[Cite as *In re Al.C.*, 2011-Ohio-6315.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of: Al.C., Ar.C., W.C., H.C.

Court of Appeals Nos. L-11-1148
L-11-1161

Trial Court No. JC 09193710

DECISION AND JUDGMENT

Decided: December 9, 2011

* * * * *

Dan M. Weiss, for appellants.

Jeremy G. Young and Shelby J. Cully, for appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} This is a consolidated appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, that terminated the parental rights of appellants "mother" and "father" and granted permanent custody of all four children to appellee Lucas County Children Services ("LCCS"). For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} On April 28, 2009, appellee filed a complaint in dependency, neglect and abuse and a request for shelter care hearing regarding the appellants' minor children Al.C., Ar.C., W.C. and H.C. An emergency hearing was held and the trial court awarded temporary custody of the children to appellee. On December 31, 2009, the trial court filed a judgment entry finding Al.C. and Ar.C. abused, neglected and dependent, and finding W.C. and H.C. neglected and dependent.

{¶ 3} On November 24, 2010, appellee filed a motion for permanent custody of the four children. An attorney was appointed for each parent. On February 10, 2011, when father requested new counsel, the trial court appointed attorney Dan Weiss to replace attorney Charles Rowell. The pretrial hearing date was continued to allow time for all attorneys to prepare. At the pretrial hearing on February 24, 2011, appellant father again requested new counsel; the trial court dismissed father's attorney and appointed attorney Amy Stoner as his counsel. The permanent custody hearing date was then rescheduled to accommodate Attorney Stoner's schedule, with the first of two days of testimony to begin on May 13, 2011.

{¶ 4} On May 9, 2011, however, Attorney Stoner filed a motion to withdraw as father's counsel. In support of her request, counsel stated that a "complete breakdown" in the attorney/client relationship had occurred and that it had become "unreasonably difficult" for her to carry out her responsibilities. Counsel stated that when she was appointed to represent father on February 24, 2011, she asked father to schedule an appointment with her to review the case. When father did not respond, counsel repeated

the request via letters sent in February, March and April. On March 14, 2011, father called Ms. Stoner's office with the names of potential witnesses. Father stated that it was counsel's responsibility to contact LCCS to get the witnesses' addresses and commented, "[D]oesn't any attorney in Toledo do their job?" Father then stated he was referring Ms. Stoner to the bar association grievance committee, although he did not explain why. By letter dated March 30, 2011, counsel again asked father to contact her office to schedule an appointment to either discuss the case or confirm his desire for her to withdraw as counsel.

{¶ 5} Hearing was held on counsel's motion on May 10, 2011. Counsel stated that she had not heard from father until the date of the hearing. Father then complained at length that Ms. Stoner had failed to contact him or return his calls and stated that he had "[done his] part as a client." The trial court responded that counsel had an excellent reputation with the court and that the court would not "subject her to this."

{¶ 6} The trial court stressed that, in light of the children's overriding need for permanency, the age of the case and father's prior difficulties with court appointed counsel, the permanent custody hearing would not be delayed further. The court then informed father he had three options: he could represent himself, hire new counsel, or allow Ms. Stoner to remain on the case. After much discussion, father then scheduled an appointment with Ms. Stoner for the following day. The court affirmed the May 13, 2011 hearing date.

{¶ 7} Hearing commenced on May 13, 2011. Then on May 20, 2011, the second day of the hearing, father informed the court that he wanted Ms. Stoner to be removed and stated that he would represent himself. The trial court granted father's request but asked counsel to remain in case father had questions or needed advice.

{¶ 8} The hearing concluded on May 20, 2011. In its judgment entry filed June 16, 2011, the trial court awarded permanent custody of all four children to appellee LCCS.

{¶ 9} Appellants set forth the following sole assignment of error:

{¶ 10} "The Trial Court's decision to deny a continuance of the permanent custody trial combined with its stance of Father-Appellant's counsel's request to withdraw was unreasonable, arbitrary, unconscionable, and an abuse of discretion."

{¶ 11} Appellants assert that the need for a continuance was legitimate and was not caused by any "dilatory, purposeful, or contrived reason" that could be attributed to appellants. They argue that they were in need of a reasonable continuance "to allow counsel and father to meet and appropriately review all evidence, testimony and documentation."

{¶ 12} It is not clear whether appellants believe a continuance should have been granted when Attorney Stoner requested leave to withdraw on May 10, 2011, or when father indicated his desire to proceed pro se ten days later on the second day of hearing. What is clear from the record, however, is that neither father nor mother ever requested a continuance.

{¶ 13} Further, we find that the options which the trial court presented to father at the May 10, 2011 hearing as summarized above were reasonable in light of the duration of the case and the nature of the case, as well as father's history of dissatisfaction with various appointed counsel.

{¶ 14} Juv.R. 23 states that "continuances shall be granted only when imperative to secure fair treatment for the parties." Further, "[t]he power of a trial court in a juvenile proceeding to grant or deny a continuance under Juv.R. 23 is broad and is reviewed under an abuse of discretion standard." *In re Jordan B*., 6th Dist. No. L-06-1161, 2007-Ohio-2537, ¶ 16. See, also, *State v. Thompson*, 6th Dist. No. WD-06-034, 200-Ohio-2665, ¶ 38. Consequently, "[a]n appellate court will not find error 'unless it clearly appears, from all the facts and circumstances, that there has been an abuse of discretion, operating to the prejudice of the party in the final determination of the case.'" *State v. Sipes*, 5th Dist. No. CA-A-04-0014, 2008-Ohio- 6627, ¶ 62, quoting *Garrett v. Garrett* (1977), 54 Ohio App.2d 25, 34. See, also, *Blakemore v. Blakemore* (1984), 5 Ohio St.3d 217.

{¶ 15} Nevertheless, the right of due process requires that "a defense counsel be afforded the reasonable opportunity to prepare his case." *State v. Sowders* (1983), 4 Ohio St.3d 143, 144. The Supreme Court of Ohio has recognized: ""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.'" *State v. Unger* (1981), 67 Ohio St.2d 65, 67, quoting *Ungar v. Sarafite* (1964), 376 U.S. 575, 589.

{¶ 16} Having examined all the facts and circumstances that existed at the time of the proceedings in question, we cannot find that the trial court abused its discretion. Again, neither mother nor father specifically asked for a continuance. Moreover, appellants have not demonstrated any actual prejudice resulting from the lack of a continuance. Although appellants insist on appeal that they were entitled to a continuance, they have still not identified or even alleged that there is any particular evidence, argument, or defense that they were unable to present at trial due to the purported lack of additional preparation time. The record does reflect, however, that father failed to schedule an appointment with attorney Stoner despite being asked to do so after she was appointed as his counsel on February 24, 2011, and that father failed to respond to the follow-up letters attorney Stoner sent him during February, March and April.

{¶ 17} Based on the foregoing, we are unable to find that the trial court abused its discretion by insisting that the trial proceed as scheduled. Accordingly, appellants' sole assignment of error is not well-taken.

{¶ 18} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellants.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _______________________________
JUDGE

Thomas J. Osowik, P.J.

Stephen A. Yarbrough, J. _______________________________
CONCUR. JUDGE

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.