FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-2476

IN RE: JANE DOE 22-B,

Appellant.

On appeal from the Circuit Court for Escambia County.
Jennifer J. Frydrychowicz, Judge.

August 15, 2022

PER CURIAM.

Appellant, a minor, wishes to terminate her pregnancy. She appeals the trial court's dismissal of her petition seeking judicial waiver of the parental/legal guardian notice and consent provisions under section 390.01114, Florida Statutes. The trial court found, based on the nonadversarial presentation below, that Appellant had not established by clear and convincing evidence that she was sufficiently mature to decide whether to terminate her pregnancy. Having reviewed the record, we affirm the trial court's decision under the deferential standard of appellate review set out in the governing statute. § 390.01114(6)(b)2., Fla. Stat. (2022) ("The reason for overturning a ruling on appeal must be based on abuse of discretion by the court and may not be based on the weight of the evidence presented to the circuit court since the proceeding is a nonadversarial proceeding."). We note that section 390.01114 allows for a remand to the trial court with instructions for a further ruling, but no such remand is warranted here. *See id.* ("An appellate court must rule within 7 days after receipt of appeal, but a ruling may be remanded with further instruction for

a ruling within 3 business days after the remand."). The trial court's order and findings are neither unclear nor lacking such that a remand would be necessary for us to perform our review under the statute.

AFFIRMED.

JAY and NORDBY, JJ., concur; MAKAR, J., concurs in part and dissents in part with opinion.

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

MAKAR, J., concurring in part and dissenting in part.

This appeal arises from an order denying a pregnant minor's request to bypass parental notice of and consent for the termination of her pregnancy under the process set forth in section 390.01114, Florida Statutes. The order was "without prejudice," the trial court stating that it "may re-evaluate its decision" in a renewed hearing for the minor to "adequately articulate her request."

The minor is almost seventeen years-old and parentless. She lives with a relative but has an appointed guardian. She is pursuing a GED with involvement in a program designed to assist young women who have experienced trauma in their lives by providing educational support and counseling. The minor experienced renewed trauma (the death of a friend) shortly before she decided to seek termination of her pregnancy.

Her petition—a standard form that she completed by hand—stated two potential bases for a waiver under the statute. First, the minor states that she is sufficiently mature to make the decision, saying she "is not ready to have a baby," she doesn't have a job, she is "still in school," and the father is unable to assist her. *See* § 390.01114(6)(c), Fla. Stat. (2022) (specifying that a judicial

bypass order may be issued if the trial judge "finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy"). Second, the minor states that her "guardian is fine with what [she] wants to do," which would be a sufficient basis for a waiver of notice if other statutory requisites are met. *Id.* § 390.01114(4)(b)2., Fla. Stat. ("Notice is waived in writing by the person who is entitled to notice and such waiver is notarized, dated not more than 30 days before the termination of pregnancy, and contains a specific waiver of the right of the parent or legal guardian to notice of the minor's termination of pregnancy[.]"). She inexplicably checked the box indicating she did not request an attorney, which is available by law for free under the statute. *Id*. § 390.01114(6)(a), Fla. Stat. ("The court shall advise the minor that she has a right to court-appointed counsel at no cost to the minor. The court shall, upon request, provide counsel for the minor at least 24 hours before the court proceeding.").

As required, the trial court held a non-adversarial hearing on the petition in chambers; only the minor and two of her supporters were present (her case worker and a guardian ad litem child advocate manager). The trial judge displayed concern for the minor's predicament throughout the hearing; she asked difficult questions of the minor on sensitive personal matters in a compassionate manner. The trial judge's tone and method of questioning were commendable and her ability to produce a thoughtful written order in a rapid fashion is admirable (she prepared her written order immediately after the hearing, handing a copy thereafter to the minor). Based on the high standard of appellate review, I concur in affirmance of the factual findings of the trial court as well as her decision to deny the petition without prejudicing the minor from seeking relief from the trial court in coming days. *Id*. § 390.01114(6)(b)2., Fla. Stat.

Based on the hearing transcript and her written order, the trial judge apparently sees this matter as a very close call, finding that the minor was "credible," "open" with the judge, and non-evasive. Indeed, the minor "showed, at times, that she is stable and mature enough to make this decision." The transcript demonstrates that the minor was knowledgeable about the relevant considerations in terminating her pregnancy along with

other statutory factors. She had done Google searches and reviewed a pamphlet (that she and a family member got from their visit to a medical clinic) to gain an understanding about her medical options and their consequences. *Cf. In re Doe*, 204 So. 3d 175, 177 (Fla. 1st DCA 2016) (Makar, J., concurring) (affirming denial of judicial waiver where the "minor did not know what the medical procedure involved"). The trial court noted that the minor "acknowledges she is not ready for the emotional, physical, or financial responsibility of raising a child" and "has valid concerns about her ability to raise a child."

The trial judge denied the petition but explicitly left open the availability of further proceedings by saying that the "Court finds [the minor] may be able, *at a later date*, to adequately articulate her request, and the Court may re-evaluate its decision at that time." (Emphasis added). The emphasized language indicates the trial judge must have been contemplating that the minor—who was ten weeks pregnant at the time—would potentially be returning before long—given the statutory time constraints at play—to shore up any lingering doubt the trial court harbored.

In this regard, the key if not sole factor for "re-evaluation" would apparently be the trial judge's initial concern that the minor's "evaluation of the benefits and consequences of her decision is wanting." The detailed written order points out that the minor has evaluated the pros/cons in making her decision and the transcript reflects a similar mental process. Reading between the lines, it appears that the trial court wanted to give the minor, who was under extra stress due to a friend's death, additional time to express a keener understanding of the consequences of terminating a pregnancy. This makes some sense given that the minor, at least at one point, says she was open to having a child, but later changed her view after considering her inability to care for a child in her current station in life.

Given the open-ended nature of the order reflecting the trial judge's willingness to hear from the minor again—and the time pressures presented—I would remand the case to the trial court under section 390.01114(6)(b)2., Florida Statutes, which says in part that "[a]n appellate court must rule within 7 days after receipt of appeal, but *a ruling may be remanded with further instruction*

for a ruling within 3 business days after the remand." (Emphasis added). A remand would allow the trial judge to "re-evaluate its decision" for a conclusive determination of the statutory factor of concern. Utilizing this statutorily authorized process would chart a middle ground that the trial court explicitly left open, potentially making further appellate review unnecessary.

A limited statutory remand is particularly appropriate given that the petition essentially says the minor's guardian agrees to the termination of pregnancy, which would be a legally sufficient basis for a waiver—an issue raised indirectly in the petition but not addressed in the trial judge's order. The minor wrote that her guardian "was fine" with the minor's decision. This statement was written in the section of the form petition related to whether it was in the "best interest of the minor" for a parent/guardian to not be notified, which was out of place on the form but not a basis to disregard the apparent possibility of guardian consent. If the minor's guardian consents to the minor's termination of her pregnancy, all that is required is a written waiver from the guardian. § 390.01114(4)(b)2., Fla. Stat. Such a written waiver would be self-executing, meaning that the minor need not invoke the judicial bypass procedure at all.

The trial court is entitled to great deference under the appellate standard of review, *In re Doe 13-A*, 136 So. 3d 723, 748 (Fla. 1st DCA 2014) (Makar, J., dissenting) (Under the statute, the "question is only whether a reasonable judge could have reached the conclusion of this trial judge based on the non-adversarial appellate record presented under the über-deferential standard of appellate review."); *see also In re Doe*, 331 So. 3d 1281, 1282 (Fla. 1st DCA 2022) (Makar, J., dissenting) ("Though an appellate court is not to reweigh the evidence, an abuse of discretion may exist where the established facts do not support the denial of a petition on the merits."). On that basis, I concur in affirmance generally given the trial court's factual findings and conclusions. But the legislature has provided a specific tool for an appellate court to remand these types of cases to achieve clarity and completeness where it may be lacking. Given the trial court's entreaty to the minor that it may "re-evaluate its decision" under the circumstances, as well as the unaddressed guardian consent issue,

I would remand for the three-day statutory period to clarify such matters, and dissent on that basis.

Jane Doe 22-B, pro se, Appellant.