

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. 2019-409

APRIL TERM, 2020

In re M.G. & P.G., Juveniles	}	APPEALED FROM:
(R.G., Father* & B.B., Mother*)	}	
	}	Superior Court, Addison Unit,
	}	Family Division
	}	
	}	DOCKET NOS. 39/40-4-18 Anjv
		Trial Judge: Alison S. Arms

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

Parents appeal from the termination of their rights in M.G. and P.G. They argue that the court abused its discretion in denying their motion to continue the termination hearing. We affirm.

M.G. was born in March 2016; P.G. was born in December 2017. The children were placed in the custody of the Department for Children and Families (DCF) in April 2018. Parents stipulated that, due to their substance use, the children needed care and supervision. An August 2018 case plan required parents to abstain from substance use, engage in treatment, sign releases, establish safe and stable housing, and demonstrate an ability to safely parent. In March 2019, DCF moved to terminate parents' rights.

Parents were provided notice of the termination hearing, which was held in October 2019. Parents did not appear. At the outset of the hearing, which began in the afternoon, father's attorney stated that he had been informed by parents that they had no transportation. Parents sought to continue the hearing to another scheduled hearing date the following week. Parents told their attorneys that they had "new evidence" but they did not identify any. Counsel argued that there would be no prejudice from delaying the hearing and indicated that, during this time, counsel could discuss voluntary relinquishment with parents. The State opposed the motion. It explained that it was prepared to go forward with the hearing and noted that the hearing had been scheduled for a long time with ample notice provided to all parties. The State added that parents were not engaged in the case plan, they had been inconsistent in visiting the children, and one week earlier, parents had failed to attend a hearing on a motion to suspend their visitation. The children joined the State in opposing the motion to continue.

The court denied parents' request, finding it untimely and unsupported by any verifiable evidence. The court noted that parents had been aware of the hearing date for some time and they could have identified the transportation issue sooner than the start of the afternoon hearing. The court explained that it was required to ensure timely permanency for the children. Father's counsel then asked the court to leave the evidence open through the following week to allow for a possible voluntary relinquishment or the presentation of evidence from parents. The court denied the

request for the same reasons stated above, emphasizing the vague, unsupported, and untimely nature of parents' request. The hearing then proceeded and concluded that day.

The court subsequently issued an order terminating parents' rights. It found that parents struggled with sobriety throughout the case and continued to do so. They were not engaged with DCF and they had not signed appropriate releases. Mother was discharged from the Lund Home for substance abuse. Parents were suspected of being under the influence during visitation. As noted above, parents were inconsistent in visiting the children and visits were suspended in July 2019 based on concerns about parents' substance use and the effect that parents' inconsistency was having on the children. Visitation was suspended again just before the October 2019 termination hearing because parents had not attended visits in almost two months. Parents did not attend the hearing on the motion to suspend visitation. Ultimately, the court found that parents' lack of progress represented a material change in circumstances warranting modification of the disposition order. It emphasized that the children were quite young and had been in foster care much of their lives. They were doing well in their foster homes and they needed and deserved permanency as quickly as possible.

Turning to the statutory best-interest factors, the court concluded, among other things, that parents had a nominal relationship with the children; the children were well-adjusted to their foster homes; parents could not resume parenting the children within a reasonable time; and they had not provided the children with emotional support or affection. It found termination of parents' rights in the children's best interests. This appeal followed.

Parents do not challenge the merits of the court's termination decision. Instead, they argue that the court erred in denying their motion to continue. They contend that a continuance would have allowed them to present their case and they assert that the court should have accepted the reason they offered for their absence at face value. Parents assert that the children would not have been harmed by a week's delay. They analogize their case to In re D.H., 2017 VT 71, ¶ 12, 205 Vt. 281, where we reversed the trial court's denial of a motion to continue.

As parents' acknowledge, the trial court has discretion in ruling on a motion to continue and the party claiming error "must show that the court failed to exercise its discretion, or that its discretion was exercised for reasons clearly untenable or to an extent clearly unreasonable." Id. ¶ 11. We "will not set aside a discretionary ruling if there is a reasonable basis for the lower court's action." In re L.R.R., 143 Vt. 560, 562 (1983).

The court provided reasonable grounds for its decision here. It was not required to accept parents' transportation excuse at face value, but even doing so, the court found the request—made late in the afternoon on the day of the hearing—to be untimely. Moreover, parents here were not engaged in the case plan, they had not visited the children in several months, and they had failed to attend another significant hearing the week before. They did not, and have not, identified any evidence that they would have presented had the hearing been continued. Under all of these circumstances, the court reasonably concluded that the hearing should go forward to ensure that the juveniles received permanency in a timely fashion.

This case is readily distinguishable from In re D.H., 2017 VT 71. In In re D.H., the trial court denied a mother's request for a thirty-minute recess to allow her to appear for a termination hearing. We reversed given "the unique circumstances" of the case. Id. ¶ 12. The mother there made her request at the outset of a three-day termination proceeding and we found that her appearance could have been quickly secured. More importantly, the mother had been "actively involved throughout the proceedings below" and she had attended and participated in almost all of

the seventeen prior hearings. Id. ¶ 14. Additionally, the mother “consistently attended visits with the children and was well-bonded with them.” Id. “This was not a case,” we explained, “where the parent demonstrated a complete lack of interest or involvement in the proceedings.” Id. We concluded that the brief delay requested by the mother would have been minimally disruptive and it would have allowed her to “to testify regarding her participation in treatment, her progress toward the case plan goals, and her strong relationship with the children—evidence that the family court did not have before it when it rendered its decision.” Id. ¶¶ 12-13.

As recounted above, we are faced with much different circumstances here. This is a case where parents were not engaged in the case plan, did not consistently visit the children, had not seen the children for several months by the time of the termination hearing, and had failed to appear at another very recent hearing. The court did not abuse its discretion in denying parents’ untimely motion to continue.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice