

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-113

JULY TERM, 2019

In re A.T., Juvenile
(A.T., Mother*)

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
}
} DOCKET NO. 27-2-16 Frjv

Trial Judge: John L. Pacht

In the above-entitled cause, the Clerk will enter:

Mother appeals from the termination of her parental rights in A.T. She argues that she was denied her right to testify at the termination-of-parental rights (TPR) hearing. We affirm.

Parents have several children, including A.T. who was born in August 2010. A.T. has cystic fibrosis, a life-threatening disease that requires daily, focused, and consistent care. In January 2016, A.T. was hospitalized due to his seriously deteriorating health. Shortly thereafter, the Department for Children and Families filed a petition alleging that A.T. was a child in need of care or supervision (CHINS) due to serious medical neglect. Mother stipulated that A.T. was CHINS and admitted that she made medical decisions that were not in A.T.'s best interests. A.T.'s health stabilized after coming into DCF custody, and his medical status significantly improved. The court's disposition order had a concurrent goal of reunification with either parent or adoption with an initial goal date of December 2017, later extended to June 2018.

In August 2018, DCF moved to terminate parents' residual rights. Following a two-day hearing, the court granted its request. At the outset of its decision, the court recounted parents' participation at the TPR hearing. It explained that parents were present for part of the first hearing day, staying through father's testimony that day. After the lunch break on the first day, parents' attorneys informed the court that parents wanted to voluntarily relinquish their residual parental rights. The court gave parents time to further discuss this decision and sign any necessary documents. After the documents were signed, the court engaged in a colloquy with parents. While mother's colloquy went smoothly, the court was concerned, among other things, that father might not understand the finality of his decision. The court asked the parties to consider their decisions overnight and inform the court of their decision the following morning; the proceedings on the second day were not due to commence until 1:00 pm. After this discussion with the court, parents stated that they would not be able to stay for the afternoon session of the first day of the hearing because they needed to get their other children. The court informed the parties that the hearing would go forward as there were witnesses present to testify. Parents left knowing that the hearing would continue.

The following morning, the court received an email stating that parents did not want to voluntarily relinquish their rights but that they could not get to the hearing. The court allowed parents to call and listen in to the hearing. Parents knew the hearing would commence at 1:00 pm. Parents did not call in at 1:00, however, and phone calls to parents initially went unanswered. Parents did call in at approximately 1:45 pm but they announced that their other children would be home from school shortly and they did not want to be on the phone when they arrived. Apparently, parents' other children arrived home sooner than expected and parents hung up their phones at approximately 2:00 pm. The court found that, as parents were aware, the hearing continued and it concluded later that afternoon.

After reciting this procedural history, the court made numerous findings and conclusions regarding the merits of the TPR petition, most of which we do not recite here. The court found that, while in parents' care, A.T. experienced severe neglect, developmentally, behaviorally, and most importantly, medically. During the time A.T. was in DCF custody, parents made no progress in meeting the case plan goals. They demonstrated no ability to consistently meet A.T.'s complex medical needs and made no progress in understanding how their medical neglect put A.T. at serious risk of harm. Parents were in no better position to attend to A.T.'s daily needs than they were at the time of the CHINS petition. The court explained that parents never progressed to supervised, let alone unsupervised, visitation with A.T. in their home. They showed no interest in better understanding A.T.'s needs. Three years had passed with no discernable progress and the court found no basis to conclude that this would change. For these and other reasons, the court concluded that termination of parents' rights was in A.T.'s best interests.

Mother argues on appeal that she was denied her due process right to testify on her own behalf. See *In re R.B.*, 152 Vt. 415, 421 (1989) (stating that in TPR proceeding "all the parties involved are to be accorded a fair hearing, and their constitutional and other legal rights recognized and enforced" (quotation omitted)). According to mother, she "had direct, never amended notice from the court that the hearing would extend to three days and that she would have the opportunity to testify." Mother complains that the hearing concluded on the second day "without any effort by the court to safeguard [her] due process right to testify."

We reject mother's argument. The court did state on the first hearing day, in discussing how long the case might take, that it would need a third hearing day because the court was no longer available to hear the case the following morning. Not long thereafter, however, the court indicated that the length of trial was a "moving target," and that it would take at least the rest of the first day and a second day of trial. Parents chose to leave for the afternoon portion of the first day.

Mother voluntarily absented herself on the second hearing day and the court allowed her to call into the hearing. The court informed counsel that it did not imagine that mother would be able to testify on the phone if there was an objection, but if either the State or mother's counsel wanted mother to testify, the court would "figure out a way to make that occur." Mother later called in and listened to a short portion of the hearing that afternoon. Mother's attorney was present throughout the hearing. When the court asked mother's attorney if she planned to call anyone, she responded, "I don't think my client wants to testify." Counsel added that mother was "obviously not available" that afternoon. After the State rested, the court asked if there was "anything else anyone wants to do," to which mother's attorney responded "no." The court asked this question again and received the same response. Several months later, the court issued its written decision. During the period between the hearing and the decision, neither mother nor her counsel moved to reopen the evidence to allow mother to testify.

The record does not support mother's assertion that her due process rights were violated, and we reject her assertion that she "had direct, never amended notice from the court that the hearing would extend to three days." Mother was never noticed for a third hearing day. In fact, as reflected above, the court made clear that the length of the proceedings was subject to change. While the court indicated it would figure out a way to allow mother to testify if she so chose, mother's counsel informed the court of her understanding that mother did not want to testify. Mother made no request to testify during her limited participation in the TPR proceedings, nor did she make such a request after learning that the hearing had been completed. Mother was neither promised, nor entitled, to a third hearing day. Mother fails to show that her due process rights were violated.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice