IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest of A.S. and S.S., persons under eighteen years of age. _____ C.S., Appellant, v. State of Utah, Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090586-CA F I L E D (October 8, 2009) 2009 UT App 289

Second District Juvenile, Farmington Department, 173779
The Honorable J. Mark Andrus

Attorneys: Matthew L. Nebeker, Layton, for Appellant
Mark Shurtleff and John M. Peterson, Salt Lake City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Greenwood, Thorne, and Davis.

PER CURIAM:

C.S. (Grandmother) appeals the juvenile court's order terminating her guardianship and placing her two grandchildren into the custody of the Division of Child and Family Services. We affirm.

Grandmother first asserts that the juvenile court failed to conduct a proper inquiry regarding her complaints about her appointed counsel and, as a result, improperly denied her substitute counsel. "'Whether to appoint a different lawyer for an indigent defendant who expresses dissatisfaction with [her] court-appointed counsel . . . is a matter committed to the sound discretion of the trial court and will be reversed only for an abuse of discretion.'" In re R.H., 2003 UT App 154, ¶ 9, 71 P.3d 616 (omission in original) (quoting State v. Pursifell, 746 P.2d 270, 272 (Utah Ct. App. 1987)).

Guardians are granted a statutory right to counsel in child welfare proceedings. See Utah Code Ann. § 78A-6-1111(1)(a) (2008). The right to counsel encompasses not just the presence of an attorney, but the effective assistance of counsel. See In re R.H., 2003 UT App 154, ¶ 11.

> An integral part of the right to the effective assistance of counsel is the opportunity to have substitute counsel appointed when necessary and, to that end, to have the court explore a party's complaints regarding the assistance his or her attorney has provided to determine if substitute counsel is indeed necessary.

Id. Accordingly, when a guardian complains about appointed counsel, a juvenile court "must explore whether there is any validity to an indigent [client's] expressed complaints and determine whether the [client's] relationship with his or her appointed attorney has deteriorated to the point that sound discretion requires substitution." Id.

In determining whether substitute counsel is necessary, the juvenile court must apply the "good cause" standard. See In re C.C., 2002 UT App 149, ¶ 14, 48 P.3d 244. "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 leads to an apparent unjust verdict.'" Id. (quoting State v. Lovell, 1999 UT 40, ¶ 31, 984 P.3d 382).

The juvenile court gave Grandmother ample opportunity to explain her dissatisfaction with appointed counsel. The juvenile court prompted her to identify specific instances leading to her complaints. Grandmother identified three particular complaints: that counsel told her she could not submit a letter to the court; that she had difficulty finding counsel's new office after a move; and that she frequently reached only an answering machine when she called. Grandmother acknowledged that she did ultimately find the office and had met with counsel twice in the week prior to the hearing, and also that counsel returned her phone calls.

The juvenile court determined that Grandmother's rather minor complaints did not rise to a level warranting substitute counsel. Other than the three specific complaints, Grandmother expressed only a vague dissatisfaction with her attorney. Although Grandmother asserts that the juvenile court's inquiry was insufficient to discover the facts necessary to make a determination for new counsel, she did not specify any additional

facts or complaints that the juvenile court should have considered. The record demonstrates that the court asked appropriate questions and encouraged Grandmother to identify any issues she had with counsel. The juvenile court conducted a proper inquiry into Grandmother's complaints and did not abuse its discretion in denying new counsel.

Grandmother also asserts that the juvenile court erred in finding that she waived her right to counsel. A finding of waiver of a statutory right to counsel is proper if the record as a whole reflects the parent or guardian's "reasonable understanding of the proceedings and awareness of the right to counsel." In re A.E., 2001 UT App 202, ¶ 12, 29 P.3d 31. Here, the record shows that Grandmother had a reasonable understanding of the proceedings and knew of her right to counsel.

Grandmother had an understanding of the nature of the proceedings. She had participated in the mediation process, discussing the issues at hand. She understood that there was an upcoming trial to determine the remaining issues in the petition for custody. She had been represented by appointed counsel throughout the proceedings until her own spontaneous request to move forward pro se. The record establishes that she clearly was aware of her right to counsel and that she had a reasonable understanding of the proceedings. Accordingly, the juvenile court did not err in finding that she waived her right to counsel.

Affirmed.

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Pamela T. Greenwood,
Presiding Judge

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William A. Thorne Jr.,
Associate Presiding Judge

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James Z. Davis, Judge