

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE M.H. :
Minor Child : No. 110396
[Appeal by Mother] :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: August 5, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-17914799

Appearances:

Brian A. Smith Law Firm, L.L.C., and Brian A. Smith, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Joseph C. Young, Assistant Prosecuting Attorney, *for appellee.*

KATHLEEN ANN KEOUGH, P.J.:

{¶ 1} Mother-appellant, appeals from the trial court's decision granting permanent custody to the Cuyahoga Department of Children and Family Services ("CCDCFS" or "the agency"). For the reasons that follow, we reverse the juvenile court's decision and remand for further proceedings.

{¶ 2} In September 2017, CCDCFS filed a complaint alleging that M.H. was a dependent child and requesting temporary custody. After a hearing on December 6, 2017, the juvenile court adjudicated the child dependent and granted temporary custody to the agency. On August 18, 2018, CCDCFS filed a motion to modify temporary custody to permanent custody. In June 2019, mother requested that the trial court grant legal custody to M.H.'s paternal aunt. On March 27, 2020, mother filed another motion requesting that the trial court grant legal custody to M.H.'s paternal aunt.

{¶ 3} On March 12, 2021, the juvenile court considered the agency's motion for permanent custody and mother's motion for legal custody to the paternal aunt. Prior to the start of the hearing, counsel for mother requested a continuance because mother had given birth the week prior and was feeling ill. Counsel also stated that she was surprised that paternal aunt was not present because she had been very responsive, showed great interest in gaining legal custody of M.H., and that counsel had the impression that she would be attending the hearing. The state objected, noting that the case had been pending since August 2018 and that neither paternal aunt nor mother made appearances at prior hearings. The trial court denied counsel's request for a continuance, stating:

I'm not going to continue this. This thing's been pending for some time and [paternal aunt]'s not here, mom's not here. So we're [going to] go forward * * *."

(Tr. 6.) Prior to the first witness testifying, paternal aunt appeared for the hearing. Despite her appearance, the motion to continue was not revisited.

{¶ 4} At the hearing, both Ebony Wright, a social worker for CCDCFS who was assigned to mother and child, and M.H.'s guardian ad litem commended paternal aunt's willingness to take custody of M.H., but recommended that it would be in the child's best interest if the juvenile court granted the agency's motion for permanent custody. Paternal aunt testified that she currently has legal custody of M.H.'s two biological brothers, has a loving relationship with M.H., and has a good, communicative relationship with mother. Although there were concerns whether paternal aunt's home could accommodate another child, she explained that she could readjust the sleeping arrangements or just obtain a larger home.

{¶ 5} Following the evidentiary hearing, the juvenile court granted the agency's motion for permanent custody of M.H. and denied mother's request for legal custody to paternal aunt. Despite the juvenile court stating on the record that it would outline its reasons for each ruling in its journal entry, the court issued a general order, only reiterating the applicable R.C. 2151.414 statutory factors.

{¶ 6} Mother now appeals, raising two assignments of error.

{¶ 7} In her first assignment of error, mother contends that the trial court abused its discretion in denying her request for a continuance of the permanent custody hearing.

{¶ 8} "The grant[ing] or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge. An appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion." *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981); *Fitworks Holding*,

L.L.C. v. Sciranko, 8th Dist. Cuyahoga No. 90593, 2008-Ohio-4861, ¶ 4. Courts should consider the following objective factors when ruling on a motion for a continuance:

the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the [requesting party] contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case.

Unger at 67-68.

{¶ 9} “There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” *Unger* at 67, quoting *Ungar v. Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964). “Weighed against any potential prejudice to a defendant are concerns such as a court’s right to control its own docket and the public’s interest in prompt and efficient dispatch of justice.” *Unger* at *id.*

{¶ 10} In this case, counsel requested a continuance because mother had given birth six days before the hearing and was experiencing illness as a result. Nevertheless, the court denied the continuance at the request of the state. We find this decision was an abuse of discretion because it was unreasonable to expect mother to be medically able to attend a court hearing after being hospitalized for the birth of a child during the middle of a pandemic. Accordingly, the request for the

continuance was for a legitimate reason and was not dilatory, purposeful, or contrived.

{¶ 11} Furthermore, the length of the continuance was not discussed and there was no indication on the record that mother had requested other continuances. Finally, considering that termination of parental rights is the family law equivalent to the death penalty in a criminal case, a brief continuance in this matter for mother to attend the hearing to either rebut the testimony presented against her or support the motion for legal custody would not be unreasonable. The *Unger* factors weighed in favor of granting a continuance.

{¶ 12} Accordingly, we find that the trial court abused its discretion in denying mother's request for a continuance of the permanent custody hearing. Finding merit to mother's first assignment of error, her second assignment of error challenging the trial court's decision granting the agency permanent custody is hereby rendered moot. The trial court's decision is reversed and the case is remanded to the trial court for a new hearing on the state's request for permanent custody and mother's motion for legal custody to paternal aunt.

{¶ 13} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27
of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
MARY EILEEN KILBANE, J., CONCUR

