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IN RE PHOENIX M.\*  
(AC 46328)

Bright, C. J., and Elgo and Eveleigh, Js.

*Syllabus*

The respondent mother appealed to this court from the judgment of the trial court terminating her parental rights with respect to her minor child. On appeal, she claimed that the court erred in denying her request for new counsel on the first day of the trial, specifically, that the court improperly based its decision on the best interest of the child. *Held* that the trial court did not abuse its discretion when it denied the respondent mother's request for new counsel: the court properly considered whether the request for new counsel would cause an undue delay in the trial, and the court's consideration of the child's best interest was tied into that concern; moreover, the court considered the issues the mother raised in support of her request for a continuance, including her counsel's performance, her acceptance into a treatment program, her incarceration, and her contact with the child's unidentified father, and expressed its belief that she raised those issues on the first day of trial for the purpose of causing a delay.

Argued September 11—officially released October 3, 2023\*\*

*Procedural History*

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of New Britain, Juvenile Matters, and tried to the court, *Daniels, J.*; judgment terminating the respondents' parental rights, from which the respondent mother appealed to this court. *Affirmed.*

*Matthew C. Eagan*, assigned counsel, for the appellant (respondent mother).

*Patrick T. Ring*, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Evan O'Roark*, assistant solicitor general, for the appellee (petitioner).

*Lisabeth B. Mindera*, for the minor child.

*Opinion*

EVELEIGH, J. The respondent mother, Chantel A.,<sup>1</sup> appeals from the judgment of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families (commissioner), terminating her parental rights with respect to her minor child, Phoenix M.<sup>2</sup> On appeal, the respondent claims that the trial court improperly denied her request for new counsel on the first day of trial. We affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of this appeal. The Department of Children and Families (department) initially became involved with the respondent in 2005, and again in 2013, in relation to her first two children, due to her substance abuse and unresolved mental health issues. The respondent gave birth to Phoenix in March, 2021. At that time, Phoenix tested positive for fentanyl and required treatment for withdrawal.

On April 22, 2021, the petitioner filed an ex parte motion for an order of temporary custody of Phoenix, which was issued, and a neglect petition. On April 30, 2021, the order of temporary custody was sustained. On July 8, 2021, Phoenix was adjudicated neglected and committed to the care and custody of the petitioner. The petitioner subsequently placed Phoenix with fictive kin, the friend of a maternal aunt.

At the time that Phoenix was adjudicated neglected, the court ordered specific steps to facilitate reunification between the respondent and Phoenix, which required the respondent, inter alia, to take part in counseling and make progress toward identified treatment goals, to refrain from the use of illegal drugs and the abuse of alcohol or medicine, to obtain housing and a legal income, to visit Phoenix as often as permitted by the department, and to avoid involvement in the criminal justice system. The respondent failed to fully comply with the specific steps ordered by the court. Among other things, she failed to engage in treatment related to her substance abuse and mental health issues, she disclosed to a department social worker that she continued to use fentanyl twice per day, she had been arrested on five different occasions for numerous drug related charges, and she had attended only five supervised visits with Phoenix, during which she appeared to be under the influence of drugs or alcohol. On March 4, 2022, the trial court approved a permanency plan of termination of parental rights and adoption.

On March 29, 2022, the petitioner filed a petition seeking to terminate the parental rights of the respondent as to Phoenix on the ground that, pursuant to General Statutes § 17a-112 (j) (3) (B) (i), the respondent had failed to achieve a sufficient degree of personal

rehabilitation that would encourage the belief that, within a reasonable time, considering the age and needs of Phoenix, she could assume a responsible position in the life of Phoenix.

The termination trial began on Monday, September 26, 2022. The respondent, who was incarcerated at that time, appeared by video. Before evidence began, the court, *Daniels, J.*, canvassed the respondent pursuant to *In re Yasiel R.*, 317 Conn. 773, 794, 120 A.3d 1188 (2015). When the court inquired whether the respondent had any questions, the respondent asked to whom she should talk “about getting an extension . . . some time, instead of going through this trial right now,” because she had been accepted into a treatment program a few days earlier, on the previous Friday. The court told the respondent: “Well, that’s something you could’ve consulted with your lawyer about. I don’t think right now we’re in a position to continue the trial, which has been scheduled for a while.” The respondent stated: “I did, and he’s not doing much of a job for me, so I wanted to fire him.”

The court addressed the respondent’s court-appointed counsel, Edmond Feinberg, and asked whether the respondent had talked to him about the possibility of moving for a continuance. Feinberg stated: “It sounds like it’s been a recent development, Your Honor. I believe [the respondent] mentioned that perhaps, and I want to speak to her because this seems to have happened on Friday, but perhaps her criminal case was somehow resolved and . . . I don’t know, perhaps I should talk to her, Your Honor. That’d probably be the best thing before I speculate as to what happened exactly on Friday.” The court remarked that any developments regarding services and treatment could be offered into evidence at trial and considered by the court in reaching its decision. The court then provided Feinberg an opportunity to speak with the respondent.

After a brief recess, Feinberg told the court: “I guess the first item I should bring up is . . . my client’s desire to have me withdraw as her attorney. She feels that I have not been diligent enough . . . .” The court rejected this request, stating: “[W]e are scheduled to start trial today and this is the first time that this concern is being raised. The court is going to conclude that it would not be in Phoenix’s best interest to further delay the proceeding.”

The respondent then addressed the court. She stated that she had been telling Feinberg “for a while” that she was working on getting accepted into the program, and she asked how she was “going to be forced to have someone represent me that I’m not comfortable with.” The court told the respondent: “[T]he fact that you’ve been working to get [in] a program does not have anything to do with Attorney Feinberg’s performance as a lawyer. As I said earlier, you can introduce all of that

information into evidence . . . to present your defense to the [petitioner's] claim of failure to rehabilitate.”

The respondent also questioned how she could present her defense given that she was incarcerated. She explained that this was the reason she had asked for a continuance, but her counsel did not think that such a request would be successful. The court told the respondent that her incarceration did not constitute a legitimate ground for a continuance, and, because the matter already had been delayed several months, they needed to move forward with the trial in accordance with the best interest of the child. The respondent proceeded to tell the court that Phoenix's father had been trying to contact her and that he wanted to help and be involved. The court, noting that the respondent had not previously provided reliable information about the identity of Phoenix's father, stated: “I can't help but think at this point in time, as you're raising all of these issues, it would appear to the court, simply by way of delay.”

Feinberg subsequently moved for a continuance to afford the respondent an opportunity to enter the program she had mentioned, reasoning that the program offered treatment options that the prison did not, and that once the respondent entered the program, she could provide more detailed testimony about it. The court denied the motion, explaining in relevant part: “I am going to deny the motion for a continuance as not being in the best interest of the minor child and taking notice of how long this matter has been proceeding, and how long it's been since this trial date was noticed. As I indicated earlier, certainly as part of her defense here, the respondent . . . is able to offer testimony if she chooses to do so about the program and about her knowledge of services that may be available to her as part of the program. But I do think it's incumbent upon us to proceed today at this time.”

The evidentiary portion of the trial began, but, while a social worker for the department was testifying, a correctional officer alerted the court that the respondent was experiencing a medical issue.<sup>3</sup> When the officer reported that the respondent was being sent to the hospital for further evaluation, the court continued the trial.

The trial resumed on November 7, 2022. Feinberg continued to appear on behalf of the respondent, and the respondent did not express any dissatisfaction with his representation. Before the evidentiary portion of the trial restarted, Feinberg again moved for a continuance until the respondent could complete the inpatient treatment program at the APT Foundation, which the court denied. The trial proceeded, and Feinberg subsequently presented evidence concerning the respondent's participation in the program through testimony from the director of residential services for the program and

testimony from the respondent herself.

On January 18, 2023, the court rendered judgment terminating the respondent's parental rights with respect to Phoenix. The court concluded that the respondent had failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (i) and that termination of the respondent's parental rights was in the best interest of Phoenix. This appeal followed.

On appeal, the respondent claims that the court abused its discretion in denying her request for new counsel on the first day of trial.<sup>4</sup> Specifically, she argues that the court improperly based its decision on the best interest of Phoenix. We disagree.

“Although a parent has a statutory right to counsel in a neglect proceeding, [t]here is no unlimited opportunity to obtain alternate counsel.” (Internal quotation marks omitted.) *In re Ceana R.*, 177 Conn. App. 758, 775, 172 A.3d 870, cert. denied, 327 Conn. 991, 175 A.3d 1244 (2017). “It is within the trial court’s discretion to determine whether a factual basis exists for appointing new counsel. . . . [A]bsent a factual record revealing an abuse of that discretion, the court’s failure to allow new counsel is not reversible error. . . . Such a request must be supported by a substantial reason and, [i]n order to work a delay by a last minute discharge of counsel there must exist exceptional circumstances. . . . A request for the appointment of new counsel . . . may not be used to cause delay.” (Citation omitted; internal quotation marks omitted.) *In re Isaiah J.*, 140 Conn. App. 626, 633–34, 59 A.3d 892, cert. denied, 308 Conn. 926, 64 A.3d 333, cert. denied sub nom. *Megan J. v. Katz*, 571 U.S. 924, 134 S. Ct. 317, 187 L. Ed. 2d 224 (2013).

In the present case, we conclude that the respondent’s claim rests on the incorrect premise that the court’s decision was “focused entirely” on Phoenix’s best interest. It is clear from the entire context of the court’s decision that the court’s overall focus was whether the respondent’s request for new counsel would cause an undue delay, and the court’s consideration of Phoenix’s best interest was tied into that concern. The court expressed doubt as to the legitimacy of the issues that the respondent had raised regarding her counsel’s performance and her other proposed grounds for a continuance—her acceptance into the treatment program, her incarceration, and the contact that she had reportedly received from Phoenix’s unidentified father—when it told her: “I can’t help but think at this point in time, as you’re raising all of these issues, it would appear to the court, *simply by way of delay*.” (Emphasis added.) The court properly could consider whether the respondent’s request for new counsel was made for the purpose of causing an undue delay, and the impact of such a delay, in ruling on the respondent’s request for new counsel, particularly in light of the fact

that the request was made on the first day of trial. See *In re Isaiah J.*, supra, 140 Conn. App. 634 (“[a] request for the appointment of new counsel . . . *may not be used to cause delay*” (emphasis added; internal quotation marks omitted)); see also *In re Ceana R.*, supra, 177 Conn. App. 775 (explaining that “exceptional circumstances” must exist “[i]n order to work a delay by a last minute discharge of counsel” (internal quotation marks omitted)). Accordingly, we conclude that the court did not abuse its discretion when it denied the respondent’s request for new counsel.

The judgment is affirmed.

In this opinion the other judges concurred.

\* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, 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 court.

\*\* October 3, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

<sup>1</sup> The court also terminated the parental rights of John Doe, the unknown father of the child, on the grounds of abandonment and no ongoing parent-child relationship pursuant to General Statutes § 17a-112 (j) (3) (A) and (D). In light of the fact that John Doe has not appealed from the judgment of the trial court, we refer in this opinion to the respondent mother as the respondent.

<sup>2</sup> The attorney for the minor child filed a statement adopting the brief of the petitioner.

<sup>3</sup> The respondent was pregnant at the time and reported that she was experiencing stomach pain.

<sup>4</sup> The respondent also claims that harm should be presumed from the court’s decision on the basis of her contention that she had a constitutional right to counsel, or, alternatively, if she has the burden of demonstrating harm, that her counsel’s performance contributed to the termination of her parental rights. In light of our conclusion that the court did not improperly deny the respondent’s request for new counsel, we do not reach the issue of harm.

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