

STATE OF MICHIGAN
COURT OF APPEALS

In re E. R. THRUSHMAN, Minor.

UNPUBLISHED
April 19, 2016

No. 327580
Oakland Circuit Court
Family Division
LC No. 13-807927-NA

Before: O'CONNELL, P.J., and MARKEY and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court's April 15, 2015 order terminating her parental rights to the minor child. We affirm. The parental rights of the child's legal father are not at issue in this appeal.

The child was removed from respondent's care on April 26, 2013, for several reasons including respondent's homelessness, outstanding arrest warrants, physical altercations in the child's presence, and use of inappropriate language in the child's presence. Respondent pleaded no contest to the allegations in the petition and signed a parent-agency agreement that required her participation in a variety of services. Over the next year, respondent failed to make meaningful progress in those services. Consequently, on June 3, 2014, petitioner filed a supplemental petition seeking the termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). At the two-day "statutory grounds" hearing, petitioner presented the testimony of two witnesses, and each testified that respondent's participation in probation and services was poor. Conversely, respondent, who was incarcerated at the time of the hearing dates, described her progress as "leaps and bounds" and testified that she would be released from incarceration in November 2014. The hearing referee concluded that each statutory ground asserted by petitioner was supported by clear and convincing evidence. Several months later, a "best interest" hearing was held, and petitioner presented the testimony of several witnesses, each of which, again, testified that respondent failed to make sufficient progress throughout the entirety of this case. The hearing referee concluded that the termination of respondent's parental rights was in the child's best interests. Thus, on April 15, 2015, the circuit court entered an order terminating respondent's parental rights to the minor child.

On appeal, respondent does not challenge the statutory-grounds or best-interests decisions. Rather, her sole argument on appeal is that she was deprived of her constitutional right to be represented by counsel of her choice because the hearing referee abused its discretion in denying her motions for counsel to withdraw and for continuance to retain counsel on the

morning of the first day of the statutory grounds hearing. Thus, she claims, the circuit court's order terminating her parental rights should be reversed, and this matter should be remanded for further proceedings. We disagree.

A trial court's decision that a ground for termination has been proven by clear and convincing evidence and a trial court's decision that termination was in the child's best interests are both reviewed for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court's decision regarding a party's motion for counsel to withdraw and a trial court's decision regarding a party's motion for continuance to retain counsel of choice are both reviewed for an abuse of discretion. *In re Withdrawal of Attorney*, 234 Mich App 421, 431; 594 NW2d 514 (1999); *People v Echavarría*, 233 Mich App 356, 368; 592 NW2d 737 (1999). A trial court abuses its discretion when its decision falls beyond the range of principled outcomes. *People v Strickland*, 293 Mich App 393, 397; 810 NW2d 660 (2011). Constitutional issues are reviewed de novo. *In re Hamlet (After Remand)*, 225 Mich App 505, 521; 571 NW2d 750 (1997).

In termination of parental rights proceedings, a parent has the right to retain an attorney and, if financially unable to do so, the right to request and receive a court-appointed attorney as a matter of statute and court rule. *In re Powers Minors*, 244 Mich App 111, 121; 624 NW2d 472 (2002). The constitutional concepts of due process and equal protection guarantee the same. *Id.* That said, a trial court maintains discretion in deciding whether to grant a parent's motions for counsel to withdraw and for continuance to retain counsel. In the criminal context, this Court has explained that appointment of substitute counsel is warranted only upon a showing of good cause and if substitution will not unreasonably disrupt the judicial process. *Strickland*, 293 Mich App at 397. When reviewing a trial court's decision to deny a party's motions for counsel to withdraw and for continuance to retain counsel, this Court considers five factors: (1) whether the party is asserting a constitutional right; (2) whether the party has a legitimate reason for asserting the right, such as a bona fide dispute with his or her attorney; (3) whether the party was negligent in asserting his or her right; (4) whether the party is merely attempting to delay trial; and (5) whether the party has demonstrated prejudice resulting from the trial court's decision. *Echavarría*, 233 Mich App at 369.

In reviewing the record in light of those factors, we conclude that the circuit court did not abuse its discretion in denying respondent's motions for counsel to withdraw and to retain counsel. While it is true it is true that respondent asserted a constitutional right, i.e., the right to retain counsel, for purposes of the first factor, the remaining four factors weigh in favor of the hearing referee's decision. *Echavarría*, 233 Mich App at 369. Respondent has failed to articulate a legitimate reason for asserting her right to retain counsel both before the hearing referee and before this Court. Before the hearing referee, while she claimed that her court-appointed attorney's assistance was ineffective, she failed to articulate any bona fide dispute that existed between the two. On appeal, rather than expounding upon his alleged shortcomings, respondent simply relies upon the importance of this constitutional right and the hearing referee's allegedly inadequate analysis. She was also negligent in asserting her right to retain counsel. This case commenced in April 2013, and she did not seek to retain counsel of her choice until July 2014, approximately 15 months later and *on the morning of the first day of the statutory grounds hearing*. Additionally, while not expressly stated by the hearing referee, the record reflects, and it is argued by petitioner, that these motions merely constituted an attempt by

respondent to delay the termination of her parental rights rather than a good-faith attempt to obtain substitute counsel. Finally, respondent has made no attempt to articulate any prejudice that resulted from the denial of her motions. As discussed below, she instead devotes her brief to the importance of her right to retain counsel of her choice and the hearing referee's allegedly inadequate analysis.

Specifically, respondent argues on appeal that reversal is required because the hearing referee failed to weigh her right to retain counsel of choice against the efficient administration of justice. See *Strickland*, 293 Mich App at 397. Because of the importance of her right to retain counsel, respondent contends, the circuit court's order terminating her parental rights should be reversed. We reject this contention. While it is true that the hearing referee did not expressly reference "expediency as a basis for his denial," that, alone, does not end our inquiry. In light of the factors above, as well as the timing, i.e., the morning of the first day of the statutory grounds hearing, and detail, i.e., merely the name of a proposed attorney with little other information, of respondent's request, the hearing referee's failure to specifically conclude whether the administration of justice would be negatively impacted is not, in our view, dispositive. Indeed, this Court has repeatedly concluded that waiting to request substitute counsel on the day of trial unreasonably delays the judicial process. *Strickland*, 293 Mich App at 399; *People v Weddell*, 485 Mich 942, 944; 774 NW2d 509 (2009) (CORRIGAN, J., concurring). The fact that respondent's proposed attorney had not filed an appearance or provided any other indication that she intended to represent respondent further supports this conclusion. See MRPC 1.1(b) (discussing competence); see also *Bauer v Ferribly & Houston, PC*, 235 Mich App 536, 539-540; 599 NW2d 493 (1999) (explaining that the "[r]etention of an alternative attorney effectively terminates the attorney-client relationship" with the original attorney). Additionally, it cannot be overlooked that respondent, still, fails to articulate any issue with her court-appointed attorney's effectiveness. Had she, for example, developed arguments relating to any specific actions taken by her attorney during this case, our conclusion might differ. But, she did not.

Accordingly, because the hearing referee's decision denying respondent's oral motions for counsel to withdraw and for continuance to retain counsel on the morning of the first day of the statutory grounds hearing did not fall beyond the range of principled outcomes, we conclude that respondent was not deprived of her constitutional right to be represented by counsel of her choice.

Affirmed.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Colleen A. O'Brien