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IN THE
COURT OF APPEALS OF INDIANA

IN RE Paternity of
A.M.: Bianca Teamer,
Appellant-Respondent,

v.

Theophilus Muhammad,
Appellee-Petitioner

May 26, 2022

Court of Appeals Case No.
21A-JP-2261

Appeal from the Marion Superior
Court

The Honorable Marshelle
Broadwell, Judge

Trial Court Cause No.
49D16-2104-JP-2931

May, Judge.

[1] Bianca Teamer (“Mother”) appeals the trial court’s denial of her motion to correct error in a paternity action filed by Theophilus Muhammed (“Father”)

regarding custody and support of A.M. (“Child”). Mother presents multiple arguments, which we consolidate and restate as whether the trial court abused its discretion when it denied her motion to correct error because it should have granted her motions to continue the final paternity hearing. We affirm.

Facts and Procedural History

[2] Mother gave birth to Child on August 2, 2012. Shortly after Child was born, Mother and Father executed a paternity affidavit acknowledging Father is the biological father of Child. The parties did not, until the instant proceedings, pursue a formal custody or support order. Child lived with Mother, and Father exercised parenting time every Friday, Saturday, and Sunday “once [Child] started . . . first or second grade[.]” (Tr. Vol. II at 52.)

[3] In early April 2021, Mother informed Father she intended to relocate to Dallas, Texas with her husband (“Stepfather”) and Child “on April 16, 2021 or April 17, 2021[.]” (App. Vol. II at 15.) On April 13, 2021, Father, via counsel, filed an “Emergency Verified Petition to Establish Paternity, Custody, Support and Parenting Time and Verified Request for Temporary Restraining Order Preventing Relocation of the Child from Indiana Pending Hearing.” (*Id.* at 14) (original formatting omitted). In that petition, Father alleged:

8. That [Stepfather] has a history of domestic abuse against [Mother] in the presence of Child and that the Indiana Department of Child Services has previously opened a CHINS [Child in Need of Services] case as a result of said abuse against [Mother].

9. That as part of the aforementioned CHINS case, [Mother] was ordered to dissolve her marriage to [Stepfather] and that, to date, [Mother] has not done so.

10. That in 2019, [Stepfather] abused her in the presence of the Child which resulted in [Mother] suffering a broken leg.

* * * * *

12. That [Father is] gravely concerned for the safety and wellbeing of Child while the Child is in the care and custody of [Mother] while [Mother] still resides with [Stepfather].

13. That [Father does] not believe it is in the best interest of the Child to relocate to Texas with [Mother] and [Stepfather] due to [Mother's] extensive history of abuse from [Stepfather] in the presence of the Child.

(*Id.* at 15.) Father additionally requested in his petition that the trial court issue “a Temporary Restraining Order preventing relocation of the Child[,]” (*id.*), and that the trial court schedule an emergency hearing on the matter. Mother moved to Texas as scheduled.

[4] On April 14, 2021, the trial court scheduled an initial hearing on Father’s petition for April 21, 2021. On April 19, 2021, Mother filed a counterpetition to establish paternity, custody, and child support. On the same day she also filed her response to Father’s petition and a motion to vacate the April 21, 2021, hearing, arguing “an emergency does not exist[,]” Father’s allegations regarding Stepfather are untrue, and “Father has failed to raise any concerns

about the safety and wellbeing of [Child] for three thousand-one hundred-seventy-six (3176) days, or eight (8) years and two hundred-fifty-six (256) days.” (*Id.* at 27-8.) Attorneys C. Matthew Zentz and Thomas Roberts entered their appearance on Mother’s behalf.

[5] Father filed his objection to Mother’s motion to vacate the April 21, 2021, hearing. On April 20, 2021, the trial court converted the April 21, 2021, hearing to an attorney conference. On April 21, 2021, the trial court set a provisional hearing for June 22, 2021. On May 27, 2021, Father filed a motion for the appointment of a guardian ad litem (“GAL”). The trial court approved Father’s request for a GAL on June 2, 2021. On June 22, 2021, the parties filed an agreed entry that allowed Child to remain in Mother’s primary physical custody until the final hearing, granted Father specific summer parenting time, outlined the details of travel therefor, and ordered Father to reimburse Mother for Child’s summer camp and piano lessons. The trial court scheduled the final hearing on the parties’ petitions for September 8, 2021.

[6] On August 31, 2021, Mother filed a motion to continue the September 8, 2021, hearing, arguing she “just found out that [her] attorney, Zentz Law, resigned.” (*Id.* at 49.) Mother claimed she “was not notified nor included when this decision was made” and needed “additional time to hire new representation.” (*Id.*) On the same day, Father objected to Mother’s motion to continue, arguing:

5. That the undersigned [Father’s counsel] contacted the office of [Mother’s] counsel telephonically on August 31, 2021 and was

informed by the receptionist that [Mother's] counsel had sent a ten-day notice of withdrawal to [Mother] on August 25, 2021 which should have put [Mother] on notice that she needed to hire new counsel roughly two (2) weeks before the Final Hearing.

6. That the GAL filed her Guardian ad Litem Report with the Court on August 2, 2021.

7. That the GAL recommends [Father] have primary physical custody and [Mother] have parenting time pursuant to the Indiana Parenting Time Guidelines based in part on the following urgent matters:

a. The GAL's serious concerns regarding [Stepfather] and the fighting [Child] is exposed to in [Mother's] home.

b. That in the less than three (3) months that [Mother] has moved to Texas, [Mother] and [Child] have already stayed in a hotel after a fight between [Mother] and [Stepfather].

c. [Child's] concerns regarding instances of verbal and physical abuse by [Stepfather] against [Mother] in the presence of [Child] as well as instances of verbal abuse by [Stepfather] against [Child].

(*Id.* at 51-2.)

[7] On September 1, 2021, Mother's attorneys, Zentz and Roberts, filed their motion to withdraw their appearance on Mother's behalf. They attached the

letter sent to Mother on August 16, 2021, in which Zentz¹ indicated his intention to withdraw from Mother’s case within “10 days from the date of this letter” because “there has been a breakdown of the attorney client relationship” and “there has been a misrepresentation of the material facts related to your matter[.]” (*Id.* at 57.) The trial court granted the attorneys’ request to withdraw on September 2, 2021.

[8] The trial court held the final hearing on September 8, 2021. Mother was not represented by counsel, and she orally requested a continuance. A dialogue between Mother and the Court regarding this continuance ensued:

[Mother]: Oh my gosh. Uhm, I was trying to like, uh request, you Honor, a motion of continuance. Uhm, my – our attorney, uhm I just found out last week that he resigned and I tried to submit –

* * * * *

[Court]: Okay. And what’s the basis of your motion to continue?

[Mother]: Okay, Uhm, our attorney – I just found out last week that he resigned. He did not call. I had called him mid-August uhm to speak with him about my case. The office manager said that she would put me on the calendar or the schedule and he would get back with me. I didn’t hear anything

¹ Mother does not argue that she did not receive notice that Roberts also intended to withdraw, and Zentz stated in his letter to Mother “after my appearance has been officially withdrawn, you alone are responsible for representing yourself in Court[.]” (*Id.* at 58.)

for about a week. Last week I called to, you know, to try to get some information to talk to him about the upcoming cases – or the court date is coming and she said that she put mail in the check – a check in the mail and she sent some paperwork in the mail and that he would call later that afternoon. I never received a phone call, and I received uhm this package in the mail which states that he has resigned. I had no clue that he resigned.

* * * * *

[Court]: So I know I saw a copy of that letter. That letter was sent to you on August 16th. It was filed with the Court on September 1st. The letter mentions the issue of the check being sent. So it appears to me that you've known for at least three (3) weeks that your attorney was going to withdraw. At no time –

[Mother]: Uhm –

[Court]: Hang on, I'm talking now. I'll let you – I'll let you respond. You did not file a motion to continue the hearing uhm after he withdrew that I know of. It's like there was one that you filed, let's see, on August 31st, it was denied. I don't know that anything has changed since August 31st until now.

[Mother]: Okay, may I speak?

[Court]: Yes.

[Mother]: Okay, uhm, this letter that I have in my hand that I just got out of my mailbox last week is dated August the 25th. He says, "I plan to withdraw from your case ten (10) days from the date of this letter. I am informing you of the following." And he has a list of uh reasons why that he withdrew. I immediately – as soon as I got this, I immediately went online to try to file a

motion for continuance myself. It was denied. The next day, uh September 2nd is when he officially withdrew his appearance. That's what the documentation says online. I just found out about this.

* * * * *

[Court]: Well, but also, I denied the continuance on August 31st, that was a week ago, and I don't know that anything has changed since the denial of the motion to continue that I denied before.

[Mother]: I don't know, all I know is the lawyer must be lying. I uh – uhm - do you see where he withdrew his appearance that's dated September the 2nd online? I just got this. I have phone calls, I have phone records of my uhm communication with him, I have this letter in my hand that'd dated August 25th and he said he planned to withdraw from this case ten (10) days from now.

[Court]: Right. And he did, and I signed the Order on September 2nd, but the letter he sent appears to have been sent quite some time before that.

[Mother]: No, ma'am, I did not – he didn't send me, there was no communication at all from him. I tried to call him, I left messages and the uhm – the uhm – with the office manager and she said that she would put me on the calendar. I sent an email over there to them as well. I had no clue, they just – I was dropped last – I just found out last week. And I've been calling and scrambling around to try to find – a list of new attorneys that I have in my inbox that we're trying – trying to, you know, hire to get some representation.

[Court]: All right ma'am –

[Mother]: This is not fair.

[Court]: Ma'am, you were aware of the denial of the motion to continue – of the motion to continue that was –

[Mother]: Yes. I was and I immediately got on the phone and tried to get lawyers. Everybody is telling me it's too soon, we can't make a case on Wednesday.

* * * * *

[Court]: Okay. Ma'am, the motion –

[Mother]: I just –

[Court]: - to continue is denied, ma'am, the motion to continue is denied.

(Tr. Vol. II at 7-11.)

[9] The hearing proceeded, with Mother acting pro se. During the hearing, Mother was able to cross-examine witnesses, sometimes with the aid of the judge; she was able to object to exhibits as they were offered and argue regarding why she thought they were inadmissible; and she made a closing argument and a reply to Father's closing argument.

[10] On September 9, 2021, the trial court entered a paternity order in which the court granted Father primary physical custody. The trial court awarded Mother parenting time pursuant to the Indiana Parenting Time Guidelines. The trial

court also ordered Mother to pay Father \$38 per week in child support and provided parameters for Child's medical care, travel arrangements, and counseling. On October 4, 2021, Mother, via counsel,² filed an affidavit and motion to correct error, arguing the trial court relied on erroneous information when it denied both her written and oral motions to continue because:

- a. On September 1, 2021, prior counsel filed his motion to withdraw and attached to said motion was prior counsel's 10-day letter dated August 16, 2021. The letter went via 1st class U.S. mail to: [Mother's former address in Indianapolis]
- b. Prior counsel stated in his motion to withdraw that Mother's last known address is [Mother's address in Dallas].
- c. Mother never received the letter dated August 16, 2021 from her prior attorney as it was mailed to her prior residence and not her Dallas, Texas residence.
- d. On August 25, 2021, prior counsel mailed Mother his intent to withdraw to Mother's correct address – See Exhibit A.
- e. Upon receiving prior counsel's letter to withdraw from the post office on August 30, 2021, Mother immediately called prior counsel's office and was informed that the letter was sent out twice as it was erroneously sent to the wrong address.

² Mother obtained new counsel on September 22, 2021.

f. Mother filed for a continuance of hearing on August 31, 2021 a day after receiving the letter.

g. On September 2, 2021, the Court granted prior counsel's motion to withdraw – 7 days after prior counsel mailed the August 25, 2021 notice to Petitioner and approximately 3 days after Mother received her prior counsel's intent to withdraw letter.

h. As Mother did not receive the August 25, 2021 letter until August 30, 2021, she had 9 days in which to find legal assistance. Mother actually had less time, due to the Labor Day weekend.

(App. Vol. II at 62.) Mother outlined the firms she contacted and indicated some did not call her back or they indicated they could not be adequately prepared by the September 8, 2021, hearing date. Additionally, Mother asserted:

10. Although it may be understandable that prior counsel accidentally filed the wrong letter with the Court as to when [he] notified Mother of his intent to withdraw, that accident was detrimental to Mother's right to be represented by counsel at the September 8, 2021 hearing.

11. Mother believes that had the Court been aware that the letter was not mailed to her at her Dallas, Texas residence on August 25, 2021 and received by her on August 30, 2021, the Motion for a Continuance would have been granted.

12. As the issues [sic] of custody of a minor child is involved, Mother should be given the opportunity to present her case with legal representation.

(*Id.*)

[11] Father filed his objection to Mother's motion to correct error, asserting:

13. [Mother] concludes her Motion to Correct Error alleging that had the Court been aware that the ten-day letter was not mailed to her Dallas residence until August 25, 2021 and received by her on August 30, 2021, the Motion to Continue would have been granted; however, as indicated herein, the Court was in fact aware of the correct mailing date and receipt date when the Court denied [Mother's] Motion to Continue and was still aware of the same when [Mother] orally requested a continuance at the final hearing by virtue of [Mother] testifying as to the correct mailing and receipt dates that had already been indicated in both parties' previous pleadings and which the Court considered prior to denying the continuance in the first instance. In essence, an error never occurred for the Court to now correct.

(*Id.* at 69.) On October 14, 2021, the trial court denied Mother's motion to correct error.

Discussion and Decision

[12] We review a trial court's decision regarding a motion to correct error for an abuse of discretion. *Inman v. Inman*, 898 N.E.2d 1281, 1284 (Ind. Ct. App. 2009). An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances that were before the court. *Id.* Determining whether the court abused its discretion when it denied the motion to correct error requires that we review the propriety of the trial court's

underlying judgment. *In re Guardianship of M.N.S.*, 23 N.E.3d 759, 766 (Ind. Ct. App. 2014).

[13] Here, that judgment is the denial of Mother’s motion to continue. Our standard of review regarding a trial court’s decision on a motion to continue is well-settled:

The decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court. *Riggin v. Rea Riggin & Sons, Inc.*, 738 N.E.2d 292, 311 (Ind. Ct. App. 2000). We will reverse the trial court only for an abuse of that discretion. *Id.* An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion. *Id.* However, no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial. *Id.*

Rowlett v. Vanderburgh Cnty. Ofc. of Family & Children, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. Further, “denial of a continuance based on the withdrawal of counsel may be error when the moving party is free from fault and his rights are likely to be prejudiced by the denial.” *Koors v. Great Southwest Fire Ins. Co.*, 530 N.E.2d 780, 783 (Ind. Ct. App. 1988) (abrogated on other grounds by *Martin v. Amoco Oil Co.*, 679 N.E.2d 139 (Ind. Ct. App. 1997)) (internal citations omitted), *reh’g denied*.

[14] Mother argues she “is free from fault” in Zentz’s decision to withdraw his representation of her because “she was unaware of what the material misrepresentation of facts” Zentz referred to in his withdrawal notice. (Br. of Appellant at 13-4.) Mother also asserts she was diligent in her attempts to find

replacement counsel but was unable to hire a new attorney because those she contacted either did not call her back or did not feel they could be adequately prepared for the hearing on September 8, 2021. Additionally, Mother contends the trial court’s denial of her motions to continue was “prejudicial to Mother’s fundamental rights in the care, custody and control of the minor child.” (*Id.* at 14.)

[15] Mother relies primarily on *Koors*, in which we held the trial court abused its discretion when it denied defendant Hedrick’s motion to continue.³ *Koors*, 530 N.E.2d at 783. *Koors* involves litigation wherein Koors and a number of other investors alleged certain investments were sold by Hedrick, the officer and

³ Like the dissent, we acknowledge our Indiana Supreme Court’s decision in *Ramirez v. State*, -- N.E.3d --, 21S-CR-373 (Ind. 2022). We find the *Ramirez* opinion informative, though ultimately distinguishable from the case before us. First, as noted in *Ramirez* and in our majority opinion, a party must demonstrate prejudice in order for this court to find an abuse of discretion in the trial court’s denial of a motion to continue. *Id.* at *6 (citing *Gibson v. State*, 43 N.E.3d 231, 236 (Ind. 2015)). In *Ramirez*, the prejudice was significant – despite his best efforts, Ramirez’s counsel was denied the opportunity to investigate new allegations disclosed the day before trial. *Id.* at *5. This prejudiced Ramirez because he was unable to depose the alleged victim and other witnesses about these allegations, which included arguably more serious allegations that would likely change Ramirez’s defense strategy. Based thereon, our Indiana Supreme Court reversed the trial court’s denial of Ramirez’s motion to continue and remanded for a new trial. *Id.* at *8.

Our Indiana Supreme Court’s holding in *Ramirez* is inapposite, though it does reinforce the legal tenet that a litigant appealing the denial of a motion to continue must show prejudice, as we have noted *supra*. First, in the case before us, Teamer created the situation which resulted in her former counsel’s withdrawal from the case – specifically that there had “been a breakdown of the attorney client relationship” and there had “been a misrepresentation of the material facts related to this matter.” (App. Vol. II at 57.) Additionally, Teamer did not demonstrate prejudice from of the trial court’s denial of her motion to continue as required by precedent. As we stated *supra*, Teamer was permitted to cross examine witnesses, raise objections to exhibits, and present argument. Teamer did these actions often with the assistance of the trial court. *See, i.e.*, Tr. Vol. II at 12 (trial court prompts Teamer to explain the reason for her objection); *Id.* at 21 (trial court changing Teamer’s statement into a question after opposing counsel’s objection); *Id.* at 29 (same); *Id.* at 74 (explaining to Teamer that she has the right to testify on her behalf but doing so would subject her to cross examination). Further, while in her brief Teamer asserted she was prejudiced by the denial of her motions to continue, she did not proffer explanation regarding those alleged prejudices. Therefore, unlike in *Ramirez*, where the prejudice was well-established, the trial court in this case properly denied Teamer’s motions to continue.

director of the Brown County Ski Mountain Resort, in violation of the Indiana Securities Act. *Id.* at 781. Hedrick’s attorney notified Hedrick approximately fourteen days prior to a hearing on summary judgment that he would be withdrawing from Hedrick’s case because of a conflict of interest, specifically that the attorney “knew the corporate attorney that had been hired to secure approval of the sale of the investment notes from the Indiana Securities Commissioner.” *Id.* at 781-2. The trial court granted the motion to withdraw. *Id.* at 782.

[16] Hedrick obtained replacement counsel one day prior to the scheduled hearing. *Id.* Replacement counsel requested a continuance, which the trial court denied. *Id.* The trial court held the summary judgment hearing as scheduled, and neither Hedrick nor his replacement counsel appeared. *Id.* Shortly thereafter, the trial court entered summary judgment in favor of the investors and ordered Hedrick to pay \$584,448.82 in damages. *Id.* at 781.

[17] Hedrick appealed, arguing the trial court abused its discretion when it denied his motion to continue based on his counsel’s withdrawal and his subsequent inability to obtain counsel that could be adequately prepared for the summary judgment hearing. *Id.* at 783. Our court agreed, noting that Hedrick was not at fault for his counsel’s withdrawal, because it stemmed from a conflict of interest. *Id.* Additionally, the trial court noted that neither Hedrick nor his replacement counsel were present at the summary judgment hearing, which resulted in a large judgment against Hedrick. Our court held:

By denying the continuance, the trial court was in effect forcing [Hedrick's counsel] to review and digest from Virginia, over a period of less than three days, the numerous pleadings, motions, memoranda, depositions and answers to interrogatories which had been filed in a complicated case over a year's time. . . . [T]he result of the denial of [Hedrick's counsel's] motion for a continuance was to deprive Hedrick of representation at a crucial stage of the proceedings. [Hedrick's counsel] was not only unable to prepare for the hearing, but might well have found it impossible to be physically present on such short notice [because counsel lived in Virginia]. He did telephone his request for a continuance on two occasions prior to the hearing and filed a written motion for a continuance. A continuance should have been granted, even if only for a short period of time. A postponement of the hearing was not so prejudicial to the Investors to justify denying Hedrick his day in court.

Id. at 783-4.

[18] The case before us is distinguishable. Here, Mother's counsel withdrew because of "a breakdown of the attorney client relationship" and "a misrepresentation of material facts" by Mother. (App. Vol. II at 57.) While Mother claims on appeal that she does not know what she misrepresented, a client's maintenance of her relationship with her attorney and her representation of facts to her attorney is at least partially in her control, unlike the conflict of interest in *Koors*. Further, while Mother claims she was prejudiced by the denial of her motions to continue, she does not explain what that prejudice may be or how a continuance would have cured it. During the hearing, Mother was able to cross-examine witnesses, sometimes with the assistance of the judge; raise objections to exhibits, some of which the trial court

sustained; and make closing arguments. The trial court also gave Mother substantial leeway in terms of inserting narrative into her cross-examination of witnesses. Based thereon, we conclude the trial court did not abuse its discretion when it denied Mother's motion to continue because even if Mother was not at fault for her lack of counsel at the final hearing, she has not demonstrated that she was prejudiced by the denial. *See Matter of L.C.*, 659 N.E.2d 593, 597 (Ind. 1995) (holding no prejudice in denial of motion to continue because pro se litigant was able present argument, make objections, and cross-examine witnesses).

Conclusion

[19] Because Mother has not demonstrated prejudice, the trial court did not abuse its discretion when it denied Mother's motions to continue. Accordingly, the trial court did not abuse its discretion when it denied Mother's motion to correct error, and we affirm.

[20] Affirmed.

Pyle, J., concurs.

Brown, J., dissents with opinion.

I N T H E
C O U R T O F A P P E A L S O F I N D I A N A

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Brown, Judge.

[21] I respectfully dissent and would conclude that the trial court abused its discretion by denying Mother’s motion for a continuance. The Fourteenth Amendment to the United States Constitution “protects the traditional right of parents to establish a home and raise their children.” *In re G. Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009), *reh’g denied*. “[A] parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). The parent-child relationship is “one of the most valued relationships in our culture.” *Id.* (quoting *Neal v. DeKalb Cnty. Div. of Family & Children*, 796 N.E.2d 280, 285 (Ind. 2003)).

[22] The United States Supreme Court has addressed the issue of continuances by stating:

The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel.

Contrariwise, a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality. 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.

Ungar v. Sarafite, 376 U.S. 575, 589, 84 S. Ct. 841, 849-850 (1964) (citations omitted), *reh'g denied*. “[A]mong the things to be considered on appeal from the denial of a motion for continuance, we must consider whether the denial of a continuance resulted in the deprivation of counsel at a crucial stage in the proceedings.” *Hess v. Hess*, 679 N.E.2d 153, 154 (Ind. Ct. App. 1997) (citing *Homehealth, Inc. v. Heritage Mut. Ins. Co.*, 662 N.E.2d 195, 198 (Ind. Ct. App. 1996), *trans. denied*). *See also Ramirez v. State* (filed April 27, 2022), Ind. No. 21S-CR-373, slip op. at 5 (holding that a fair proceeding must afford attorneys an adequate amount of time to prepare an effective defense). The denial of a continuance based on the withdrawal of counsel may be error when the moving party is free from fault and the party’s rights are likely to be prejudiced by the denial. *Hess*, 679 N.E.2d at 154.

[23] The record reveals that Child lived with Mother since birth. On August 31, 2021, Mother filed a motion to continue after receiving a letter from her counsel dated August 25, 2021, at her Dallas address indicating his intent to withdraw from the case. While the letter mentioned there had been a breakdown of the attorney-client relationship and a “misrepresentation of the material facts related to your matter,” the letter did not detail any alleged misrepresentation. Appellant’s Appendix Volume II at 65. Further, the record does not reveal that the trial court questioned Mother or Mother’s counsel regarding the alleged reason for the withdrawal. In Mother’s verified affidavit and motion to correct error, she asserted that she did not receive the letter until August 30, 2021, and identified the eight law firms or attorneys which she subsequently contacted for help. Given the Labor Day holiday, there were only four business days between the date Mother filed her motion to continue on August 31, 2021, and the date of the hearing on September 8, 2021.

[24] The case required comprehension of the law with respect to the modification of custody as well as the rules of evidence and trial procedure. While the trial court offered Mother the opportunity to testify, she elected to “just make a closing remark.” Transcript Volume II at 74. Moreover, Mother presented no case-in-chief.

[25] Marion County Local Rule LR49-TR3.1-201 provides in part that “[p]ermission to withdraw shall be given only after the withdrawing attorney has given his client ten days written notice of his intention to withdraw” Ind. Trial Rule 3.1(H) provides in part that “[a]n attorney representing a party may file a

motion to withdraw representation of the party upon a showing that the attorney has sent written notice of intent to withdraw to the party at least ten (10) days before filing a motion to withdraw representation” In his argument on appeal, Father asserts that “the trial court’s denial was based on the understanding that the 10-day letter was mailed on August 25, 2021,” and “[t]his timeline aligns with Mother’s own Motion for Continuance, wherein she states that she had just learned of her counsel’s intent to withdraw ‘yesterday’ (i.e. August 30, 2021).” Appellee’s Brief at 9. Accordingly, the trial court’s September 2, 2021 grant of the request to withdraw was premature under the Marion County Local Rule, and the September 1, 2021 motion to withdraw was premature under Ind. Trial Rule 3.1(H).

[26] The trial court’s September 9, 2021 order, which granted Father primary physical custody, specified that he would not have primary physical custody until October 30, 2021. Under these circumstances, I conclude that Mother demonstrated good cause for a continuance of the hearing, this case involved at least some complexity as well as a fundamental right of Mother, she was prejudiced by the denial of her motion for a continuance, and a delay would not have prejudiced Father to an extent to justify denial of the continuance. In light of the fundamental parent-child relationship involved and the record, I would hold that the trial court abused its discretion in denying Mother’s motion to continue. *See Hess*, 679 N.E.2d at 155 (noting there was nothing in the record to show that husband intended or could foresee that counsel would withdraw at such a late hour, the record did not demonstrate dilatory tactics on the

husband's part, husband was unexpectedly without representation four days before trial, the denial of a continuance deprived husband of counsel at the most crucial stage in the proceedings, and husband presented no case-in-chief, and concluding the trial court abused its discretion when it denied husband's motion for a continuance).