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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-205

Filed: 5 September 2017

Forsyth County, No. 15 JT 15

IN THE MATTER OF: A.J.S.

Appeal by respondent-father from order entered 9 November 2016 by Judge Laurie Hutchins in Forsyth County District Court. Heard in the Court of Appeals 10 August 2017.

*Assistant County Attorney Theresa A. Boucher for petitioner-appellee Forsyth County Department of Social Services.*

*Michael E. Casterline for respondent-appellant father.*

*Smith Moore Leatherwood LLP, by Carrie A. Hanger and Ellis Martin, for guardian ad litem.*

BRYANT, Judge.

Where the trial court did not abuse its discretion in denying respondent-father's motion for a continuance, and respondent-father was not prejudiced thereby, we affirm the order terminating respondent-father's parental rights.

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In January 2015, the Forsyth County Department of Social Services (“DSS”) filed a juvenile petition alleging that six-day-old A.J.S. (“Alex”)<sup>1</sup> was dependent. At the time of his birth, Alex tested positive for opiates, cocaine, and cannabinoid and was placed in the NICU at Forsyth Regional Medical Center. Alex’s mother informed DSS that she did not know who Alex’s father was, that she could not care for Alex, and that she had no relatives able to do so. DSS obtained nonsecure custody of Alex and placed him in a licensed foster home. At the nonsecure custody hearing on 30 January 2015, Alex’s mother stated that respondent-father was Alex’s biological father, but failed to provide DSS with a proper spelling of his name.

On 4 March 2015, the trial court allowed a DSS motion to amend the petition to include an allegation that Alex was neglected. DSS continued to try to locate respondent-father, but was unable to do so prior to the adjudication hearing on 18 March 2015.<sup>2</sup> By order entered 20 April 2015 and amended order entered 8 May 2015, Alex was adjudicated neglected and dependent. Respondent-father was ordered to cooperate with paternity testing and, if determined to be Alex’s father, to complete a case plan.

Alex’s mother relinquished her parental rights to Alex on 7 December 2015. On 6 January 2016, DSS filed a petition to terminate the parental rights of

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<sup>1</sup> A pseudonym is used to protect the identity of the juvenile pursuant to N.C. R. App. P. 3.1(b) (2017).

<sup>2</sup> By the time of this hearing, DSS had determined the proper spelling of respondent-father’s name.

respondent-father as well as the rights of putative father John Doe on the grounds of neglect, failure to establish paternity, and abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (5), (7) (2015). After the petition was filed, DSS discovered that respondent-father was an inmate in federal prison in Virginia.

The petition first came on for hearing on 10 June 2016. DSS made a motion to continue in order to allow for time to serve putative father John Doe by publication. In addition, respondent-father's counsel notified the court that counsel had made contact with respondent-father, and he requested a paternity test. The matter was continued until 27 July 2016.

At the next hearing, respondent-father's attorney made a motion to continue to provide more time to conduct the paternity test. Counsel represented to the court that the federal prison system was requesting a court order to perform the testing. The court agreed to provide the order and continued the case until 22 August 2016.

At that subsequent hearing, DSS informed the court it was only going forward with the termination of John Doe's parental rights, in order to allow respondent-father additional time to complete paternity testing. DSS asserted, "[i]f [respondent-father] turns out to be the father then we'll uhm, reconvene and have a hearing as to him." At the conclusion of the hearing, the trial court terminated the parental rights of the putative father John Doe. Respondent-father's hearing was continued until 14 October 2016.

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At that hearing, respondent-father's counsel again made a motion to continue, seeking additional time to complete paternity testing. Counsel informed the court that respondent-father had a new caseworker who informed counsel that there was no contractor that could currently perform the DNA testing. DSS opposed the motion, noting that respondent-father "has had no contact with this child who was born in January 2015 and has been in the custody of DSS since January of 2015 . . . ." The trial court denied respondent-father's motion, but continued the case for one week because the guardian *ad litem* was not present.

On 21 October 2016, the case was again called for hearing. Respondent-father's counsel made another motion to continue, which was denied. On 9 November 2016, the trial court entered an order terminating respondent-father's parental rights on the grounds of neglect and failure to establish paternity. Respondent-father filed timely notice of appeal.

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Respondent-father's sole argument is that the trial court erred by denying his motion to continue. We disagree.

Pursuant to N.C. Gen. Stat. § 7B-1109, "[c]ontinuances that extend beyond 90 days after the initial [termination] 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).

“A trial court’s decision regarding a motion to continue is discretionary and will not be disturbed on appeal absent a showing of abuse of discretion. Continuances are generally disfavored, and the burden of demonstrating sufficient grounds for continuation is placed upon the party seeking the continuation.” *In re C.J.H.*, 240 N.C. App. 489, 492–93, 772 S.E.2d 82, 86 (2015) (quoting *In re J.B.*, 172 N.C. App. 1, 10, 616 S.E.2d 264, 270 (2005)). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* at 492–93, 772 S.E.2d at 86 (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)).

Respondent-father argues the trial court abused its discretion in denying his motion to continue. He emphasizes the importance of establishing paternity and asserts the trial court should not have proceeded to termination until paternity testing was completed. However, at the time of the termination hearing, the termination petition had been pending for more than nine months. The case had already been continued on multiple occasions in order to allow respondent-father to submit to paternity testing, but as found by the trial court in its termination order, there was still no “reasonable plan to accomplish” any testing. Under these

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circumstances, the trial court's denial of respondent-father's motion was clearly "the result of a reasoned decision." *Id.* at 493, 772 S.E.2d at 86 (citation omitted).

Moreover, respondent-father has not shown that he was prejudiced by the trial court's order. *See In re D.W.*, 202 N.C. App. 624, 627, 693 S.E.2d 357, 359 (2010) ("[T]he denial of a motion to continue . . . is sufficient grounds for the granting of a new trial only when the [appellant] is able to show that the denial was erroneous and that he suffered prejudice as a result of the error." (second alteration in original) (quoting *State v. Rogers*, 352 N.C. 119, 124, 529 S.E.2d 671, 675 (2000))). If respondent-father was determined not to be Alex's father, the termination of his nonexistent rights would be immaterial. But even assuming, *arguendo*, that he was found to be Alex's father, there was still incontrovertible evidence supporting at least one ground for terminating his parental rights. It is not disputed that respondent-father failed to take any of the actions listed in N.C. Gen. Stat. § 7B-1111(a)(5),<sup>3</sup> and

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<sup>3</sup> The "actions listed" in N.C.G.S. § 7B-1111(a)(5) are as follows:

The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights, done any of the following:

- a. Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human Services; provided, the petitioner or movant shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and the Department's certified reply shall be submitted to and considered by the court.
- b. Legitimated the juvenile pursuant to the provisions of G.S. 49-10, G.S. 49-12.1, or filed a petition for this specific purpose.

this Court has made clear that “the provisions of section 7B-1111(a)(5) are applied strictly, without regard to the respondent-father's knowledge of the minor child[.]” *In re M.A.I.B.K.*, 184 N.C. App. 218, 223, 645 S.E.2d 881, 885 (2007).

Accordingly, we find the trial court properly denied respondent-father’s motion to continue. The court’s decision was supported by reason, and respondent-father was not prejudiced by the denial of his motion. The order terminating respondent-father’s parental rights is affirmed.

AFFIRMED.

Judges HUNTER, JR., and MURPHY concur.

Report per Rule 30(e).

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- c. Legitimated the juvenile by marriage to the mother of the juvenile.
  - d. Provided substantial financial support or consistent care with respect to the juvenile and mother.
  - e. Established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding.

N.C.G.S. § 7B-1111(a)(5)a.–e. (2015).