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IN RE SHANAIRA C.*
(AC 28419)

Bishop, Gruendel and Borden, Js.

Argued November 13, 2007—officially released February 12, 2008

(Appeal from Superior Court, judicial district of
Hartford, Juvenile Matters, A. Santos, J.; Hon. William
L. Wollenberg, judge trial referee.)

Roseann Canny, for the appellant (intervenor Stephanie E.).

Patricia B. Johnson, assistant attorney general, with whom, on the brief, were *Richard Blumenthal*, attorney general, and *Susan T. Pearlman*, assistant attorney general, for the appellee (petitioner).

Marcia McCormack, for the appellee (respondent mother).

Trudy Condio, for the minor child.

Opinion

BISHOP, J. This appeal arises from a neglect petition that resulted in the commitment of the minor child, Shanaira, to the custody of the petitioner, the commissioner of children and families (commissioner), and the subsequent revocation of that commitment. The intervening former girlfriend of Shanaira's father,¹ Stephanie E. (intervenor), appeals from the judgment of the trial court revoking the commitment of Shanaira to the custody of the commissioner. On appeal, the intervenor contends that the court (1) violated her due process rights in failing to allow her to introduce evidence at the revocation hearing and (2) abused its discretion in revoking the commitment. We affirm the judgment of the trial court.

The following factual and procedural history is germane to our resolution of the intervenor's appeal. On March 28, 2006, the commissioner filed a neglect petition and motion for an order of temporary custody of Shanaira on the basis of allegations of medical and educational neglect, as well as domestic violence and drug abuse by the father. The court granted the order. At that time, Shanaira had been residing with her father and his girlfriend, the intervenor. On April 3, 2006, the intervenor filed a motion to intervene, which was granted by the court on May 9, 2006. On July 5, 2006, the intervenor filed a motion to transfer guardianship of Shanaira to herself, and on September 5, 2006, she filed a motion for visitation. The court consolidated the trial of these motions with the trial of the neglect petition.

After three days of trial, on October 17, 2006, the court adjudicated Shanaira neglected. The court also denied the intervenor's motions for guardianship and visitation.² On November 2, 2006, the court committed Shanaira to the custody of the commissioner. The court continued the matter to December 15, 2006. In doing so, the court expressed its intention to send Shanaira to Florida to live with the respondent mother.

On December 12, 2006, the commissioner filed a motion to revoke the commitment of Shanaira on the ground that reunification with the respondent mother, in Florida, was in the child's best interest. The motion to revoke was heard on December 15, 2006, and all parties were present. The commissioner submitted to the court a status report, a report from Shanaira's therapist and a report from the mother's therapist. The intervenor opposed the motion to revoke and informed the court that she would be calling witnesses, including her mother and Shanaira's aunt, who was also the foster mother. The attorney for the minor child also indicated that she had one witness, Shanaira's schoolteacher. The court allowed testimony from Shanaira's aunt and teacher. On the basis of the reports submitted by the

commissioner, the testimony and the statements of counsel, including that of the intervenor, the court found that revocation of the commitment was in Shanaira's best interest and granted sole custody of Shanaira to the respondent mother. This appeal followed.

Because the respondent mother challenges the intervenor's standing to bring this appeal, and such a claim implicates our jurisdiction, we address that issue first. See *West Farms Mall, LLC v. West Hartford*, 279 Conn. 1, 11 n.6, 901 A.2d 649 (2006). The respondent mother contends that the intervenor does not have standing to bring this appeal challenging the revocation of the commitment of Shanaira because her standing terminated when the court denied her motions for guardianship and visitation and committed Shanaira to the custody of the commissioner. We disagree.

As noted, the intervenor was granted intervenor status on May 9, 2006. Practice Book § 35a-4³ permits intervention in the dispositional phase of the trial.⁴ "Disposition in a neglect petition may take one of a number of forms, including return to parents, return to parents with a protective order, foster care placement, or the initiation of proceedings to terminate parental rights." (Internal quotation marks omitted.) *In re Elisabeth H.*, 40 Conn. App. 216, 219, 669 A.2d 1246 (1996). "Whether to maintain or revoke the commitment is a dispositional question" Practice Book § 35a-14 (c).

Here, although the commitment of Shanaira to the custody of the commissioner was a disposition, the court indicated that the commitment was temporary and continued the matter to December 15, 2006, with the stated intention of transferring custody of Shanaira to the respondent mother on that date. The intervenor objected to the revocation of the commitment and the transfer of custody to the respondent mother, contending that it was not in Shanaira's best interest. Because the revocation of commitment is a step in the dispositional phase of a neglect petition and, in this case, was a necessary step in facilitating the court's intended disposition, the intervenor was a proper party to that proceeding.

Appellate standing is established "if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *Hunt v. Guimond*, 69 Conn. App. 711, 715, 796 A.2d 588 (2002). Because the court's ruling revoking the commitment was adverse to the intervenor's interest in the disposition of the neglect petition, the intervenor has standing to bring this appeal.

The intervenor first claims on appeal that the court violated her due process rights in failing to hold an evidentiary hearing on the motion to revoke the com-

mitment.

“The issue of whether the court violated the defendant’s procedural due process rights is a question of law over which this court’s review is plenary. . . . The fundamental requisite of due process of law is the opportunity to be heard. . . . The hearing must be at a meaningful time and in a meaningful manner. . . . Inquiry into whether particular procedures are constitutionally mandated in a given instance requires adherence to the principle that due process is flexible and calls for such procedural protections as the particular situation demands. . . . There is no per se rule that an evidentiary hearing is required whenever a [property] interest may be affected. Due process . . . is not a technical conception with a fixed content unrelated to time, place and circumstances. . . .

“The United States Supreme Court analyzes claims of procedural due process in accordance with the three part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334–35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The Connecticut Supreme Court uses the same test. . . . That test requires a consideration of the private interest that will be affected by the official action, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (Citations omitted; internal quotation marks omitted.) *GMAC Mortgage Corp. v. Glenn*, 103 Conn. App. 264, 273–74, 931 A.2d 290 (2007). “Due process does not mandate full evidentiary hearings on all matters, and not all situations calling for procedural safeguards call for the same kind of procedure. . . . So long as the procedure afforded adequately protects the individual interests at stake, there is no reason to impose substantially greater burdens . . . under the guise of due process.” (Citation omitted; internal quotation marks omitted.) *Id.*, 275. “The bottom-line question is whether the denial rendered the [proceeding] fundamentally unfair in view of the *Mathews* factors.” *In re Shaquanna M.*, 61 Conn. App. 592, 606, 767 A.2d 155 (2001).

As noted, Practice Book § 35a-4 permits intervention in the dispositional phase of a neglect proceeding. In this case, the intervenor participated in every aspect of the neglect proceedings, including the revocation hearing. Over the course of the five days of trial on the neglect petition, the intervenor filed motions, cross-examined witnesses, called witnesses on her behalf and made arguments to the court. On the date that the court considered revocation, however, the record reveals that the nature of the intervenor’s interest in the case had changed because her previously filed motions for guard-

ianship and visitation had been denied. Therefore, although she still had standing to participate in the continuing dispositional phase of the proceeding, her personal interest in the proceeding was diminished.

At the revocation hearing, the intervenor indicated her intention to introduce the testimony of her mother and Shanaira's foster mother.⁵ On the basis of the scant representations made by the intervenor and in the absence of an offer of proof as to the testimony she sought to introduce, we can glean that she intended to show that the child's behavior had deteriorated since the last hearing. Thus, in seeking to introduce testimony, the intervenor was not attempting to further her personal interests in obtaining guardianship or visitation, but rather she apparently was trying to prevent custody from being transferred to the respondent mother.

Although the intervenor was not permitted to call witnesses at the revocation hearing as she had requested, the court did hear testimony from Shanaira's foster mother and teacher.⁶ Both witnesses testified, when examined by the court, as to the time period since the last hearing, the same time period that the intervenor sought to address. The intervenor did not at any point indicate that she wanted to question the witnesses further or that she would have presented testimony other than or in addition to that elicited by the court. After hearing this testimony, the court awarded custody of Shanaira to the respondent mother. Under these circumstances, it is not apparent that permitting the intervenor's mother to testify or allowing the intervenor to introduce the testimony of Shanaira's foster mother herself would have elicited any facts that were not already before the court. On this basis, and mindful of the diminished personal interest of the intervenor following the denial of her motions for guardianship and visitation, we do not find an erroneous deprivation of due process in refusing her request to call her own witnesses. We, therefore, conclude that the court afforded the intervenor all the process that she was due.

The intervenor next claims that the court abused its discretion in revoking the commitment because it failed to make a finding that a cause for commitment no longer existed. We are not persuaded.

Our review of this claim is controlled by General Statutes § 46b-129 (m), which provides in relevant part: "The commissioner, a parent or the child's attorney may file a motion to revoke a commitment, and, upon finding that cause for commitment no longer exists, and that such revocation is in the best interests of such child or youth, the court may revoke the commitment of any child or youth. . . ." "The burden is clearly upon the persons applying for the revocation of commitment to allege and prove that cause for commitment no longer exists. Once that has been established, the inquiry

becomes whether a continuation of the commitment will nevertheless serve the child's best interests." (Internal quotation marks omitted.) *In re Patricia C.*, 93 Conn. App. 25, 30, 887 A.2d 929, cert. denied, 277 Conn. 931, 896 A.2d 101 (2006).

"The trial court's determination . . . as to whether to maintain or revoke the commitment is largely premised on that prior adjudication. . . . The court, in determining whether cause for commitment no longer exists, would obviously look to the original cause for commitment to see whether the conduct or circumstances that resulted in commitment continue to exist. . . . Accordingly, the trial court considers not only the adjudication, but also the attendant facts." (Citations omitted; internal quotation marks omitted.) *In re Allison G.*, 276 Conn. 146, 160, 883 A.2d 1226 (2005).

"On appeal, our function is to determine whether the trial court's conclusion was legally correct and factually supported. We do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached . . . nor do we retry the case or pass upon the credibility of the witnesses. . . . The determinations reached by the trial court that the evidence is clear and convincing will be disturbed only if [any challenged] finding is not supported by the evidence and [is], in light of the evidence in the whole record, clearly erroneous." (Internal quotation marks omitted.) *In re Cameron C.*, 103 Conn. App. 746, 757, 784 A.2d 979, 930 A.2d 826 (2007).

Here, the intervenor provided this court only with the transcript from the December 15, 2006 hearing. In fact, the intervenor objected to the release of the transcripts of the remainder of the neglect proceeding and, therefore, we are unable to ascertain the court's specific reasons for committing Shanaira to the custody of the commissioner. We can discern from the neglect petition, however, that the allegations of neglect concerned Shanaira's father, with whom Shanaira was living at the time the petition was filed. In revoking the commitment of Shanaira to the commissioner, the court talked extensively about the ability of the respondent mother to care for her. Although the court did not explicitly make a finding that the respondent mother's fitness to care for Shanaira meant that there was no longer a cause for commitment, this is clearly the import of the court's comments, particularly in light of the court's finding that it was in the best interest of Shanaira that the commitment be revoked and that sole custody be granted to the respondent mother. Thus, even on the basis of the sparse record provided by the intervenor, we conclude that the court's conclusion was legally and factually supported.

The judgment is affirmed.

In this opinion GRUENDEL, J., concurred.

(b) and Practice Book § 79-3, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

Reporter of Judicial Decisions

¹ The neglect petition named both the child's father and mother as respondents. Because only the respondent mother has participated in this appeal, we refer to her as the respondent.

² The intervenor subsequently filed a motion for reargument or reconsideration of her motions, which was denied on November 13, 2006. The intervenor did not appeal from that ruling to this court.

³ Practice Book § 35a-4 provides in relevant part: "(b) Other persons including, but not limited to, siblings may move to intervene in the dispositional phase of the trial and the judicial authority may grant said motion if it determines that such intervention is in the best interest of the child or in the interests of justice.

"(c) In making a determination upon a motion to intervene by any other applicant, the judicial authority shall consider:

"(1) the timeliness of the motion as judged by all the circumstances of the case;

"(2) whether the applicant has a direct and immediate interest in the case;

"(3) whether the applicant's interest is not adequately represented by existing parties;

"(4) whether the intervention may cause delay in the proceedings or other prejudice to the existing parties;

"(5) the necessity for or value of the intervention in terms of resolving the controversy before the judicial authority.

"(d) Upon the granting of such motion, such grandparent or other applicant may appear by counsel or in person. Intervenors are responsible for obtaining their own counsel and are not entitled to appointment of counsel at state expense by the court."

⁴ We note that although the judicial form for intervention refers to General Statutes §§ 46b-129 (c) and 46b-57, Practice Book § 35a-4, which took effect January 1, 2003, is the pertinent rule governing the intervention in this case.

⁵ In support of her contention that she had a right to call her own witnesses, the intervenor repeatedly relied on the fact that the foster mother has a statutory right to be heard in a revocation proceeding. Although the intervenor is correct in this regard, counsel for the intervenor did not represent the foster mother at the hearing, and there is no authority for the proposition that she had a due process right to call her as her own witness.

⁶ After indicating that it would hear the testimony of Shanaira's foster mother and teacher, the court inquired of the parties whether there was "anything else before we proceed?" The intervenor did not respond or object.