

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Adoption
of L.D. (Minor child):

Q.R.,
Appellant,

v.

D.W. and L.W.,
Appellees.

August 30, 2022

Court of Appeals Case No.
22A-AD-665

Appeal from the Hamilton
Superior Court

The Honorable David K. Najjar,
Judge

Trial Court Cause No.
29D05-1903-AD-516

Bailey, Judge.

Case Summary

- [1] Q.R. (“Mother”) appeals the trial court’s order finding that her consent to the adoption of her minor child, L.D. (“Child”), by D.W. and L.W. (“Adoptive Parents”) was not required.¹ We affirm.

Issues

- [2] Mother raises the following two issues for our review:
- I. Whether the trial court abused its discretion when it denied her motion to continue.
 - II. Whether the court violated Mother’s due process rights when it did not adequately advise her of her right to an attorney.

Facts and Procedural History

- [3] Mother gave birth to Child on May 27, 2017. Shortly thereafter, the Indiana Department of Child Services (“DCS”) filed a petition alleging that Child was a Child in Need of Services based on Mother’s “mental health issues” and “drug use.” Tr. at 24. On July 18, DCS removed Child from Mother’s care and placed him with Adoptive Parents.

¹ J.D., Child’s Father, voluntarily relinquished his rights to Child and does not participate in this appeal.

[4] On March 29, 2019, Adoptive Parents filed a petition to adopt Child.

Thereafter, on July 29, 2020, Mother, represented by counsel, filed a motion to contest the adoption. On February 12, 2021, Mother’s counsel filed a motion to withdraw his appearance on the ground that Mother had not “made a payment” toward her attorney’s fees. *Id.* at 53. The court granted that motion on February 17. The court then scheduled a hearing on Mother’s motion to contest the adoption for June 30. On June 25, a second attorney entered an appearance on behalf of Mother and filed a motion to continue the final hearing in order to have “more time” to prepare. *Id.* at 65. The court granted that motion. Following discovery disputes and various motions, the court ultimately rescheduled the hearing for December 3.

[5] On November 21, Mother’s second attorney sent her a letter informing her of his intent to withdraw his appearance. The attorney stated that Mother had failed to make payments toward his fees and that there had been “numerous instances” in which he had “tried to contact” Mother or “set up meetings to discuss” her case, but that Mother had not complied. *Id.* at 136. On December 2, that attorney filed a motion to withdraw his appearance and again stated that Mother had failed to make any payments toward his fees and that Mother had “failed to meet” with him “to discuss her case.” *Id.* at 133.² The court granted the attorney’s motion to withdraw.

² The attorney initially filed a motion to withdraw on December 1, but the court denied that motion.

[6] At the December 3 hearing, Mother indicated that she had the money to pay her attorney but that she had not because she was dissatisfied with his services. Mother then informed the court that she was not prepared to proceed with the hearing because her former attorney had “all [of her] paperwork” and because none of her witnesses had been subpoenaed. Tr. at 4. And Mother stated that she would “like to hire counsel[.]” *Id.* at 12.

[7] The court then noted that the case had been on its docket for two years and voiced its concern that Mother “won’t be prepared again because either [she] won’t have an attorney or [her] attorney will have just gotten involved[and] would not have had enough time to get up to speed,” or that she would otherwise need a continuance for a different reason. *Id.* at 14. The court then stated:

if you want to hire an attorney, you’re welcome to hire an attorney. If you have the money to hire an attorney, then pay that attorney and have that attorney do that attorney’s job. And if you don’t want to have an attorney, that’s fine too. You can come in here and represent yourself as best you can. You have that right, too.

Id.

[8] However, in order to give Mother “every opportunity that [she] can to present the case that [she] would like to present,” the court granted Mother’s motion to continue. *Id.* The court reset the hearing for January 3, 2021, and informed the parties that it did not “intend to continue that date.” *Id.* at 15. And, in a

written entry, the court admonished Mother to “be prepared at the next hearing as no further continuances will be granted.” Appellant’s App. Vol. 2 at 141.

[9] At the beginning of the hearing on January 3, Mother informed the court that she was again not ready to proceed. She stated that she had hired counsel “th[at] morning” and that her new attorney was unable to be at the hearing. Tr. at 20. She further stated that her attorney had advised her to ask for a continuance. The following colloquy then occurred between the court and Mother:

THE COURT: [Mother], I’m not going to grant you a continuance. I told you that last time.

[MOTHER]: Okay.

THE COURT: We were here a month ago.

[MOTHER]: Okay.

THE COURT: And I told you back then that if you wanted to hire somebody, you needed to do that right then and there, very quickly. Because I told you when today was going to be.

[MOTHER]: You did.

THE COURT: And I told you not to show up and ask for another continuance.

[MOTHER]: You did.

Id. at 21. The court denied Mother’s motion and proceeded with the hearing as scheduled.

[10] During the hearing, Adoptive Parents presented evidence that Mother used methamphetamine while pregnant with Child, that she continues to use methamphetamine, and that she has “a long history of mental health problems[.]” *Id.* at 31. Adoptive Parents also presented evidence that Mother does not take her prescribed medication but that she “self-medicates” with methamphetamine. *Id.* at 39. And Adoptive Parents presented evidence that Mother has not completed a drug treatment program. Following the hearing, the court concluded that Mother is “unfit to be a parent” and that “dispensing with [her] consent is in [Child’s] best interest.” Appellant’s App. Vol. 2 at 16. Accordingly, the court determined that Mother’s consent was not required and denied her motion to contest the adoption.³ This appeal ensued.

Discussion and Decision

Issue One: Motion to Continue

[11] Mother first asserts that the court abused its discretion when it denied her motion to continue the January 3 hearing. The decision to grant or deny a motion for a continuance is within the sound discretion of the trial court. *F.M.*

³ The court also found that “there is no just reason for delay and expressly direct[ed] entry of final judgment against [Mother] and in favor of [Adoptive Parents]” such that its order was “a final and appealable order.” *Id.*

v. N.B., 979 N.E.2d 1036, 1039 (Ind. Ct. App. 2012). On appeal, we review the trial court’s decision only for an abuse of that discretion, “and there is a strong presumption the trial court properly exercised its discretion.”

Gunashekar v. Grose, 915 N.E.2d 953, 955 (Ind. 2009). The denial of a motion for a continuance is an abuse of discretion “only if the movant demonstrates good cause for granting it.” *Id.* A trial court “shall grant a continuance upon motion and ‘a showing of good cause established by affidavit or other evidence.’” *Id.* (quoting Ind. Trial Rule 53.5). However, “no abuse of discretion will be found when the moving party has not shown that he was prejudiced by the denial.” *F.M.*, 979 N.E.2d at 1039.

[12] Further, a party is not entitled to a continuance merely because his or her counsel withdraws. *Hess v. Hess*, 679 N.E.2d 153, 154 (Ind. Ct. App. 1997). However, “the denial of a continuance based on the withdrawal of counsel may be error when the moving party is free from fault and [her] rights are likely to be prejudiced by the denial.” *Id.* Among the things we are to consider on appeal from the denial of a continuance is whether the denial “resulted in the deprivation of counsel at a crucial stage” of the proceedings. *Id.*

[13] Mother claims that the court abused its discretion when it denied her motion to continue because she was unrepresented by counsel “at a crucial stage” of the adoption proceedings. Appellant’s Br. at 13. She maintains that her “ability to present her case effectively was significantly hampered” such that she was prejudiced by the court’s denial of her motion. *Id.* at 15. And Mother asserts

that the record does not show any dilatory tactics on her part and that a minimal delay would not have prejudiced Adoptive Parents.

[14] However, the record demonstrates that Mother was not free from fault for her lack of representation by counsel. Mother's first attorney withdrew because she failed to pay him. And Mother's second attorney withdrew from her case for two reasons, namely, because she had failed to pay for his services and because she had failed to meet with him concerning her case. On appeal, Mother does not acknowledge that her attorney withdrew in part because she failed to cooperate as a client, and she does not otherwise attempt to explain why she was without fault in that regard. As for her failure to pay, Mother contends that her "legal debt and financial hardship" resulted in an inability to pay her attorney such that she was without fault. Appellant's Br. at 13. However, at the hearing on December 3, Mother twice informed the court that she had "the money to pay" her attorney but that she did not because she was dissatisfied with his services. Tr. at 5. In other words, Mother could have paid her attorney but chose not to. Mother was not without fault for the withdrawal of her first two attorneys.

[15] Still, because her second attorney withdrew his appearance the day before the scheduled hearing, and because the court wanted to give Mother "every opportunity" to present her case, the court granted Mother's motion to continue on that date. Tr. at 14. The court continued the hearing for thirty days, advised Mother to hire an attorney if she wished, and admonished Mother that it would not continue the hearing again.

[16] But even though Mother had thirty days to hire an attorney to represent her at the January 3 hearing, and even though Mother had been expressly informed that the court would not grant an additional continuance, Mother did not hire her third attorney until the morning of the hearing. Mother did not explain to the trial court, and she does not explain now, why she waited until the morning of her scheduled hearing to hire an attorney when she had ample time to do so. And Mother made no argument to the trial court, nor does she on appeal, that thirty days was not an adequate amount of time to hire an attorney or that she had been diligent in attempting to hire an attorney before that morning. We therefore conclude that Mother was not without fault for her lack of representation by counsel at the hearing on her motion to contest the adoption.

[17] Further, Mother was able to cross-examine witnesses, raise objections, and offer her own exhibits. And she presented her own testimony and called Child's father as a witness on her behalf. As a result, we conclude that Mother has not demonstrated that she was prejudiced by the denial of her motion to continue. *See Teamer v. Muhammad (In re Paternity of A.M.)*, 189 N.E.3d 619, 627 (Ind. Ct. App. 2022) (holding that the mother had not shown that she was prejudiced by the denial of her motion to continue when she had the ability to cross-examine witnesses, raise objections, make closing arguments, and insert narrative into her cross-examinations). Because Mother was not without fault for her lack of representation and because she has not demonstrated that she

was prejudiced, we cannot say that the trial court abused its discretion when it denied Mother's motion to continue.

Issue Two: Due Process

[18] Mother next contends that the court violated her due process rights when it failed to adequately advise her of her right to be represented by counsel. Indiana Code Section 31-32-2-5 (2022) provides that “[a] parent is entitled to representation by counsel in proceedings to terminate the parent-child relationship.” And this court has held that a party's right to counsel also applies in adoption proceedings where, as here, the petitioners seek to adopt the child over the objection of one of the natural parents. *See Taylor v. Scott*, 570 N.E.2d 1333 (Ind. Ct. App. 1991), *trans. denied*. Thus, a parent whose parental rights will be terminated in an adoption proceeding have three rights: (1) the right to be represented by counsel; (2) the right to have counsel provided if she could not afford private representation; and (3) the right to be informed of the two preceding rights. *See S.R. v. M.J. (Matter of Adoption of C.J.)*, 71 N.E.3d 436, 443 (Ind. Ct. App. 2017). Here, Mother argues that the trial court violated her due process rights by not advising her of her right to counsel or her right to have counsel appointed to represent her at the hearing.

[19] We agree with Mother that, while the court informed her that she could hire an attorney or represent herself, the court did not inform Mother that she had a right to be represented by counsel or to have counsel appointed for her. However, “a violation of the right to counsel is subject to the constitutional rule of harmless error.” *Sharp v. Fields (In re Adoption of Baby W.)*, 796 N.E.2d

364, 376 (Ind. Ct. App. 2003). Here, the record reflects that Mother hired three attorneys throughout the proceedings. Indeed, when Mother's first attorney withdrew his appearance, she hired the second attorney. And, after that attorney withdrew, Mother informed the court that she would "like to hire counsel" to represent her at the final hearing. Tr. at 12. Following that hearing, Mother hired a third counsel to represent her. It was because Mother had waited until the morning of the hearing to hire the third attorney that he was unable to represent her at the hearing. Thus, even without the court's advisement of Mother's right to an attorney, Mother continued to hire her own counsel.

[20] Further, while the court did not represent to Mother that she had the right to have counsel appointed if she could not afford it, the record does not demonstrate that Mother was indigent. Indeed, even though her first and second attorneys withdrew their appearances at least in part because Mother had failed to pay them, Mother never made any argument to the trial court that she lacked the necessary funds to pay an attorney. On the contrary, she twice informed the trial court that she "ha[d] the money to pay" her second attorney but that she had not paid him because she was dissatisfied with his services. Tr. at 5. And, again, after her second attorney withdrew, Mother hired a third attorney to represent her. It was not until the day after the hearing on her motion to contest the adoption that Mother first asserted that she was indigent and requested that the court appoint an attorney to represent her.

[21] Because the only representation Mother made to the court regarding her finances prior to the hearing on her motion to contest the adoption was that she did not lack funds to pay an attorney and because she hired her own attorneys, any error in the court's failure to advise Mother of her right to counsel was harmless.

Conclusion

[22] The trial court did not abuse its discretion when it denied Mother's motion to continue. And any error in the court's failure to advise Mother of her right to counsel was harmless. We therefore affirm the trial court.

[23] Affirmed.

Bradford, C.J., and Altice, J., concur.