worthless instrument. Those pleas were entered on July 25, 2018 -- I'm sorry, on April 3, 2018. And J.W.'s plea agreement, as well as the amount that they are behind on their payments, on her theft fourth charge. And these are all certified records as well and self-proving.

"(State's Exhibit Number 2 was marked for identification.)

"MR. DRAKE: I don't have an objection, your Honor, on the records. But I object to the extrajudicial statements made by counsel for [DHR] concerning what these items show or what these items depict or what is stated in these records.

"MR. BAGGETT: Your Honor, I would--

"MR. DRAKE: I move to strike it.

"MR. BAGGETT: I'll withdraw my statements regarding what they show. I believe they are self-explanatory.

"THE COURT: They will be admitted with the comments stricken from the record.

"(State's Exhibit Number 2 was admitted into evidence.)

"Q. (By MR. BAGGETT): All right. Mrs. Campbell [DHR social worker], will you take a look at what I've just handed you that has been marked State's Exhibit 3?

"(State's Exhibit Number 3 was marked for identification.)

"A. ISPs [individualized service plans].

"Q. How many ISPs are there?

"A. Twelve.

"Q. Okay. And do these ISPs represent the records of the ISP meetings which were held while the case was opened?

"A. Yes.

"Q. And are they in the normal format that you use to record what happens in these meetings?

"A. They are.

"Q. And is that part of your normal record keeping process at the Department of Human Resources?

"A. It is.

"Q. Okay. And do those, to the best of your knowledge, truly and accurately represent what occurred and what was stated in the mutual agreements at those meetings?

"A. Yes.

"MR. BAGGETT: Your Honor, the State moves to admit what has been collectively numbered as State's Exhibit 3 which is ISPs held in the case.

"MR. DRAKE: I object, Your Honor. All these records are hearsay. The other thing, I object to the characterization that these items represent the agreements in some way. I have never attended an ISP--very few where there was an agreement. ISPs are generally--ISPs are sham proceedings. The Individualized Service Plans, it's been my experience, have been compiled and drafted and done before the ISP meeting by either the caseworker of someone in the Department of Human Resources. It's never been my experience that these ISPs are subject to any agreement.

"So I don't understand the characterization that the ISPs even represent some kind of an agreement because they are unilateral documents that are issued out of the Department of Human Resources. So I would object to that characterization. I don't know if these documents are originals [or] copies based on the statement of the witness, so I would object on those grounds. It appears--I mean, they're not the originals and I object that it violated the best evidence rule.

"MR. BAGGETT: Your Honor, these records fall under the hearsay exception for business records, and a facsimile is also clearly acceptable in lieu of an original copy.

"THE COURT: Mr. Drake, your objection is noted and overruled. They will be admitted.

"(State's Exhibit Number 3 was admitted into evidence.)

"MR. BAGGETT: Okay.

"MR. DRAKE: Judge, just one second. My clients have appeared.

"THE COURT: They can appear all they want, but they are not going to be allowed--I have started and the court is--

"MR. DRAKE: I'm sorry?

"THE COURT: I said they're welcome to stay in here, but they're not going to be allowed--I started. Court was scheduled. You can do what you need to do.

"MR. DRAKE: Come on in and just have a seat.

"MR. BAGGETT: Mr. Drake, are both of your clients here?

"MR. DRAKE: Yes. Both of my clients have been waiting outside. They were told by someone--who were you told to wait outside?

"THE BAILIFF: I did. I told them.

"[J.W.]: Somebody just told me to sit out here.

"MR. DRAKE: Okay. They were told to wait outside, so.

"MR. BAGGETT: Okay.

"THE COURT: Again, for the record, this case was set at 8:30. We did not start until 8:42.

"MR. DRAKE: I understand. But even with that being the case, Your Honor, I still have another client that -- this door was locked when I came up.

"THE COURT: And I told them to lock it.

"MR. DRAKE: Yeah.

"MR. BAGGETT: Judge, I would ask--

"MR. DRAKE: I would ask to leave it--as a matter of fact, when I stepped out to make my phone call, somebody locked it.

"THE COURT: Well, that locks automatically unless somebody switches the--

"MR. DRAKE: Well, I would ask permission to leave it open until my client gets here, my other client.

"THE COURT: It's cracked right now. He can push it open.

"MR. DRAKE: Okay. Thank you.

"MR. BAGGETT: Judge, I ask you to take judicial notice that that door was opened until we began the hearing.

"Q. (By MR. BAGGETT) All right. Mrs. Campbell, I'm handing you two documents there collectively marked as State's Exhibit 4. What are those?

"(State's Exhibit Number 4 was marked for identification.)

"A. (By MRS. CAMPBELL) Birth certificates for Z. and J.

"Q. Okay. And to the best of your knowledge, do those represent true copies of the birth certificates?

"A. Yes.

"....

"MR. BAGGETT: The State moves to admit State's Exhibit Number 4, the birth certificates of J.L. and Z.L.

"MR. DRAKE: I would object, Judge. Those are not records kept in the normal course of business from the Department of Human Resources, they are copies obviously. We object under the best evidence rule and also the attesting witness rule.

"THE COURT: Overruled. They will be admitted.

"(State's Exhibit Number 4 was admitted into evidence.)

"MR. BAGGETT: All right. I believe that's all I have, Your Honor.

"THE COURT: All right. Ms. Watts, did you have any further questions for Mrs. Campbell?

"MS. WATTS: I don't, Your Honor.

"THE COURT: Any other witnesses, Mr. Baggett?

"MR. BAGGETT: No, sir, Judge.

"THE COURT: All right. This matter is concluded.

"MR. BAGGETT: I'll send you an order, Judge.

"THE COURT: All right. I find that there is a reasonable basis for a termination of parental rights for the children, Z.L. and J.L. Again, for

> the record this court was scheduled at 8:30 in the morning. We did not start until 8:42 and really officially got going at 8:45. The parents showed up 30 minutes late and, therefore, they have forfeited their right to this trial. Thank you."

On August 28, 2018, the juvenile court entered orders terminating the parents' parental rights. That same day, the parents filed a motion for a new trial, arguing that the juvenile court violated their rights of confrontation, due process, and fundamental fairness. Specifically, the parents stated:

> "That the court[']s order (of termination) entered prior to allowing cross-examination of the witness violated the Confrontation Clause of both the U.S. and state constitutions, Due Process of Law, and Procedural Due Process of Law.
>
> "That the court's order entered prior to allowing the Movant's the opportunity to mount/present a defense in opposition of [DHR's] case, violated ... Due Process of Law, Fundamental Fairness and Procedural Due Process of Law."

The juvenile court denied that motion. The parents appealed to the Court of Civil Appeals, which affirmed the juvenile court's order without an opinion. J.W. v. Cullman Cty. Dep't of Human Res. (No. 2171075 and 2171076, January 11, 2019), ___ So. 3d ___ (Ala. Civ. App. 2018)(table).

Discussion

It appears from the record that moments after the juvenile court expressed its dissatisfaction with counsel's and the parents' tardiness and began to proceed with the admission of evidence outside the parents' presence, their counsel objected on the basis that "my clients have a right to confront the witnesses, confront the custodians of these records, cross-examine the custodian of these records. And it's a violation of the confrontation clause of the United States Constitution and the confrontation clause of the Alabama Constitution." I recognize that counsel's objection includes an objection to the admission of documents; however, when reading the objection in context, including the juvenile court's prior comments, it is clear that the parents' counsel's objection was also based on the juvenile court's refusal to allow his clients to participate in the trial and involved the Confrontation Clause. Thus, I believe the constitutional issues were raised for the first time during the trial itself and not raised for the first time in a postjudgment motion.

It is likewise arguable that the motion for a new trial was the more appropriate time to challenge the juvenile

court's conclusions regarding the deprivation of the parents' right to participate in trial. I do recognize that there are instances when constitutional issues may not be raised for the first time in a postjudgment motion. The law generally provides that

> "'[e]ven constitutional issues must be properly preserved for appellate review. Brown v. State, 705 So. 2d 871, 875 (Ala. Crim. App. 1997). "Due process does not override the basic law of preservation, ... and the issue must first be presented to the trial court before it will be reviewed on direct appeal." Boglin v. State, 840 So. 2d 926, 929 (Ala. Crim. App. 2002).'
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> "Byrd v. State, 10 So. 3d 624, 626-27 (Ala. Crim. App. 2008). See also Consolidated Pipe & Supply Co. v. City of Bessemer, 69 So. 3d 182, 189 (Ala. Civ. App. 2010)(quoting United Servs. Auto. Ass'n v. Wade, 544 So. 2d 906, 917 (Ala. 1989)) ('"constitutional issues may not be raised for the first time in a post-judgment motion"')."

M.H. v. B.F., 78 So. 3d 411, 418 (Ala. Civ. App. 2011).

As a practical matter, an objection must be made at the time of a ruling or at the earliest opportunity thereafter. See 4 C.J.S. Appeal and Error § 308 (2019). This Court has held that "'questions involving constitutional rights must be seasonably raised at the trial court level.'" Ross v. State, 581 So. 2d 495, 496 (Ala. 1991) (quoting Johnson v. State, 480

So. 2d 14, 17-18 (Ala. Crim. App. 1985)). It appears that, just before sounding the gavel at the close of the trial proceeding, the juvenile judge concluded:

> "I find that there is a reasonable basis for a termination of parental rights for the children.... Again, for the record this court was scheduled at 8:30 in the morning. We did not start until 8:42 and really officially got going at 8:45. The parents showed up 30 minutes late and, therefore, they have forfeited their right to this trial. Thank you."

Given that the juvenile court's final ruling included a finding that the parents had forfeited their right to trial, the most "seasonable" time to object to the deprivation of the right to confrontation and to participate in their own trial would be in a postjudgment motion, such as a motion for a new trial. Furthermore, it is logical to assume that the most appropriate time to object to a trial judge's complete disallowance of an individual's participation in his or her own trial would be after the trial itself. In this case, it is arguable that the parents' counsel timely objected during the proceeding and seasonably argued in a motion for a new trial regarding the alleged constitutional violations.

With regard to the parents' argument that they were denied their right to participate in the hearing terminating

their parental rights, I note that the right to "bring up children" has long been "recognized at common law as essential to the orderly pursuit of happiness by free men." Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923). Alabama considers this right of such import that the State created a statutory right to counsel in what is a civil proceeding.

> "Alabama has created a right to counsel in actions seeking to terminate parental rights and in other cases in which a parent's child is alleged to be dependent. § 12-15-305(b), Ala. Code 1975; J.K. v. Lee Cty. Dep't of Human Res., [668 So. 2d 813 (Ala. Civ. App. 1995)]; and J.A.H. v. Calhoun Cty. Dep't of Human Res., 846 So. 2d 1093, 1095 (Ala. Civ. App. 2002)('An indigent parent facing the termination of his parental rights is entitled to the appointment of counsel.'). In doing so, Alabama has recognized that state action, such as the consideration of whether to terminate a parent's parental rights, is 'in derogation of fundamental constitutional rights.' In re Ward, 351 So. 2d 571, 573 (Ala. Civ. App. 1977). This court has explained:
>
> > "'The legislature has thus by statute recognized that an action brought by the state which involves the termination of parental rights is of such importance that a parent must be informed of the right to counsel, and if indigent, must be furnished counsel. Such legislative and statutory recognition is in line with statements of the United States Supreme Court as to the fundamental nature of parental rights.'

> "In re Ward, 351 So. 2d at 573. See also K.P.B. v. D.C.A., 685 So. 2d 750, 751 (Ala. Civ. App. 1996) (extending the right to appointed counsel in actions in which a child is alleged to be dependent to actions initiated by a parent seeking to terminate the rights of the other parent)."

K.J. v. Pike Cty. Dep't of Human Res., 275 So. 3d 1135, 1142 (Ala. Civ. App. 2018).

I recognize that notice and opportunity to be heard does not necessarily mean presence in the courtroom when that parent has been afforded meaningful representation, even if not allowed to attend. In M.T.D. v. Morgan County Department of Human Resources, 53 So. 3d 966 (Ala. Civ. App. 2010), the father argued that the trial court violated his due-process rights by finding his child dependent when he was not present at the dependency hearing because he was incarcerated. The father argued that he had a right to be present at the dependency hearing. The Court of Civil Appeals, citing Clements v. Moncrief, 549 So. 2d 479, 481 (Ala. 1989), held that an incarcerated person has no right to be transported from his or her place of confinement to participate in a civil action that is not related to his or her confinement. Consistent with this Court's holding in Clements v. Moncrief, in the context of a case involving a claim that a child is

dependent or that parental rights should be terminated, the Court of Civil Appeals stated:

> "'It has been stated that due process of law requires that there be notice, a hearing conducted in accord with that notice, and a judgment consistent with that notice and hearing. Opinion of the Justices, 345 So. 2d 1354 (Ala. 1977). Where there is representation by counsel and an opportunity to present testimony through deposition, then due process does not require that an incarcerated parent be allowed to attend the termination hearing. Eastman v. Eastman, 429 So. 2d 1058 (Ala. Civ. App. 1983); 16D C.J.S. Constitutional Law § 1254 (1985).'
>
> "Pignolet v. State Dep't of Pensions & Sec., 489 So. 2d 588, 590-91 (Ala. Civ. App. 1986). See also Thornton v. Thornton, 519 So. 2d 960, 961 (Ala. Civ. App. 1987); and Valero v. State Dep't of Human Res., 511 So. 2d 200, 202-03 (Ala. Civ. App. 1987)."

M.T.D., 53 So. 3d at 968 (emphasis added).

In M.H.S. v. State Department of Human Resources, 636 So. 2d 419 (Ala. Civ. App. 1994), the trial court did not err in terminating the parents' rights to their four minor children when the record reflected that both the father and the mother were served with a notice of the termination-of-parental-rights hearing and the paternal grandmother testified at the hearing that the mother and the father were aware of the hearing. However, neither the father nor the mother appeared

at the hearing. The record reflected that neither the father nor the mother contacted the trial court or their attorney to seek a continuance or a delay of the hearing, and the record contains no evidence of any reason why neither the father nor the mother could attend the hearing.

In M.H.S., there was ample ore tenus evidence presented indicating that any effort exerted by the Department of Human Resources to rehabilitate the mother and the father was thwarted by the action or inaction of both parents. That evidence reflected that the father suffered from a mental illness and that he had refused treatment for his illness; that the father had threatened to injure or kill the Department of Human Resources workers and court officials; that the mother and the father had refused to attend parenting classes; that the mother rarely visited the minor children; and that neither the mother nor the father had contributed to the support of the minor children after the Department of Human Resources removed the children from their custody.

In B.D.S. v. Calhoun County Department of Human Resources, 881 So. 2d 1042, 1056 (Ala. Civ. App. 2003), the mother asserted on appeal that her due-process rights were

violated when the trial court admitted a transcript from a prior hearing into evidence. At the prior hearing, the mother was afforded an opportunity to cross-examine the witnesses, and she was able to confront six of those same witnesses a second time at the final hearing. The trial court's denial of the mother's motion for extraordinary expenses to purchase the transcript of the prior hearing was not error in light of the mother's delay in filing her motion for expenses until one day before the final hearing and her presence at the prior hearing. The Court of Civil Appeals held that the trial court did not violate the mother's due-process rights.

In the present case, the parents were represented by counsel. Counsel was served with notice of the date and time of the termination proceedings, which provided that the hearing would start at 8:30 a.m. The termination proceeding began at 8:45 a.m. Counsel incorrectly told the parents that the hearing would begin at 9:00 a.m. The parents were at the courtroom before 9:00 a.m. The juvenile court had the bailiff keep the parents from entering the courtroom to attend the termination proceeding. DHR called one witness, a social worker, who testified briefly regarding individualized service

plans, child support, and relative resources. Certain records were admitted into evidence during the social worker's testimony. In its order terminating the parents' rights, the juvenile noted that the social worker's testimony lasted approximately 15 minutes. Counsel for the parents was locked out of the courtroom for a portion of the brief proceeding.

I recognize that a trial court is vested with the authority "'to manage its affairs in order to achieve the orderly and expeditious disposition of cases.'" Mangiafico v. Street, 767 So. 2d 1103, 1105 (Ala. 2000)(quoting Iverson v. Xpert Tune, Inc., 553 So. 2d 82, 87 (Ala. 1989)). Although a trial court has discretion in scheduling and determining courtroom procedure, when the exercise of that discretion results in the denial of basic constitutional right, that discretion has been exceeded. See Ephraim v. State, 627 So. 2d 1102 (Ala. Crim. App. 1993)(holding that a capital-murder defendant's constitutional right to testify in his own behalf was violated when the trial court refused to reopen the case after the defendant told the court he had changed his mind and wanted to testify, which occurred after the defense rested and before closing arguments).

Here, I believe the juvenile court exceeded its discretion in its heavy-handed and unfair treatment of the parents. By refusing to allow the parents an opportunity to present testimony or even to attend the entirety of the proceeding that deprived them of the custody and the parental bonds of their children, the juvenile court deprived the parents of due process. It was obvious that the parents' counsel was responsible for the parents being late to court, and it was further obvious that the juvenile court was frustrated with counsel.

I also question whether the brief hearing was sufficient to make a properly supported decision on whether the parents' rights were due to be terminated, a determination that is so important that, as quoted above, it is "in derogation of fundamental rights." In B.D.S., supra, even though the mother and the father willfully failed to attend the termination proceeding, the trial court nonetheless conducted a full and fair hearing in their absence. Although this Court gives deference to a trial court in the termination of a parent's rights because of its superior position of being able to observe the parties and witnesses, the brief hearing in the

present case, where the parents were not allowed to attend all the hearing and counsel was not allowed to fully represent their interests, was a miscarriage of justice.

I am well aware that parental rights will not be enforced to the detriment of a child's safety, well-being, and welfare. However, termination of parental rights is an extreme remedy -- and one that should not be imposed without due process. In seeking to balance the protection of a child with the protection of a parent's rights, the juvenile court must ensure that a termination proceeding is conducted fairly and properly. Frustration with either parties or counsel cannot deter or obstruct a judge's responsibility.

Wise and Stewart, JJ., concur.