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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-282

Filed: 4 October 2016

Buncombe County, Nos. 08 JT 366, 368

IN THE MATTER OF: A.M-M., M.M-M.

Appeal by respondent from judgments entered 4 January 2016 by Judge Ward D. Scott in Buncombe County District Court. Heard in the Court of Appeals 7 September 2016.

*Hanna Frost Honeycutt, for Buncombe County Department of Social Services, petitioner-appellee.*

*Amanda Armstrong for guardian ad litem.*

*Edward Eldred for respondent-appellant.*

TYSON, Judge.

Respondent appeals from judgments terminating her parental rights to her son, A.M-M., and daughter, M.M-M. We affirm.

I. Procedural Background

The Buncombe County Department of Social Services (“DSS”) filed petitions and alleged A.M-M. and M.M-M. were neglected juveniles on 31 October 2008 and 22 February 2011. Each time, the juveniles were adjudicated neglected, but both children were ultimately returned to Respondent’s custody. On 21 December 2012,

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DSS filed juvenile petitions alleging the two children were neglected and dependent juveniles. Both children were adjudicated to be neglected and dependent on 9 April 2013 and were placed into the legal custody of DSS. Following a permanency planning hearing on 20 March 2014, the court amended the permanent plan from reunification to adoption. On 13 May 2014, DSS filed petitions to terminate Respondent's parental rights ("TPR"). In response to the petitions, Respondent was assigned court-appointed counsel for the termination proceedings on 20 May 2014.

Respondent hired her own attorney, who entered an appearance on 1 April 2015. After a number of continuances, the trial court convened the hearing on the TPR petitions on the morning of 4 September 2015. Respondent's attorney moved for a continuance, and cited inadequate time to prepare due to her own trial schedule, as well as her need for an interpreter to communicate with her client. Counsel further stated she had met with Respondent the previous evening and recognized "there were things not done appropriately . . . [and] subpoenas which I was not aware of."

DSS opposed the continuance. The trial court denied the motion, but directed the parties to return to the courtroom at 2:00 p.m. that afternoon. Before adjourning, the court conducted an inquiry of Respondent regarding the release of her court appointed attorney. Respondent, through the court interpreter, indicated she understood the proceedings and consented to the withdrawal of the court-appointed attorney.

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The hearing commenced at 3:33 p.m. DSS called one witness, a social worker assigned to the case, whom Respondent cross-examined until the court paused the hearing at 4:55 p.m. The hearing resumed nearly three weeks later at 11:02 a.m. on 24 September 2015. Respondent continued cross-examination of the social worker, and DSS completed its presentation of evidence. Respondent testified on her own behalf until recess of court at the end of the day. The court scheduled the hearing to resume on 22 October 2015.

Respondent failed to appear for the hearing on 22 October 2015 and her attorney moved to continue the hearing. The court denied the motion, but allowed Respondent's counsel to introduce exhibits into evidence. The court closed the evidence and rendered a judgment terminating Respondent's parental rights.

Respondent appeared before the court later that day and the trial court, with consent of the parties, allowed Respondent's motion to reopen the evidence. Respondent completed her testimony and additionally offered the testimony of her husband. After the conclusion of the hearing, the court terminated Respondent's parental rights and subsequently filed written judgments, one for each child, on 4 January 2016. Respondent filed timely notices of appeal from each judgment.

II. Issue

The sole issue before us is whether the trial court erred by denying Respondent's motion to continue to permit her attorney to arrange foreign language

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interpreter services to assist counsel in representing her. She contends the court's decision deprived her of the right to effective assistance of counsel. We disagree.

III. Standard of Review

“Ordinarily, a motion to continue is addressed to the discretion of the trial judge and the court's ruling will not be disturbed absent a gross abuse of discretion.” *In re D.Q.W.*, 167 N.C. App. 38, 40, 604 S.E.2d 675, 676 (2004) (citations omitted). “However, if ‘a motion to continue is based on a constitutional right, then the motion presents a question of law which is fully reviewable on appeal.’” *Id.* at 40-41, 604 S.E.2d at 677 (citing *State v. Jones*, 342 N.C. 523, 530-31, 467 S.E.2d 12, 17 (1996)). Because Respondent contends the trial court's denial of the motion to continue violated her constitutional right to effective assistance of counsel, we conduct a full *de novo* review.

IV. Analysis

The court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile. Continuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.

N.C. Gen. Stat. § 7B-1109(d) (2015).

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“The right to effective assistance of counsel includes, as a matter of law, the right of client and counsel to have adequate time to prepare a defense.” *In re Bishop*, 92 N.C. App. 662, 666, 375 S.E.2d 676, 679 (1989) (citing *State v. Maher*, 305 N.C. 544, 550, 290 S.E. 2d 694, 697-98 (1982)). To establish a trial court’s failure to grant a continuance amounts to a constitutional violation of the right to counsel, a party must show “how his case would have been better prepared had the continuance been granted or that he was materially prejudiced” by its denial. *State v. Covington*, 317 N.C. 127, 130, 343 S.E.2d 524, 526 (1986).

To determine whether a failure to grant a continuance rises to constitutional consequence, the reasons presented for the requested continuance are of particular importance. *In re D.Q.W.*, 167 N.C. App. at 42, 604 S.E.2d at 677. This Court affirmed the trial court’s denial of the respondent’s motion to continue his termination of parental rights hearing, after the respondent did not explain why his counsel had not been provided adequate time to prepare, or what specifically counsel hoped to accomplish during the continuance. *Id.* at 41, 604 S.E.2d at 677.

The record shows Respondent retained counsel, who entered an appearance on 1 April 2015, and appeared with Respondent at a permanency planning hearing on 22 May 2015, four months before the initial calendar call of the TPR hearing and five months before its final determination.

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Even after the trial court denied the motion to continue, the case was delayed until after 3:30 that afternoon, allowing counsel further time to meet with Respondent. The case was continued for three more weeks until 24 September 2015. Respondent and her counsel were afforded additional and ample time to prepare for cross-examination of DSS's witness, to prepare her own testimony, and, secure her own witnesses.

At the close of court on 24 September, the trial court held the case over until 22 October 2015. Respondent failed to appear at the outset and call of the hearing. Her counsel was allowed to introduce exhibits into evidence. After the trial concluded and the order entered, Respondent and her husband appeared in court. The trial judge reopened the matter, and allowed both to testify. Based upon the record before us, we conclude Respondent has failed to demonstrate prejudice or how her case would have been better prepared or a different result obtained had the continuance been granted.

Respondent does not cite or argue any evidence, defenses, or testimony she was foreclosed from presenting as a result of the court's denial of her motion to continue to show any constitutional violation.

V. Conclusion

Respondent has failed to show how her case would have been better prepared or a different result reached, had her motion for a continuance been granted.

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Respondent and her counsel were allowed many opportunities over months to confer and prepare for trial. Her arguments are overruled.

The court did not err by denying Respondent's motion for a continuance. The judgments terminating Respondent's parental rights are affirmed.

AFFIRMED.

Judges BRYANT and ZACHARY concur.

Report per Rule 30(e).