20-P-791 Appeals Court

ADOPTION OF YVONNE (and two companion cases[1]).

No. 20-P-791.

Suffolk. March 12, 2021. – May 18, 2021.

Present: Massing, Henry, & Ditkoff, JJ.

Adoption, Dispensing with parent's consent, Care and protection. Parent and Child, Adoption, Dispensing with parent's consent to adoption, Custody, Care and protection of minor, Custody of minor. Minor, Adoption, Care and protection. Due Process of Law, Child custody proceeding, Adoption. Practice, Civil, Adoption, Findings by judge, Care and protection proceeding, Hearsay, Judicial discretion, Relief from judgment, Assistance of counsel. Evidence, Child custody proceeding, Hearsay, Report of licensed social worker, Inference. Indian Child Welfare Act. Judgment, Relief from judgment.

Petitions filed in the Suffolk County Division of the Juvenile Court Department on August 18, 2014.

The cases were heard by Peter M. Coyne, J., and a motion for new trial was heard by him.

Valerie B. Robin for the mother.
Tasha Bahal, Special Assistant Attorney General, for Department of Children and Families.

[1] Adoption of Faye and Adoption of Helen. The children's names are pseudonyms.

Dawn M. Messer for the children.

MASSING, J. The mother appeals from decrees issued by a Juvenile Court judge terminating her parental rights with respect to three of her children[2] and from the order denying her late-filed motion for a new trial, which the judge properly treated as a motion for relief from judgment. She contends that certain of the judge's findings are clearly erroneous and that the ultimate finding of her unfitness is not supported by clear and convincing evidence. She further asserts that delays and interruptions during the trial amounted to a denial of due process, and that the judge abused his discretion in denying her motion for a new trial. We affirm, clarifying the standard for establishing entitlement to relief from judgment under Mass. R. Civ. P. 60 (b) (6), 365 Mass. 828 (1974), which applies by analogy in termination of parental rights cases.

Background. The Department of Children and Families (department) initiated the underlying care and protection proceedings in August 2014, shortly after the birth of the mother's fifth child, Helen. When Helen was about one month old, the department received a report produced pursuant to G. L.

[2] The judge also found the fathers of the children unfit and terminated the parental rights of each with respect his child. None of the fathers has appealed.

c. 119, § 51A (51A report),[3] which was later supported, alleging medical neglect of Helen. The mother had missed several of Helen's medical appointments, and the child had gained only one pound since birth. In similar circumstances, the department had previously initiated care and protection proceedings alleging medical neglect and physical abuse[4] of the mother's third and fourth children, twins, which resulted in the termination of the mother's parental rights with respect to those two children.

The department sought emergency temporary custody of Helen and of the mother's two oldest children, Yvonne and Faye. See G. L. c. 119, § 24. The judge granted temporary custody of the two younger children, Faye and Helen, to the department,[5] and temporary custody of the eldest, Yvonne, to the maternal grandmother.

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[3] The 51A reports "set the stage" only. Adoption of Chad, 94 Mass. App. Ct. 828, 830 (2019), quoting Custody of Michel, 28 Mass. App. Ct. 260, 267 (1990). See Mass. G. Evid. § 1115(b)(2)(A) (2021).

[4] A 51A report filed in connection with the prior proceedings was based on the discovery of cigarette burns on the bodies of the twins and of the mother's second child, Faye.

[5] Helen's father obtained custody of Helen briefly during the proceedings, but custody was returned to the department before trial.

The start of trial was rescheduled at least four times.[6] Trial began in December 2017, more than three years after the initiation of the care and protection proceedings. Scheduling issues in the Juvenile Court and the mother's absence from or late arrival on certain trial dates further delayed the proceedings. Thus, the trial was held on eight nonconsecutive days over the course of six months. The mother's direct examination was staggered over three trial dates. She was absent on four days. On the final day of trial, June 13, 2018, the judge, acting sua sponte, struck the mother's testimony because she was not present to complete her direct examination or begin cross-examination. He also drew an adverse inference from her absences. At the conclusion of the trial, the judge orally announced his decision finding the mother unfit and terminating her parental rights. The judge issued an "Amended

[6] Much of the pretrial delay was attributable to the mother. The mother's first court-appointed attorney withdrew in October 2015 when the mother said she intended to retain her own attorney. A second attorney was appointed, but withdrew in May 2016 due to the mother's dissatisfaction with her representation. The third attorney represented the mother thereafter. (A two-week delay was occasioned by the department's failure to provide discovery to the mother's third counsel.) The mother also informed the judge that she was of Native American heritage, an unsubstantiated claim that caused additional delay by triggering the notice procedures of the Indian Child Welfare Act. See 25 U.S.C. § 1901 et seq. (2012); Adoption of Arnold, 50 Mass. App. Ct. 743, 747-748 (2001). None of the three children was identified as a member of any of the tribes notified.

Notice of Decision" two days later. Twelve days after that, on June 28, 2018, the mother filed and served a notice of appeal and a motion for new trial, which the judge denied on August 17, 2018. The mother timely filed a notice of appeal from the order denying her motion. In July 2020, the judge issued detailed written findings of fact and conclusions of law.

Discussion. 1. The mother's fitness. To terminate a parent's rights with respect to her children, "a judge must determine whether there is clear and convincing evidence that the parent is unfit and, if the parent is unfit, whether the child[ren]'s best interests will be served by terminating the legal relation between [them]." Adoption of Ilian, 91 Mass. App. Ct. 727, 729 (2017), quoting Adoption of Ilona, 459 Mass. 53, 59 (2011). "[T]he idea of 'parental unfitness' means 'grievous shortcomings or handicaps' that put the child's welfare 'much at hazard.'" Adoption of Katharine, 42 Mass. App. Ct. 25, 28 (1997), quoting Petition of the New England Home for Little Wanderers to Dispense with Consent to Adoption, 367 Mass. 631, 646 (1975). A judge must consider "a parent's character, temperament, conduct, and capacity to provide for the child in the same context with the child's particular needs, affections, and age," Adoption of Mary, 414 Mass. 705, 711 (1993), and "may consider past conduct to predict future ability and performance," Adoption of Jacob, 99 Mass. App. Ct. 258, 262

(2021), quoting Adoption of Katharine, supra at 32-33. "We give substantial deference to the judge's decision to terminate parental rights 'and reverse only where the findings of fact are clearly erroneous or where there is a clear error of law or abuse of discretion.'" Adoption of Talik, 92 Mass. App. Ct. 367, 370 (2017), quoting Adoption of Ilona, supra.

The mother asserts that certain of the judge's subsidiary findings -- namely those concerning her unstable housing and financial instability, domestic violence in her relationships, and "concerning behaviors" -- were clearly erroneous. The mother further contends that even if the judge's findings were not clearly erroneous, they were based on stale evidence, lacked a nexus to her parenting abilities, and provided insufficient grounds for a finding of unfitness.

a. Factual findings. The judge's determination that the mother was unfit was "based on subsidiary findings proved by at least a fair preponderance of evidence," Adoption of Jacques, 82 Mass. App. Ct. 601, 606 (2012), which are supported by the testimony of the family's ongoing social worker and other department employees, and by unobjected-to department reports and court investigator reports,[7] among other exhibits.

[7] These include department reports created under G. L. c. 119, § 51B, other department-created reports, and a court investigation report submitted in accordance with G. L. c. 119, § 24. See Mass. G. Evid. § 1115(b)(2)(B), (c)(1) (2021).

i. Domestic violence. The judge concluded that the mother's failure to recognize the need for services to address issues of domestic violence in her relationships and to engage in those services demonstrated a "lack of insight" regarding the effect domestic violence had on her and her children's lives. Because "[d]omestic violence may imperil a child's physical safety and psychological development . . . evidence of domestic violence is relevant to a judge's determination of parental fitness." Adoption of Jacob, 99 Mass. App. Ct. at 262. See Adoption of Gillian, 63 Mass. App. Ct. 398, 404 n.6 (2005).

The mother contends that the record does not support the judge's findings concerning domestic violence because he struck her testimony. Called as a witness by the department, on direct examination the mother testified at length about domestic violence in her relationships with all of the children's fathers. Indeed, domestic violence was the theme of the mother's defense.[8] However, because the mother did not return to court to complete direct examination or to be questioned by the other parties -- or even by her own attorney -- the judge, sua

[8] In her opening statement, the mother's trial counsel said, "This case is, basically, a domestic violence case . . . and [the mother] hopes to prove that, in fact, the severity and the consistency of the domestic violence has caused her to have lost her children." Counsel also argued in closing that the mother "was a victim of domestic violence and everything else flowed from that."

sponte, struck her testimony. The department did not object; as a result, however, the department is now unable to rely on the mother's testimony to support the judge's findings and conclusions.[9]

Invoking Custody of Vaughn, 422 Mass. 590, 599 (1996), the mother also contends that the judge failed to make "detailed and comprehensive findings" concerning the effects of domestic violence on the children. In light of the "special risks to the child," id., judges are required to make such findings before granting custody to a parent who has committed acts of violence against a family or household member. See Care & Protection of Lillith, 61 Mass. App. Ct. 132, 142 (2004) (award of custody to father vacated where judge failed to make express and detailed findings concerning evidence of father's domestic violence, "its effects on the child, and its relationship to the father's ability to parent"). Where evidence of domestic violence is a factor contributing to a judge's decision to find a parent unfit or to terminate parental rights, however, the judge's findings need not be any more detailed or comprehensive than is required

[9] Before striking the mother's testimony, the judge might have inquired whether the parties who were being deprived of their right to examine the mother would have preferred that the testimony remain on the record. A party witness, having seen that her testimony has gone badly, should not be empowered to remove damaging testimony from the record merely by depriving the adverse parties of their opportunity to examine her.

for any other factual findings supporting such determinations. See Adoption of Georgia, 433 Mass. 62, 66 (2000) ("we require that the judge's findings be specific and detailed, so as to demonstrate that close attention was given to the evidence").

As the presence of pervasive domestic violence was not a contested issue at trial, it is not surprising that the judge did not go to great lengths to document the occurrences of domestic violence in his findings. But even without the mother's testimony, the record reveals a pattern of abusive relationships that adversely affected the mother and the children. The department's G. L. c. 119, § 51B reports (51B reports), and the court investigation report documented a history of abuse, primarily by Faye's father. This properly admitted evidence provided adequate support for the judge's findings concerning domestic violence.[10]

The mother further argues that the record evidence of domestic violence is stale and shows no nexus to her fitness. The judge recognized that the mother "briefly" made efforts to gain insight into the effects of domestic violence on her and the children's lives and he acknowledged that she was not in an

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[10] We agree with the mother that the testimony of the family's ongoing social worker does not support the judge's finding that "[d]omestic violence has been prevalent in many of [the] mother's intimate relationships, including those with all three fathers." However, the record does include evidence of abuse by Faye's and Helen's fathers.

abusive relationship at the time of trial. Although the mother did meet with a domestic violence therapist, she told the department soon after that "she did not feel a connection" with the therapist. She partially completed a group program on the impact of violence and completed an intake with a domestic violence advocate, but stopped engaging in domestic violence education services several months later and told the department she "[did]n't feel that she need[ed] it." As of two months before the trial, the mother was not engaged in any domestic violence services. "[I]solated problems in the past or stale information cannot be a basis for a determination of current parental fitness." Adoption of Rhona, 57 Mass. App. Ct. 479, 487 (2003), S.C., 63 Mass. App. Ct. 117 (2005), quoting Petitions of the Dep't of Social Servs. to Dispense with Consent to Adoption, 18 Mass. App. Ct. 120, 126 (1984). However, a judge may "consider past conduct to predict future ability and performance." Adoption of Katharine, 42 Mass. App. Ct. at 33. See Adoption of Luc, 484 Mass. 139, 145 (2020). The judge properly considered the mother's continued failure to address how domestic violence affected her parenting.

ii. Concerning behaviors. The mother contends that the judge improperly considered incidents involving "concerning behaviors" in assessing her fitness. The judge found, and the record supports, that the mother twice threatened department

staff. On one occasion, the mother threatened to bring a homemade bomb into the department office. Another time she said that she would bring her brother's gun to the department office. The mother also displayed difficulty handling her frustrations with the department in front of the children. The judge's findings referred to the mother's "loud and defiant" demeanor on the first day of trial, the mother's attempt to jump over the railing on the fourth floor of the court house during trial, and further examples of "violent temper, inability to place the needs of her children over her emotions, and her unwillingness and inability to make appropriate decisions that are in the best interests of the subject children."

These considerations were entirely proper, as was the judge's conclusion that these "very concerning behaviors . . . speak to her parenting abilities." A parent's behavior during trial and her ability to manage anger are relevant to parental fitness. See Adoption of Querida, 94 Mass. App. Ct. 771, 775-777 (2019) (judge could consider mother's "volatile" behavior in court room in assessing fitness); Adoption of Ulrich, 94 Mass. App. Ct. 668, 676 (2019) (mother's difficulty "managing her anger" relevant to fitness).

The mother further asserts that the record does not support the conclusion that she has a mental health disorder -- a conclusion the judge did not in fact reach. The judge found

that the mother, who failed to engage in a court clinic evaluation as required by her action plan, "does not have any documented mental health conditions," and found that G. L. c. 210, § 3 (c) (xii), concerning a parent's "mental illness," did not apply. Nonetheless, the judge determined that the mother's "volatile outbursts in front of her children . . . create[d] a risk of harm to the children." We discern no error.

iii. Unstable housing and financial instability. Record evidence supports the judge's findings concerning the mother's housing and employment instability. "[P]overty or homelessness are not per se indicative of child abuse or neglect," 110 Code Mass. Regs. § 1.11 (2008), nor may they serve as the sole basis of children's removal. See Adoption of Linus, 73 Mass. App. Ct. 815, 821 (2009). However, a parent's "lack of [a] 'stable home environment'" may be considered in assessing parental fitness. Adoption of Oren, 96 Mass. App. Ct. 842, 845 (2020), quoting Petitions of the Dep't of Social Servs. to Dispense with Consent to Adoption, 399 Mass. 279, 289 (1987). See Care & Protection of Lillith, 61 Mass. App. Ct. at 136 (judge properly considered "mother's frequent moves with the child"). The evidence showed that the mother was unable to maintain stable housing prior to and during the pendency of the proceedings. The department was unable to verify the mother's living situation or conduct home visits, which the mother consistently canceled or failed to

attend. According to the ongoing social worker, whose testimony the judge credited, the mother reported that she was "bouncing [from] home to home," and that she was still homeless at the time of trial.

The mother challenges as stale the judge's findings, based on three supported 51A reports and one 51B report, that the mother and two of the children had stayed in a van outside of Faye's father's residence about six years before the initiation of the current proceedings. Given the more recent evidence of the mother's housing instability, the judge's limited reliance on the older evidence was not improper. See Adoption of Abigail, 23 Mass. App. Ct. 191, 196 (1986) ("A past pattern of behavior is . . . not irrelevant; it has prognostic value"). The judge's findings that the mother did not maintain stable housing for nearly the entire duration of the proceedings, that the mother made insufficient efforts to secure such housing for herself and the children, and that the mother "fail[ed] to appreciate the seriousness of her family's housing crisis," were not clearly erroneous.

b. Determination of unfitness. In addition to the challenged findings discussed above, the evidence included a number of other findings supporting the judge's ultimate determination of the mother's unfitness. The mother does not challenge the judge's findings concerning her lack of engagement

with services, or her failure to visit with the children between October 2016 and the start of trial in the fall of 2017.[11] Nor does the mother claim error in the judge's decision to draw an adverse inference from her many absences from the trial. See Adoption of Helga, 97 Mass. App. Ct. 521, 525 (2020) ("adverse inference [may] be drawn against a parent who, having notice of the proceedings, is absent from a child custody or termination proceeding without an adequate excuse").

A finding of unfitness is based on "a constellation of factors that point[] to termination as being in the best interests of the child." Adoption of Greta, 431 Mass. 577, 588 (2000). In finding unfitness, a judge may, as here, consider "patterns of ongoing, repeated, serious parental neglect" of the children. Adoption of Diane, 400 Mass. 196, 204 (1987). All of the subsidiary facts, taken together, ultimately supported the judge's conclusion of parental unfitness by clear and convincing evidence. See Adoption of Warren, 44 Mass. App. Ct. 620, 625 (1998).

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[11] Visits between the mother and the children ceased after the mother's threat to bring a gun to the department office, an incident that required the mother to meet with her ongoing social worker and a department supervisor before visitation could resume. The mother contacted the department one month after the incident but subsequently failed to follow up until shortly before trial. While trial was pending, the ongoing social worker scheduled a meeting with the mother, which the mother canceled.

2. Motion for a new trial. After the judge issued the "Amended Notice of Decision," the mother filed and served both a notice of appeal and a motion for a new trial, relying on Mass. R. Civ. P. 59 (a), and (e), 365 Mass. 827 (1974). The motion was untimely, as it was served more than ten days after the entry of decrees. See Mass. R. Civ. P. 59 (b), 365 Mass. 827 (1974). Accordingly, the judge construed it as a motion for relief from judgment under Mass. R. Civ. P. 60 (b), 365 Mass. 828 (1974). See Stephens v. Global NAPs, 70 Mass. App. Ct. 676, 682 (2007) ("Any motion for a new trial filed after the period set out by [Mass. R. Civ. P. 59 (b) is] considered as falling within [Mass. R. Civ. P. 60 (b)]").

Although the Massachusetts Rules of Civil Procedure do not apply to proceedings to terminate parental rights, the judge properly proceeded by analogy. See Adoption of Gillian, 63 Mass. App. Ct. at 410; Adoption of Reid, 39 Mass. App. Ct. 338, 341 (1995). "Motions for relief from final judgment are commended to the judge's discretion, and a judge's decision will not be overturned, except upon a showing of a clear abuse of discretion," especially "where, as here, the motion judge was the same judge who . . . entered the decrees" (quotation and citation omitted). Adoption of Quan, 470 Mass. 1013, 1014 (2014).

The judge was guided by rule 60 (b) (6), the "catchall provision, applicable when subdivisions (b) (1) through (b) (5) do not apply." DeMarco v. DeMarco, 89 Mass. App. Ct. 618, 621 (2016). He denied the motion, concluding that the mother "failed to show by clear and convincing evidence that the circumstances in this case [were] so 'extraordinary' that the relief sought should be granted."

The judge (understandably, as we explain) misstated the standard: "clear and convincing evidence" is not required to prevail on a rule 60 (b) (6) motion.[12] The standard the judge applied appears in a secondary source, J.W. Smith & H.B. Zobel, Rules Practice § 60.15, at 393 (2d ed. 2007) (hereinafter, Smith & Zobel), which states, "The movant must show, presumably by clear and convincing evidence, that the circumstances are so 'extraordinary' as to justify setting aside the judgment." Smith & Zobel, supra, also states, incorrectly, that a judge's discretionary decision on a rule 60 (b) (6) motion is "reversible only on a showing, by clear and convincing evidence, of abused discretion."[13] These incorrect statements of the law in turn appear to derive from this court's incorrect statement

[12] At the panel's request, the parties submitted supplemental memoranda addressing the standard for establishing entitlement to relief from judgment under rule 60 (b) (6).

[13] We discern no other error in Smith & Zobel's otherwise excellent summary of the operation of the rule.

in Care & Protection of Georgette, 54 Mass. App. Ct. 778, 787 (2002), S.C., 439 Mass. 28 (2003), that a judge's denial of a rule 60 (b) (6) motion will not be reversed "except on a showing, by clear and convincing evidence, that the judge's broad discretion was abused."[14] On further appellate review, the Supreme Judicial Court pointed out that this court had misstated the standard of review, the correct standard being a "clear abuse of discretion." Care & Protection of Georgette, 439 Mass. 28, 33 n.6 (2003), quoting Trustees of the Stigmatine Fathers, Inc. v. Secretary of Admin. & Fin., 369 Mass. 562, 565 (1976).

A motion for relief from judgment on any of the grounds identified in rule 60 (b) is generally committed to the sound discretion of the motion judge. See Adoption of Quan, 470 Mass. at 1014; Adoption of Reid, 39 Mass. App. Ct. at 341. The showings required for entitlement to relief under the six subsections of the rule vary. See generally Smith & Zobel, §§ 60.1-60.15; 11 C.A. Wright, A.R. Miller, & M.K. Kane, Federal Practice and Procedure §§ 2857-2864 (2012 & Supp. 2020).[15] In

[14] See Adoption of Gillian, 63 Mass. App. Ct. at 411 (denial of rule 60 [b] motion "will not be reversed on appeal except on a showing, by clear and convincing evidence, that the judge abused her discretion"). Smith & Zobel cites Adoption of Gillian as authority for its expression of the rule 60 (b) (6) standard.

[15] Uniquely, motions for relief from judgment brought under rule 60 (b) (3), 365 Mass. 828 (1974), alleging "fraud . . . , misrepresentation, or other misconduct of an adverse party," do

deciding a rule 60 (b) (6) motion, the judge may consider whether the movant has a "meritorious claim or defense," "whether extraordinary circumstances warrant relief," and whether granting the motion would affect "the substantial rights of the parties" (quotation and citation omitted). Parrell v. Keenan, 389 Mass. 809, 815 (1983). Although the rule "vests 'power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice,'" id., quoting Klapprott v. United States, 335 U.S. 601, 615 (1949), obtaining relief under rule 60 (b) (6) requires a showing of "extraordinary circumstances" (citation omitted), Owens v. Mukendi, 448 Mass. 66, 71-72 (2006). See Bowers v. Board of Appeals of Marshfield, 16 Mass. App. Ct. 29, 33 & n.5 (1983).[16] As difficult as it is to establish extraordinary circumstances warranting relief, doing so by a preponderance of the evidence provides a sufficient basis for the judge to exercise the discretion afforded under the catchall provision.

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in fact require a showing by clear and convincing evidence. "Since neither the fraud nor misrepresentation is presumed, the moving party has the burden of proving by clear and convincing evidence that the alleged fraud or misrepresentation exists and that [the party] is entitled to relief." Reporters' Notes to Rule 60, Mass. Ann. Laws Court Rules, Rules of Civil Procedure, at 1244 (LexisNexis 2020). See Arto, Inc. v. DiFruscia, 5 Mass. App. Ct. 513, 518 (1977).

[16] A rule 60 (b) (6) motion must also be brought "within a reasonable time." Mass. R. Civ. P. 60 (b). See Owens, 448 Mass. at 71, 74-77.

Because the judge applied the incorrect standard, we accord no deference to his decision to deny the rule 60 (b) (6) motion. Nonetheless, remand is unnecessary. See Gabbidon v. King, 414 Mass. 685, 686 (1993) ("It is well established that, on appeal, we may consider any ground apparent on the record that supports the result reached in the lower court"); Casavant v. Norwegian Cruise Line, Ltd., 76 Mass. App. Ct. 73, 78 (2009), S.C., 460 Mass. 500 (2011) ("While a remand is often necessary when a judge applies the improper legal standard, we conclude that in the circumstances presented here, a remand on this issue is neither practical nor necessary"). The only claim in the mother's motion was that her due process rights had been violated by the delays and interruptions in the proceedings. Because it is evident, as discussed infra, that the mother failed to show a violation of her due process rights or any extraordinary circumstances warranting relief from judgment, we affirm the order denying the motion.

3. Due process. In proceedings to terminate parental rights, "[d]ue process is satisfied by providing notice and an opportunity to be heard." Adoption of Talik, 92 Mass. App. Ct. at 375 n.9. See Adoption of Simone, 427 Mass. 34, 39 (1998), quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (parents must be afforded "an opportunity to be heard 'at a meaningful time and in a meaningful manner'"). Parents also have a

statutory and constitutional right to counsel. See G. L. c. 119, § 29; Department of Pub. Welfare v. J.K.B., 379 Mass. 1, 4-5 (1979).

The mother asserts that the significant delays and interruptions during the proceedings violated her due process rights. The mother is correct that trial dates were juggled, including the first day of trial, which was delayed several times; that certain hearings began later in the day than scheduled; and that the time allowed for testimony on certain dates was limited. The result, according to the mother, was a confusing and chaotic trial that prevented her from testifying fully and denied her the opportunity to be heard. She also complains of the six-year delay between the initiation of the care and protection proceedings and the issuance of the judge's findings of fact.

While these delays in completing the trial were regrettable, they did not amount to a deprivation of due process. We recognize that "an extraordinary and prejudicial delay in custody proceedings, not attributable to the parents, in some circumstances could rise to the level of a violation of due process." Care & Protection of Martha, 407 Mass. 319, 330 (1990). However, the mother has not shown that the delays in the proceedings prejudiced her, or that "the outcome of this case would have been different had the proceedings occurred more

expeditiously." Adoption of Don, 435 Mass. 158, 170 (2001). The mother fails to acknowledge that her own tardiness, recalcitrance, and absences played a substantial role in delaying the proceedings, making it impossible to complete her testimony.[17] Furthermore, throughout the proceedings the mother was represented by competent counsel, who was present at every hearing and notified the mother of trial dates in advance by telephone and by mail. Contrast Adoption of Jacqui, 80 Mass. App. Ct. 713, 718 (2011). We discern no denial of the mother's due process rights and, therefore, no error in the denial of her motion for a new trial.[18]

Conclusion. We affirm the decrees terminating the mother's parental rights to the children and the order denying the motion for a new trial.

So ordered.

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[17] We acknowledge the mother's distrust of the department and of the court system based on her past experiences. We also commend the judge for the tremendous courtesy, patience, and respect shown to the mother notwithstanding her sometimes challenging conduct throughout the proceedings.

[18] We discern no merit in the mother's perfunctory claims that she was entitled to relief for "mistake, inadvertence, surprise, or excusable neglect," or because "the judgment is void." Mass. R. Civ. P. 60 (b) (1), (4), 365 Mass. 828 (1974).