

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

In the Interest of K.E., a child.

K.E.,

Appellant,

v.

DEPARTMENT OF CHILDREN AND FAMILIES and
GUARDIAN AD LITEM PROGRAM,

Appellees.

No. 2D21-1793

March 18, 2022

Appeal from the Circuit Court for Pinellas County; Philippe Matthey, Judge.

Kari Jorma Myllynen of the Law Offices of K.J. Myllynen, Land O'Lakes, for Appellant.

Sara Elizabeth Goldfarb, Statewide Director of Appeals, and Samantha C. Valley, Senior Attorney, Statewide Guardian ad Litem Office, Tallahassee, for Appellee Guardian ad Litem Program.

Bruce Bartlett, State Attorney, and Leslie M. Layne, Assistant State Attorney, Sixth Judicial Circuit of Florida, Clearwater, for Appellee Department of Children and Families.

SILBERMAN, Judge.

K.E. appeals the final judgment terminating his parental rights. We affirm but write to address K.E.'s argument that the trial court erred by proceeding with the adjudicatory hearing after he appeared at the remote hearing by telephone but then was absent after conferring with his attorney.

Throughout the trial court proceedings, K.E. was incarcerated. On the day of the adjudicatory hearing, K.E. was to appear via remote technology but did not appear at the scheduled time. Over the course of the morning, the trial court communicated with prison officials to try and secure K.E.'s participation. The court indicated that a captain at the facility said that K.E. initially refused to appear but that a team was able to obtain his compliance.

Eventually, K.E. appeared by telephone. After some preliminary comments, the court stated that it was putting K.E. and his attorney into a separate virtual room to communicate confidentially. The court instructed K.E. that after K.E. and his attorney were done talking, K.E. was not to hang up as he and his attorney would be brought back automatically into the hearing. Eventually, K.E.'s attorney rejoined the hearing and reported that

K.E. did not want to proceed by telephone but wanted to proceed by video. The attorney added that K.E. "may have disconnected" but that K.E. had "vehemently denied" that he had refused to appear earlier in the day.

In response to K.E.'s disconnection, the Department of Children and Families moved for a default. The court denied the motion and proceeded with the adjudicatory hearing in K.E.'s absence, over the objection of K.E.'s attorney. Upon the conclusion of the proceedings, the court entered a final judgment on the merits and terminated K.E.'s parental rights.

On appeal, K.E. argues that the trial court erred in proceeding with the adjudicatory hearing after he was disconnected. Based on the record before us we affirm.

When a party is disconnected from a remote proceeding due to a technical malfunction or some other reason beyond their control and judgment is entered against him or her, the proper course of action is to file a motion to vacate the judgment alleging excusable neglect. *See, e.g., Burke v. Soles*, 326 So. 3d 83, 84 (Fla. 4th DCA 2021). In termination of parental rights cases that proceed under chapter 39, Florida Statutes (2020), a motion to vacate alleging

excusable neglect can be raised in a motion filed under Florida Rule of Juvenile Procedure 8.270(b). Upon the filing of such a motion, a court may conduct a limited evidentiary inquiry to determine whether such a disconnection was voluntary or due to circumstances beyond the movant's control. *See Burke*, 326 So. 3d at 85.

Here, K.E. did not file a motion to vacate, and on this record it is not clear whether K.E. had indeed voluntarily disconnected from the hearing or if he was disconnected due to circumstances beyond his control. Under these circumstances, we affirm without prejudice to any right K.E. may have to file a motion to vacate provided he can do so in good faith.

Affirmed.

ROTHSTEIN-YOUAKIM and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.