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IN RE KALEB H.*
(SC 18902)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Harper, Js.

*Argued May 14—officially released August 1, 2012***

Dana M. Hrelic, with whom were *Michael S. Taylor* and, on the brief, *Brendon P. Levesque*, for the appellant (respondent mother).

Susan T. Pearlman, assistant attorney general, with whom were *Gregory T. D'Auria*, solicitor general, and, on the brief, *George Jepsen*, attorney general, for the appellee (petitioner).

Christina D. Ghio, for the minor child.

Opinion

ROGERS, C. J. This case addresses whether, during proceedings to commit a minor child who has been adjudicated neglected to the custody of the commissioner of children and families, a respondent parent is entitled to a competency evaluation on the basis of her counsel's stated belief that such an evaluation is warranted. The Appellate Court affirmed the judgment of the trial court committing Kaleb H., a minor child, to the custody of the petitioner, the commissioner of children and families (commissioner), after concluding that the trial court did not abuse its discretion in denying the request by counsel for Kaleb's mother, the respondent, that the respondent's competency be evaluated. *In re Kaleb H.*, 131 Conn. App. 829, 839, 29 A.3d 173 (2011). The respondent argues following our grant of certification to appeal[1] that the holding of *In re Alexander V.*, 223 Conn. 557, 566, 613 A.2d 780 (1992), that a parent facing termination of his or her parental rights is entitled to a competency evaluation when "the record before the [trial] court contains specific factual allegations that, if true, would constitute substantial evidence of mental impairment"; (internal quotation marks omitted); should be extended to pretermination commitment proceedings, and that the foregoing standard for triggering an evaluation was met in this case. We decline to decide whether the holding in *In re Alexander V.* should be extended to pretermination hearings because we agree with the petitioner, the minor child[2] and the Appellate Court that, regardless of whether due process sometimes requires a competency evaluation in the context of commitment proceedings, the record in this case was insufficient to trigger the trial court's purported obligation to conduct one.[3] Accordingly, we affirm the judgment of the Appellate Court.

The following facts and procedural history, as recounted by the Appellate Court, are relevant to the appeal. "Kaleb was born on February 25, 2005. In March, 2009, the respondent was involved in an incident of domestic violence with the father of Kaleb's siblings. Consequently, the respondent participated in various services offered by the department of children and families [department] in an effort to improve her parenting skills. On March 19, 2010, the petitioner filed a neglect petition as to Kaleb on the ground that he was being denied proper care and supervision, that his medical and educational needs were not being met, that he was exposed to domestic violence in the home and that he was being permitted to live under circumstances injurious to his well-being. On May 20, 2010, the respondent pleaded nolo contendere to the allegations of neglect. Consequently, Kaleb was adjudicated neglected, and the court [*Simon, J.*] ordered six months of protective supervision.[4]

"On June 15, 2010, the petitioner invoked a ninety-

six hour hold; see General Statutes § 17a-101g [f]; on Kaleb following the respondent's arrest for risk of injury to a child that stemmed from Kaleb's unsupervised absence from his home, for several hours, without the respondent's knowledge that Kaleb had left the home. On June 18, 2010, the court issued an order of temporary custody, placing Kaleb in the custody of the petitioner. On June 24, 2010, the petitioner filed a motion to modify the child's disposition from protective supervision to commitment. On June 25, 2010, on the basis of an agreement between the petitioner and the respondent, the court [*Suarez*, *J.*] sustained the order of temporary custody [pending resolution of the petitioner's motion to modify the disposition]. At that time, the respondent again was canvassed and affirmed that she understood her rights, stating that she would comply with the department's requirements to get [Kaleb] back. The court also ordered, based on an agreement of the parties, a psychological and psychiatric examination of the respondent, which was performed by Robert H. Neems, a psychologist.

"On January 3, 2011, the respondent filed a motion to revoke the commitment and a motion for a new psychological evaluation, claiming that her test was 'inaccurate as it was the first time she had taken a psychological evaluation and she was overwhelmed.' In addition, the respondent claimed that she did not have ample time to counter or explain the allegations made by the petitioner and, therefore, the results of the evaluation did not 'reflect an accurate portrayal of her as a parent.'

"On February 25, 2011, a hearing commenced on the respondent's motions, as well as a motion filed by Kaleb's father to transfer guardianship of Kaleb to his paternal grandmother or aunt. At the beginning of the hearing, counsel for the respondent then indicated to the court that the respondent had informed [counsel] that she never agreed that Kaleb was neglected. On that basis, counsel indicated that she was uncertain that the respondent would be able to assist in her defense. The court [*Simon*, *J.*] explained to the respondent that she had previously agreed to the neglect adjudication and the order of protective supervision. Counsel then requested that the respondent's competence be evaluated on the basis that the respondent claimed that she did not know what she was signing when she agreed to the neglect adjudication. The court indicated that it had read the psychological reports authored by Neems and that those reports did not support the claims of the respondent's incompetency. The court, however, advised counsel that she could inquire of Neems whether he had an opinion regarding the respondent's competency.[5] The court then proceeded with the hearing regarding the commitment of Kaleb.[6] Following the hearing, the court committed Kaleb to the custody of the petitioner." *In re Kaleb H.*, supra, 131 Conn. App.

831–35.

Thereafter, the court indicated that, based on its observations of the respondent during the commitment proceedings, there was nothing to suggest that she was incompetent.[7] The respondent appealed to the Appellate Court, arguing that the trial court violated her due process rights when it denied her counsel's request for a competency evaluation. Id., 835. In support of her claim, the respondent relied on *In re Alexander V.*, supra, 223 Conn. 566, in which this court held that due process requires a competency hearing in termination of parental rights cases in certain circumstances. The respondent sought to extend the holding of *In re Alexander V.* to commitment proceedings, claiming that the same constitutional right should apply due to the potential limitations that the proceedings could have on fundamental parental rights. *In re Kaleb H.*, supra, 131 Conn. App. 836. The Appellate Court declined to reach that issue, because it concluded that the standard for triggering the trial court's obligation to order a competency hearing, pursuant to *In re Alexander V.*, had not been met. Id., 836–37. The Appellate Court concluded specifically that "the respondent failed to make specific factual allegations sufficient to raise a reasonable doubt as to her competence." Id., 837. This appeal followed.

The respondent argues that the Appellate Court improperly held that the trial court did not abuse its discretion in failing to order a competency evaluation. According to the respondent, the record contains specific factual allegations that, if true, raised a reasonable doubt as to her competence. Specifically, the respondent cites: her counsel's good faith request that a competency evaluation was necessary; counsel's statement that the respondent did not recall agreeing to a neglect adjudication; counsel's concern that the respondent could not understand legal concepts or assist in her defense; the respondent's limited intelligence, as reflected in the low IQ score included in Neems' report; see footnote 15 of this opinion; and the fact that the respondent had a conservator for her financial estate. The respondent argues that the foregoing allegations satisfy the standard of *In re Alexander V.* for triggering a competency evaluation. We disagree.[8]

In *In re Alexander V.*, supra, 223 Conn. 565–66, this court concluded that, "under certain circumstances, due process requires that a hearing be held to determine the legal competency of a parent in a termination [of parental rights] case." We emphasized that a hearing is not required in all such cases, "but only when (1) the parent's attorney requests such a hearing, or (2) in the absence of such a request, the conduct of the parent reasonably suggests to the court, in the exercise of its discretion, the desirability of ordering such a hearing sua sponte. *In either case*, the standard for the court to employ is whether the record before the court contains

specific factual allegations that, if true, would constitute substantial evidence of mental impairment. . . . Evidence is substantial if it raises a reasonable doubt about the [parent's] competency . . . ."[9] (Citations omitted; emphasis added; internal quotation marks omitted.) Id., 566. "Substantial evidence is a term of art. Evidence encompasses all information properly before the court, whether it is in the form of testimony or exhibits formally admitted or it is in the form of medical reports or other kinds of reports that have been filed with the court." *State* v. *Johnson*, 253 Conn. 1, 21, 751 A.2d 298 (2000).

"The trial court should carefully weigh the need for a hearing in each case, but this is not to say that a hearing should be available on demand. The decision whether to grant a hearing requires the exercise of sound judicial discretion."[10] (Internal quotation marks omitted.) Id., 22. In determining whether a trial court has abused its discretion, an appellate court must "make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion." (Internal quotation marks omitted.) *State* v. *Coccomo*, 302 Conn. 664, 671, 31 A.3d 1012 (2011). Accordingly, "review of [discretionary] rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did." (Internal quotation marks omitted.) Id.

"By definition, a mentally incompetent person is one who is unable to understand the nature of the termination proceeding and unable to assist in the presentation of his or her case." *In re Alexander V.*, supra, 223 Conn. 563. A competent client, in contrast, "is able to provide [her] counsel with the data necessary or relevant to the structuring of [her] case"; (internal quotation marks omitted) id., 563–64; and "information to rebut evidence offered by the state . . . ." Id., 563. The test for competency is whether the respondent "has sufficient present ability to consult with [her] lawyer with a reasonable degree of rational understanding—and whether [she] has a rational as well as factual understanding of the proceedings . . . ." (Internal quotation marks omitted.) *Taylor* v. *Commissioner of Correction*, 284 Conn. 433, 450, 936 A.2d 611 (2007).

We agree with the Appellate Court that the record in this case does not include specific factual allegations that, if true, would constitute substantial evidence of the respondent's mental impairment. First, the request of the respondent's counsel for a competency evaluation, even if premised on a good faith belief that the respondent would have difficulty understanding the proceedings and assisting in her defense, apparently was based largely if not exclusively on the respondent's statement to counsel that she did not recall agreeing to a neglect adjudication some nine months prior. A

layperson's confusion regarding complex legal concepts, however, particularly in the context of lengthy proceedings, is commonplace, and an isolated instance of confusion does not necessarily suggest incompetence. See *State* v. *Johnson*, supra, 253 Conn. 28 n.27. Although the opinion of counsel is a factor for a court to consider in evaluating a request for a competency evaluation, the court need not accept that opinion without question and reasonably may discount it when it lacks supporting detail, or when the cited concern is not part of a larger pattern of questionable behavior. See *State* v. *DesLaurier*, 230 Conn. 572, 586–89, 646 A.2d 108 (1994). Indeed, the respondent's counsel did not state that she had concluded that the respondent lacked competency, but only that the respondent's lack of recall called into question whether the respondent could adequately assist in her defense.

Importantly, counsel in this case had only recently been appointed to represent the respondent, whereas the trial judge had overseen two prior hearings in the case, including one at which he had canvassed the respondent thoroughly in connection with her nolo contendere plea to the adjudication of neglect and made specific findings that the plea was knowingly, voluntarily and intelligently entered. In other words, the trial court, unlike counsel, had personal knowledge of the proceedings about which counsel now claimed the respondent was ignorant, and the court had directly engaged with the respondent in regard to her understanding of those proceedings. Particularly so under these circumstances, "the trial court was entitled to rely on its own observations of the [respondent's] responses during the canvassing, in light of [her] demeanor, tone, attitude and other expressive characteristics." Id., 590.[11] Moreover, following counsel's request for a competency evaluation, the court observed and interacted with the respondent over the course of a two day trial and, at the conclusion of the trial, again made specific findings as to her competency. See footnote 7 of this opinion. In general, "[t]he trial judge is in a particularly advantageous position to observe a [party's] conduct during a trial and has a unique opportunity to assess a [party's] competency. A trial court's opinion, therefore, of the competence of a [party] is highly significant." (Internal quotation marks omitted.) *State* v. *Connor*, 292 Conn. 483, 523–24, 973 A.2d 627 (2009).

Aside from the trial court's personal observations and findings, the record contains Neems' psychological evaluation of the respondent, which the trial court stated it had read. Although that report opined that the respondent lacked the qualities necessary to *independently* parent her children, make complex decisions and solve problems, we cannot say that the trial judge abused his discretion in concluding that the report does not raise a reasonable doubt as to the respondent's ability, *with the assistance of competent counsel*, to

understand the proceedings against her and to contribute to the presentation of her case.[12] Specifically, Neems' report states that the respondent gave "written and apparently competent consent for the results of [the] evaluation to be reported to the Superior Court," and indicated that she understood it would be available to all counsel and not necessarily favorable to her.[13] It reflects that the respondent successfully had completed various services offered by the department, demonstrating her ability to understand requirements and to satisfy them. The report shows further that the respondent was able to provide Neems with detailed information about her personal history, including explanations for the problems she had had with the department. Moreover, the report includes the respondent's defensive responses to criticisms of her behavior and her stated plan to keep her children at home with her. All of the foregoing supports the trial court's assessment that the respondent had a basic understanding of the commitment proceedings and was capable of assisting counsel in her defense.[14]

The respondent points specifically to her limited intellectual functioning, as evidenced by the low IQ score[15] reported by Neems, and the fact that a conservator had been appointed for her estate, as factors contributing to a reasonable doubt as to her competency. These bare assertions, however, unaccompanied by any explanation or example as to how they affected the respondent's ability to understand the proceedings or assist her counsel, properly were given little weight in light of the ample contrary evidence in the record that the respondent was functioning adequately in both regards. See *In re Brendan C.*, 89 Conn. App. 511, 522–23, 874 A.2d 826 (facts of respondent's mild mental retardation and conservatorship did not suggest incompetence, for purpose of appointing guardian ad litem, when other evidence demonstrated his ability to understand proceedings and assist in presentation of case), cert. denied, 274 Conn. 917, 879 A.2d 893, cert. denied, 275 Conn. 910, 882 A.2d 669 (2005); see also *State* v. *Bethea*, 167 Conn. 80, 88, 355 A.2d 6 (1974) (counsel's representation that client was of limited intelligence and had difficulty in communicating was insufficient to raise doubt as to his competency to understand proceedings and assist in defense). Additionally, in regard to the conservatorship, it is noteworthy that the respondent did not have a conservator over her person. There are also no indications in the record whether the conservator of her estate was voluntarily or involuntarily imposed or why it was imposed.[16]

In sum, we agree with the Appellate Court that the record does not contain specific factual allegations that, if true, would constitute substantial evidence of a mental impairment that would impede the respondent's ability to understand the proceedings against her and to assist counsel in her defense. The Appellate Court prop-

erly concluded, therefore, that the trial court did not abuse its discretion in declining to order a competency evaluation for the respondent.

The judgment is affirmed.

In this opinion the other justices concurred.

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79-3, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

** August 1, 2012, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] We granted the respondent's petition for certification to appeal, limited to the following issues:

"1. Did the Appellate Court properly determine that the respondent mother failed to present sufficient factual allegations to raise reasonable doubt as to her competence?

"2. If the answer to question one is in the negative, does the same due process right to a competency evaluation that exists in termination of parental rights proceedings also attach to commitment proceedings?" *In re Kaleb H.*, 303 Conn. 916, 33 A.3d 739 (2011).

[2] The attorney for the minor child has filed a position statement in connection with this appeal, adopting as her own the brief of the petitioner.

[3] "[T]his court has a basic judicial duty to avoid deciding a constitutional issue if a nonconstitutional ground exists that will dispose of the case . . . ." (Internal quotation marks omitted.) *In re Shanaira C.*, 297 Conn. 737, 754, 1 A.3d 5 (2010), quoting *State* v. *Ritrovato*, 280 Conn. 36, 50, 905 A.2d 1079 (2006).

[4] "At the neglect hearing, the respondent was canvassed in detail, and the court found that she had entered her plea knowingly, intelligently and voluntarily." *In re Kaleb H.*, supra, 131 Conn. App. 831 n.4.

[5] The full dialogue between the trial court and the respondent's counsel is reproduced in the Appellate Court opinion. *In re Kaleb H.*, supra, 131 Conn. App. 833–35 n.5. In addition to informing the court that the respondent did not recall agreeing to the neglect adjudication, the respondent's counsel indicated that the respondent had a conservator for her financial estate. Id., 834 n.5. Counsel also observed that Neems' evaluation of the respondent was not directed at determining her competency for the purposes of participating in legal proceedings. Id., 834–35 n.5.

[6] During the hearing, when the respondent's counsel attempted to question Neems about the respondent's competence, "Neems indicated that he made a finding [in his report] of mild mental retardation, but that finding did not affect the respondent's ability to participate in court proceedings. Neems testified that his interactions with the respondent revealed that the respondent understood that her parenting skills were being evaluated but that he had not evaluated the respondent's competence to assist in her defense. On that basis, the court did not allow further questioning of Neems as to the respondent's competence." *In re Kaleb H.*, supra, 131 Conn. App. 835 n.6. The respondent did not challenge that evidentiary ruling in the Appellate Court; id.; or in this court.

[7] The trial court stated: "I will note for the record at this point as to [the respondent], that I have had the opportunity to observe her during these proceedings and that although the reports by . . . Neems indicate that there is [a] finding on his part of mild mental retardation based on his conclusions that those findings in and of themselves do not effect the issue of whether or not a person is competent to assist their attorney throughout these proceedings, and that through the court's observations of [the respondent], although she appears at sometimes to be inquisitive of the court's comments or of [her counsel's] questioning, that for all intents and purposes the court sees nothing in [the respondent's] behavior that would indicate that she is not competent to go forward in these proceedings and to assist her attorney in appropriate fashion. It may take a little bit longer than might be considered normal, but [the respondent] has shown no indications to me that with appropriate guidance and with [her counsel's] patience that she could not have full understanding of the impact of these proceedings."

[8] The respondent argues alternatively that the Appellate Court failed to employ the standard of *In re Alexander V.* when considering whether the record before the trial court made a competency evaluation obligatory, and

instead used an improper, stricter standard of substantial evidence. The respondent points to the Appellate Court's citation to cases involving competency evaluations in the criminal context, which, according to the respondent, employ different standards. We are not persuaded. The Appellate Court explicitly quoted the proper test, citing to *In re Alexander V.*, prior to conducting its analysis, and repeatedly referenced the language of the test thereafter when drawing conclusions. See *In re Kaleb*, supra, 131 Conn. App. 836, 837, 839. For this reason, we will not presume that the Appellate Court, nevertheless, applied a different test. Cf. *Kaczynski* v. *Kaczynski*, 294 Conn. 121, 130–31, 981 A.2d 1068 (2009) (even when trial court fails to state what standard of proof it has applied, reviewing court will presume correct standard was used unless record makes clear that wrong standard was applied). It is more likely that the Appellate Court, because of the dearth of case law applying the standard of *In re Alexander V.*, cited criminal cases for general concepts of competency. As *In re Alexander V.* makes clear, the definition of mental competence is the same in either realm. See *In re Alexander V.*, supra, 223 Conn. 563 ("By definition, a mentally incompetent person is one who is unable to understand the nature of the termination proceeding and unable to assist in the presentation of his or her case. See General Statutes § 54-56d [a] [concerning competency evaluations in criminal cases]; *Dusky* v. *United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 [1960].)."

[9] The holding of *In re Alexander V.* has been incorporated into the rules of practice. See Practice Book § 32a-9 (a) ("[i]n any proceeding for the termination of parental rights, either upon its own motion or a motion of any party alleging specific factual allegations of mental impairment that raise a reasonable doubt about the parent's competency, the judicial authority shall appoint an evaluator who is an expert in mental illness to assess such parent's competency; the judicial authority shall thereafter conduct a competency hearing within ten days of receipt of the evaluator's report").

[10] We note additionally that, if at any stage of the proceedings brought by the commissioner, it "appears" to the trial court that the respondent is incompetent, the court possesses statutorily conferred discretion to appoint a guardian ad litem. See General Statutes § 45a-132 (a) and (b). Moreover, in certain circumstances, the court also must cite in the department of developmental services as a necessary party to assist a developmentally disabled respondent in reunification efforts. See, e.g., *In re Devon B.*, 264 Conn. 572, 581–84, 825 A.2d 127 (2003).

[11] We recognize that the canvass occurred approximately nine months previously and that, in a case of mental illness, an individual's competency may fluctuate. The claimed basis of incompetency in this case, however, the adult respondent's low intellectual functioning, is a constant condition unlikely either to improve or deteriorate over time.

[12] A person "may be competent for one purpose but not for another . . . ." (Internal quotation marks omitted.) *Twichell* v. *Guite*, 53 Conn. App. 42, 47, 728 A.2d 1121 (1999).

[13] At trial, Neems verified that the respondent understood these points, which he considered important. As we previously have explained, Neems did not evaluate the respondent with the particular objective of assessing her competency in assisting in her defense and, therefore, was unable to testify directly in that regard. See footnote 6 of this opinion.

[14] There are further indications in the record that the respondent had an adequate grasp of the court proceedings. Although Judge Simon's awareness of the entire record is unclear, the respondent does not dispute the following occurrences, which are reflected in the transcripts submitted on appeal. The respondent's prior counsel withdrew at her behest, after she had filed complaints with the court and the department. At the hearing on the request to withdraw, which was held before Judge Suarez, counsel reported that the respondent also had requested that he file a number of motions. The respondent stated that she wanted certain evidence presented, verified that she had attended a status conference and relayed what had occurred at that conference. Additionally, when questioned by Judge Simon in connection with counsel's request for a competency evaluation, the respondent asserted that she had "all kinds of evidence" and that she was "denied [the opportunity] to file a report . . . ." In short, the respondent indicated that she was capable of presenting her position. See *State* v. *Bethea*, 167 Conn. 80, 88, 355 A.2d 6 (1974) (motion for continuance brought to trial court's attention defendant's quest for alibi witness and indicated that he understood proceedings and actively was assisting in own defense); compare *In re Doe*, Superior Court, judicial district of Middlesex, Child Protection Session at Middletown,

2005 Ct. Sup. 11768-au (August 22, 2005) (ordering competency hearing when respondent's counsel asserted that respondent did not provide requested documents and information in timely manner and did not understand counsel's role or respondent's own need to cooperate, respondent had fired three previous attorneys and displayed hostile and intimidating demeanor at hearing, and respondent left courtroom during proceedings for extended periods of time to control emotions).

[15] Neems reported the respondent's full scale IQ score as sixty-five, indicative of mild mental retardation.

[16] A conservatorship of a person's financial estate may be imposed voluntarily, in which case the court shall appoint a conservator, but "shall not make a finding that the petitioner is incapable." General Statutes § 45a-646. Even in the case of an involuntary conservatorship of a financial estate, the standard for imposition differs from that of competency to understand and assist in legal proceedings. See General Statutes § 45a-650 (f) (1) (involuntary conservatorship of financial estate may be imposed upon finding that "respondent is incapable of managing the respondent's affairs").