IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest of S.W. and N.W., persons under eighteen years of age. M.W., Appellant, v. State of Utah, Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060840-CA F I L E D (February 15, 2007) 2007 UT App 50

Third District Juvenile, West Jordan Department, 178673
The Honorable C. Dane Nolan

Attorneys: Gary L. Bell, South Jordan, for Appellant
Mark L. Shurtleff and Carol L.C. Verdoia, Salt Lake City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Appellant M.W., the children's father, appeals the termination of his parental rights.

Issues concerning the denial of M.W.'s motion for substitute counsel are governed by In re C.C., 2002 UT App 149, 48 P.3d 244. In C.C., this court stated:

> [W]e hold that for the statutorily-provided right to counsel in termination proceedings to be meaningful, juvenile courts, like their district court counterparts in criminal cases, must explore whether there is any validity to an indigent parent's expressed complaints and determine whether the parent's "relationship with his or her appointed attorney has deteriorated to the point that sound discretion requires substitution or

> even to such an extent that his or her . . . right to counsel would be violated but for substitution." This must be done "[e]ven when the [juvenile court] judge suspects that the [party]'s requests are disingenuous and designed solely to manipulate the judicial process and delay the trial."

Id. at ¶10 (citation omitted). The trial court's determination should be governed by the "good cause" standard. Id. at ¶14. "Good cause exists for providing substitute counsel whenever the court uncovers a 'conflict of interest, a complete breakdown in communication[,] or an irreconcilable conflict which lead to an apparent unjust verdict.'" Id. We considered issues regarding dissatisfaction with counsel in In re R.H., 2003 UT App 154, 71 P.3d 616. Although concluding that the juvenile court erred in failing to inquire about the reasons for dissatisfaction with counsel, we held that the failure to inquire was harmless error because "[t]he record on appeal clearly established that good cause did not exist for substitute counsel." Id. at ¶17. "Thus, the juvenile court's error in failing to adequately inquire into [the parent's] dissatisfaction with counsel was harmless." Id.

Based upon a review of the record, we conclude that the juvenile court conducted an adequate colloquy to explore M.W.'s claim of dissatisfaction with his appointed counsel. The colloquy was thorough and afforded M.W. an adequate opportunity to explain his reasons. The court addressed any specific complaints regarding motions or argument that M.W. believed his counsel should have made. The court stated that M.W.'s refusal to communicate with counsel was his own choice. The court made detailed findings on the grounds for dissatisfaction, also finding that the motion was based in part on a desire to delay the proceedings. M.W. stated that he would communicate with counsel if ordered to do so by the court. The court ordered M.W. to communicate with counsel during the trial and talk to him about the witnesses he wanted to present and questions he wanted counsel to ask. However, after the denial of the motion to appoint substitute counsel, M.W. decided not to remain at the trial. In a second colloquy, the court advised M.W. about the trial process, the State's burden of proof, and his inability to assist counsel if he was not present. The court made findings regarding M.W.'s demeanor, mental capacity, and competency, concluding his waiver of the right to be present at trial was voluntary. Counsel cross-examined the State's witnesses, called M.W.'s therapist and M.W. as witnesses, introduced evidence, and argued the defense case. Based upon the record, M.W. has not established that a complete breakdown of communication existed, except as a result of his own voluntary decision. Even after indicating that he would communicate with counsel if ordered to do so, and after the court ordered him to do just that, M.W.

elected to leave the trial and consented to have counsel proceed in his absence.

We conclude that the colloquy into the reasons for dissatisfaction with counsel was adequate. Alternatively, when viewed in the context of M.W.'s voluntary refusal to communicate with appointed counsel, his voluntary decision to leave the trial, and counsel's performance at trial, any error in conducting the colloquy was harmless.

M.W. challenges the finding that he was likely to be incarcerated and would be unable to provide long-term stability to his children. This finding was based upon the reasonable inference that because M.W. faced numerous pending felony and misdemeanor charges, it was likely that he would be incarcerated or on probation for a lengthy period of time. Even assuming that the court could not make this reasonable inference, the remaining unchallenged findings were adequate to support the grounds for termination.

M.W.'s final claim is that application of rule 58 of the Utah Rules of Appellate Procedure will violate his constitutional right to a meaningful appeal if he is not allowed a full briefing. M.W. does not provide any factual or legal analysis for his constitutional claim. The Utah Supreme Court has addressed a general challenge to the appellate rules governing child welfare cases. See In re B.A.P., 2006 UT 68, 148 P.3d 934. Petitioners in that case argued that the appellate rules, including rule 58, denied them an opportunity to adequately present their appeals. The supreme court concluded that "[t]here is nothing in the rules that precludes an appellant from presenting cogent, concise legal arguments to an appellate court or that precludes a meaningful appeal." Id. at ¶20. M.W.'s claim is equally unpersuasive.

We affirm the termination of parental rights. Counsel for M.W. filed a motion to withdraw, contending that he should not be required to brief the issues relating to his own ineffectiveness if this case goes to full briefing. Based upon our affirmance without further briefing, we do not consider the motion to withdraw.

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Pamela T. Greenwood,
Associate Presiding Judge

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Judith M. Billings, Judge

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James Z. Davis, Judge