

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-1736

T.Z., mother of B.M.K. and
A.B.K., minor children,

Appellant,

v.

DEPARTMENT OF CHILDREN AND
FAMILIES,

Appellee.

On appeal from the Circuit Court for Okaloosa County.
Terrance R. Ketchel, Judge.

October 17, 2022

PER CURIAM.

We reject Appellant's claim that the trial court fundamentally erred by failing to orally inform her of her right to file a motion claiming that her attorney provided ineffective assistance following the order terminating parental rights, pursuant to Florida Rule of Juvenile Procedure 8.530(a). *B.T. v. Dep't of Child. & Fams.*, 300 So. 3d 1273, 1285 (Fla. 1st DCA 2020). We further decline Appellant's suggestion that this Court invoke the en banc procedure of Florida Rule of Appellate Procedure 9.331(a) to recede

from *B.T.** Even if we were inclined to reconsider *B.T.*, we would still affirm, as Appellant is not entitled to complain about a lack of advice from the trial court when she voluntarily absented herself from the proceeding. As we stated in *Shaw v. State*, notification of post-hearing rights is “required *advice*” to the party. 257 So. 3d 618, 620 (Fla. 1st DCA 2018). “If the [party] is absent, there is no one to advise, and the failure to present the advice is harmless. The court is not required to give advice to an empty chair.” *Id.*

AFFIRMED.

LEWIS, ROBERTS, and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Susan J. Winterberger, of Susan Winterberger, Attorney at Law, LLC, Crestview and Ryan Thomas Truskoski of Ryan Thomas Truskoski, P.A., Orlando, for Appellant.

Sarah J. Rumph, Appellate Counsel, Department of Children and Families, Tallahassee, for Appellee; Sara E. Goldfarb, Statewide Director of Appeals, and Samantha C. Valley, Senior Attorney, Appellate Division, Statewide Guardian ad Litem Office, Tallahassee, for Guardian ad Litem; Douglas J. Glaid, Florida Statewide Guardian ad Litem Office, Defending Best Interests Project, Fort Lauderdale.

* In doing so, we note that “[a] party may not request an en banc hearing.” Fla. R. App. P. 9.331(c).