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IN RE NA-KI J. ET AL.*
(AC 46336)

Alvord, Clark and DiPentima, Js.

Syllabus

The respondent mother appealed to this court from the judgments of the trial court terminating her parental rights with respect to three of her minor children. The mother did not appear in court for the termination trial. She was represented by counsel, who indicated that the mother was unable to attend the proceeding because she was at a hospital with two of her other children who were ill. The mother's counsel requested to continue her portion of the trial. The trial court denied the request, noting that the mother had missed multiple pretrial hearings and conferences for purported reasons of illness. The trial proceeded, and the mother's counsel cross-examined the witnesses of the petitioner, the Commissioner of Children and Families, and presented a closing argument. The court found by clear and convincing evidence that, inter alia, the Department of Children and Families had made reasonable efforts to reunify the children with the mother and that termination of the mother's parental rights was in the children's best interests. *Held*:

1. The respondent mother's claim that the trial court violated her due process rights when it denied her request for a continuance failed because she did not show that a constitutional violation existed: because her counsel did not frame the request for a continuance as a matter of due process, the mother's claim was an unpreserved constitutional claim that this court reviewed under the three-prong test set forth in *State* v. *Golding* (213 Conn. 233); moreover, assuming that the mother's claim was reviewable under the first two prongs of *Golding*, in that the record was adequate and the claim was of constitutional magnitude, it did not satisfy the requirement of the third prong of *Golding* because the mother failed to establish that the denial of her motion for a continuance rendered the termination proceeding fundamentally unfair under the balancing test set forth in *Mathews* v. *Eldridge* (424 U.S. 319), as, although she had an important, constitutionally protected interest in preserving her parental rights, the granting of the continuance to provide the mother with another opportunity to be present and to testify would not have meaningfully reduced the risk of an erroneous determination regarding the termination of her parental rights, as her counsel was present throughout the hearing and adequately represented her interests in her absence and the mother failed to specify what additional evidence or testimony she would have introduced that would have rebutted the petitioner's evidence had the continuance been granted; furthermore, delaying the trial would have resulted in economic and administrative burdens on resources and would have undermined the state's important interest in protecting the welfare of children, as the department had had extensive and prolonged involvement with the minor children over the course of almost seven years.
2. The respondent mother could not prevail on her alternative claim that the trial court abused its discretion in denying her motion for a continuance: this court reviewed the record and various factors in reaching its conclusion, including the age and complexity of the case, the trial court's granting of other continuances in the past, the impact of the delay on the litigants, witnesses, opposing counsel and the court, the failure of mother's counsel to specify the length of the requested continuance, and the fact that the request for a continuance was made on the morning of trial, for which all other parties, counsel, and witnesses had appeared; moreover, the trial court reasonably could have determined that the mother's unsubstantiated excuse for her absence was inadequate, as the court had previously informed her that she would not be excused from any further court appearances without written documentation that she was prevented from attending due to a medical issue.

Argued September 19—officially released October 16, 2023**

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of Fairfield, Juvenile Matters at Bridgeport, and tried to the court, *Maronich, J.*; judgments 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).

Joan M. Andrews, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellee (petitioner).

David Schneider, for the minor children.

Opinion

ALVORD, J. The respondent mother, Nakia M., appeals from the judgments of the trial court, rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights with respect to her children, N, M, and T.[1] On appeal, the respondent claims that the court (1) violated her due process rights to be present and to testify at her termination of parental rights trial when it denied her request for a continuance, and (2) abused its discretion in denying her request for a continuance.[2] We disagree and, accordingly, affirm the judgments of the trial court.

The following facts and procedural history are relevant to our consideration of the respondent's appeal. The respondent has six children. The three children at issue in this appeal are N, who was born in January, 2012, M, who was born in September, 2013, and T, who was born in April, 2016 (collectively, minor children). The respondent has one older child, J, and two younger children, who are not at issue in this appeal. The Department of Children and Families (department) became involved with the minor children on April 28, 2016, when they, along with J, were removed from the respondent's care. The minor children returned to the respondent's care on May 30, 2017, under protective supervision. On December 18, 2017, the department received a report that the respondent had tested positive for cocaine, amphetamine, and benzodiazepine. During a subsequent home visit, the department observed the home to be "in deplorable condition," the minor children were "behind with routine medical care," and, N, who was school-age, was "chronically truant from school . . . ."

On January 25, 2018, the petitioner filed neglect petitions as to the minor children and obtained ex parte orders of temporary custody. The minor children were adjudicated neglected and committed to the petitioner's custody on April 4, 2018. On April 9, 2021, the petitioner filed petitions to terminate the respondent's parental rights with respect to the minor children.

A trial on the termination of parental rights was held on January 10, 2023, before the court, *Maronich*, *J*. At the start of the trial, the following colloquy occurred:

"[The Respondent's Counsel]: Your Honor, Diane Beltz-Jacobson representing respondent mother . . . who is this morning at the Bridgeport Hospital with her younger children.

"The Court: Mm-hmm.

"[The Respondent's Counsel]: She said they have high fevers and been vomiting all night. She had no one to take them to the hospital. So, she's there with them now.

"The Court: All right. The court with regard to that, the court will note on the record, I have reviewed the clerk's notes. And I note that in the past, on January

8, 2019, [the respondent] was not at court. The reason given by counsel was that [the respondent] was sick. She could not make it to court. On October 10, 2019, she failed to appear at a case status conference with no excuse.

"On June 22, 2022, she again was not present in court. The excuse given was that she was ill. On October 12, 2022, at a judicial pretrial, she failed to appear in court. The excuse given was that she was ill and unable to come to court. What are you requesting for today?

"[The Respondent's Counsel]: Your Honor, I'm requesting if we can continue her portion of the trial.

"The Court: Denied. Okay. I will note for the record that [Tyrome] S. offered his consent to the court this morning. And it was taken and recorded. So, we're prepared to proceed. So, call your first witness."

The petitioner introduced documentary evidence and presented the testimony of Ralph Balducci, a forensic psychologist; Nicole Finch, a therapeutic foster care social worker; Renee Brown, a visitation supervisor; and Donna Blaine, a department social worker. Cross-examination was conducted by the respondent's counsel. Michael J. also testified. See footnote 1 of this opinion.

On January 17, 2023, the court issued its memorandum of decision, in which it terminated the respondent's parental rights. The court stated: "[The respondent] did not attend her trial. She told her attorney she was busy with her twin daughters, that they were sick, and she had too much to do. [The respondent] has a history of failing to attend court hearings. She failed to attend a case status conference on January 8, 2019, and told her attorney she was 'sick.' She failed to show at a rescheduled case status conference on October 10, 2019, without any explanation. She failed to attend another conference without explanation on June 22, 2022. She failed to attend a judicial pretrial on October 12, 2022, and claimed she was at the hospital. [The respondent's] counsel was advised that [the respondent] would not be excused from any further court appearances without written documentation that she was prevented from attending because of a medical issue."

The court found by clear and convincing evidence that the department had made reasonable efforts to reunify the minor children with the respondent. It next found that the respondent had failed to achieve an appropriate degree of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the ages and needs of the minor children, she could assume a responsible position in their lives. Specifically, the court found that "[t]he [minor] children, except for a brief return to [the respondent's] care from May, 2017, through January, 2018, have now

been in [the department's] care for almost seven years. [The respondent] has only marginally engaged in mental health and substance abuse treatment and has not benefited from the treatment in which she has engaged. If the [minor children] were returned to her care, she would have to manage six children ranging in ages from two through fourteen in a one bedroom apartment. She has not been involved in services and treatment for an appreciable length of time. She misses more visits with the [minor children than] she attends, and she is chronically late when she does attend. She is chronically absent from scheduled court appearances, and she failed to appear and participate in the trial before this court. There is no reasonable prospect that given additional time [the respondent] could assume a responsible position in the lives of [the minor children] given their ages and needs."

In the dispositional phase of the proceedings, the court made findings as to each of the criteria set forth in General Statutes § 17a-112 (k) and concluded that the termination of the respondent's parental rights was in the minor children's best interests. Accordingly, the court rendered judgments terminating the respondent's parental rights and appointing the petitioner as the minor children's statutory parent. This appeal followed.

I

On appeal, the respondent first claims that the court's denial of her motion for a continuance deprived her of her due process rights to be present and to testify at the trial. Acknowledging that her counsel did not frame the request for a continuance as a matter of due process, the respondent requests review of her unpreserved constitutional claim pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).

"The test set forth in *Golding* applies in civil as well as criminal cases. . . . Pursuant to the *Golding* doctrine, we may review an unpreserved claim only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. . . . The first two *Golding* requirements involve whether the claim is reviewable, and the second two involve whether there was constitutional error requiring a new trial." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Kiara Liz V.*, 203 Conn. App. 613, 621–22, 248 A.3d 813, cert. denied, 337 Conn. 904, 252 A.3d 364 (2021). We assume, without deciding, that the respondent's claim is reviewable under the first two prongs of *Golding*;

see *In re Shane P.*, 58 Conn. App. 244, 254, 754 A.2d 169 (2000); and we proceed to determine whether the respondent has met the third requirement of *Golding*, i.e., that a constitutional violation exists and deprived her of a fair trial.

"The United States Supreme Court established a three-pronged balancing test in *Mathews* [v. *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)] to determine what safeguards the federal constitution requires to satisfy procedural due process. Courts apply that balancing test when the state seeks to terminate parental rights. . . . The three factors to be considered are (1) the private interest that will be affected by the state action, (2) the risk of an erroneous deprivation of such interest, given the existing procedures, and the value of any additional or alternate procedural safeguards, and (3) the government's interest, including the fiscal and administrative burdens attendant to increased or substitute procedural requirements." (Internal quotation marks omitted.) *In re Adrian K.*, 191 Conn. App. 397, 412, 215 A.3d 1271 (2019). "The bottom-line question is whether the denial rendered the [proceeding] fundamentally unfair in view of the *Mathews* factors." (Internal quotation marks omitted.) *In re Matthew P.*, 153 Conn. App. 667, 676, 102 A.3d 1127, cert. denied, 315 Conn. 902, 104 A.3d 106 (2014). Our balancing of the three *Mathews* factors leads us to conclude that the denial of the respondent's motion for a continuance did not render the termination proceeding fundamentally unfair.

As to the first factor of the *Mathews* balancing test, "the respondent has an important, constitutionally protected interest in preserving [her] parental rights." *In re Lukas K.*, 300 Conn. 463, 469–70, 14 A.3d 990 (2011); see also *In re Adrian K.*, supra, 191 Conn. App. 412. Accordingly, the first factor weighs in favor of the respondent.

The second factor of *Mathews* addresses the risk of an erroneous deprivation and the probable value of additional or substitute procedural safeguards. Thus, we must determine whether, under the facts and circumstances of this case, granting a continuance to provide the respondent another opportunity to be present and to testify would have meaningfully reduced the risk of an erroneous determination regarding the termination of the respondent's parental rights. The respondent contends that the present case involves a complete deprivation, in that "[t]he respondent missed the entire proceeding and was unable to participate or testify on her own behalf." She argues that her representation by counsel was not sufficient to protect her interests. The petitioner responds that the respondent's representation by counsel, who cross-examined witnesses and offered "an effective closing argument," "assured that [the respondent's] interests were protected at trial."

We first note that the court did not render a default judgment against the respondent. Rather, the court held a trial on the merits, requiring the petitioner to prove by clear and convincing evidence not only the ground for termination, but that it was in the minor children's best interests for the respondent's parental rights to be terminated. See *In re Candids E.*, 111 Conn. App. 210, 217, 958 A.2d 229 (2008) (no due process violation where court adhered to all applicable procedural safeguards, which included, inter alia, requiring "the petitioner to prove by clear and convincing evidence not only the ground for termination, but that it was in the child's best interest for the respondent's parental rights to be terminated").

Moreover, on appeal, the respondent argues vaguely and summarily that her inability to testify "influenced both" the court's adjudicative and dispositional determinations. She further maintains that the petitioner "cannot prove beyond a reasonable doubt, without resorting to speculation, that the respondent's testimony would not have been persuasive that she had, in fact, rehabilitated as her willingness to miss a termination hearing in order to remain with her younger children in the hospital demonstrated." The respondent, however, fails to explain with any specificity what additional evidence or testimony she would have introduced had the continuance been granted that would have rebutted the petitioner's evidence. See *In re Lukas K.*, supra, 300 Conn. 473–74 ("[p]erhaps more significantly, [the respondent] has not identified on appeal any additional evidence or arguments that he could have presented if the trial court had granted his request for a transcript and a continuance"). Nor does the respondent claim on appeal that the court's findings of fact were clearly erroneous. She also does not challenge the court's conclusions that a ground for termination of her parental rights existed and that such termination was in the minor children's best interests.

The record reveals that the respondent's counsel was present throughout the hearing and adequately represented her interests in her absence. See *In re Candids E.*, supra, 111 Conn. App. 217 ("This court has stated that [i]t is in the interest of justice to ensure that any parent caught in the throes of a termination proceeding be present, *or at least represented by counsel*, from the beginning of the hearing. . . . There can be, however, circumstances in a termination hearing in which the mere presence, alone, of a respondent's counsel, is not sufficient for a court to proceed in the respondent's absence. . . . This is no such circumstance." (Citations omitted; emphasis in original; internal quotation marks omitted.)). The respondent's counsel cross-examined both Dr. Balducci, eliciting his testimony that the respondent had demonstrated effective parenting during the interactional session he conducted, and

Blaine, eliciting testimony that the minor children call the respondent "mom" and that the respondent greets the minor children with affection at the beginning of visits. The respondent's counsel also delivered a closing argument in which she highlighted the relevant testimony elicited on cross-examination.

The respondent also contends that "no attempt at accommodations were offered by the trial court" and contrasts the present case with those in which alternative procedural safeguards were implemented.[3] The record, however, is devoid of any indication that the respondent's counsel sought procedures that would have allowed her to testify. The respondent did not request to provide testimony telephonically or request permission to review the transcript of the proceedings for purposes of potentially recalling witnesses on a later date. Nor did she submit any documentation to the court regarding her absence from the trial. Under these facts, we conclude that the second factor of the *Mathews* balancing test weighs in favor of the petitioner.

The final factor to be considered is "the government's interest in the termination proceeding, which is twofold. First, the state has a fiscal and administrative interest in lessening the cost involved in termination proceedings. . . . Second, as parens patriae, the state is also interested in the accurate and speedy resolution of termination litigation in order to promote the welfare of the affected child." (Internal quotation marks omitted.) *In re Matthew P.*, supra, 153 Conn. App. 679.

The respondent argues that the "third factor is mixed." Acknowledging the compelling interest in the accurate and speedy resolution of litigation involving the termination of parental rights, the respondent contends that "[t]he respondent's stated reason for missing the termination trial, if verified, [was] sufficient to warrant a continuance and, unlike requests made for a continuance by incarcerated parents, the continuance requested by the respondent was not indefinite." She argues that "the state cannot be said to have an interest in forcing a respondent mother to make the choice between leaving her two young children alone in the hospital or forgoing her protected rights to appear and give testimony in a termination hearing." The petitioner responds that the third *Mathews* factor weighs heavily in her favor. We are not persuaded by the respondent's arguments.

We first note that delaying the trial "would have resulted in the very economic and administrative burdens on resources considered by this prong"; *In re Candids E.*, supra, 111 Conn. App. 218; in light of the fact that the other parties, their counsel, the attorney for the minor children, and the four witnesses for the petitioner all were present for trial. See *In re Matthew P.*, supra, 153 Conn. App. 680 ("[i]n light of the fact that

all party representatives and the petitioner's witnesses were present on the first day of trial, we conclude that delaying the proceeding by granting the continuance would have resulted in the very economic and administrative burdens on resources considered by this prong").

More importantly, however, "because of the psychological effects of prolonged termination proceedings on young children, time is of the essence. Any significant delay would undermine the state's important interest in protecting the welfare of children. This cost, and the state's interest in avoiding it, would rise as the delay increased. Accordingly, we recognize that the state has a vital interest in expediting the termination proceedings . . . ." (Internal quotation marks omitted.) *In re Candids E.*, supra, 111 Conn. App. 218. "In assessing this prong . . . we do not consider in isolation the delay that the requested continuance would have caused. Rather, we consider the delay that would result from granting the continuance in the context of the age and complexity of the termination proceedings . . . ." *In re Matthew P.*, supra, 153 Conn. App. 681.

In the present case, the department's extensive and prolonged involvement with the minor children, over the course of almost seven years, causes the third *Mathews* factor to weigh heavily in favor of the petitioner. See id., 681–82. As the trial court found, the department first became involved with the family in April, 2016, when the minor children were four years old, three years old, and five days old. At the time of trial, the minor children were almost eleven years old, nine years old, and almost seven years old. The minor children had been in the care of the department since April, 2016, except for a brief period of time from May, 2017, until January, 2018.

Moreover, the respondent's actions in failing to appear for scheduled court dates has contributed to the protracted nature of the proceedings. See id., 682 (considering protracted nature of proceedings under third prong of *Mathews*). As the trial court recounted, the respondent did not appear in court on January 8, 2019. The reason given by her counsel was that she was sick. The respondent again did not appear in court on October 10, 2019. The file does not reflect any proffered reason for her failure to appear on that date. On October 12, 2022, the respondent failed to appear in court for a judicial pretrial. The excuse given was that she was ill and unable to attend court. In addition to the dates identified by the court, the file also reflects that the respondent was not present in court on November 9, 2022, and her counsel reported that she was ill and at the hospital.[4] Given the number of absences, the respondent's counsel had been notified that the respondent "would not be excused from any further court appearances without written documentation that

she was prevented from attending because of a medical issue."[5] Further delaying the matter by granting the respondent's requested continuance, which was unsupported by documentation despite the trial court's previous notification, "would have placed an unnecessary burden on the state's interest in providing permanency and stability" to the minor children. *In re Matthew P.*, supra, 153 Conn. App. 682. Accordingly, the third prong of *Mathews* favors the petitioner.

As applied to the specific facts of this case, the *Mathews* balancing test does not support the respondent's due process claim. Accordingly, because we cannot conclude that the court's denial of the respondent's request for a continuance rendered the trial fundamentally unfair, the respondent has not shown that a constitutional violation exists. Thus, her claim fails under the third prong of *Golding*.

II

The respondent claims in the alternative that the court abused its discretion when it denied her motion for a continuance. The petitioner responds that "[t]he trial court properly exercised its discretion to deny the continuance request on the day of the trial given its skepticism of counsel's stated reason for [the respondent's] failure to appear, her numerous prior missed court dates, the age of the case and the length of time the [minor] children had been in [the department's] care, and the negative impact of any further delay on the permanency and stability of the [minor] children." We agree with the petitioner.

"The determination of whether to grant a request for a continuance is within the discretion of the trial court, and will not be disturbed on appeal absent an abuse of discretion. . . . A reviewing court is bound by the principle that [e]very reasonable presumption in favor of the proper exercise of the trial court's discretion will be made. . . . To prove an abuse of discretion, an appellant must show that the trial court's denial of a request for a continuance was arbitrary." (Internal quotation marks omitted.) *In re Ivory W.*, 342 Conn. 692, 730, 271 A.3d 633 (2022). "[Our Supreme Court has] articulated a number of factors that appropriately may enter into an appellate court's review of a trial court's exercise of its discretion in denying a motion for a continuance. Although resistant to precise cataloguing, such factors revolve around the circumstances before the trial court at the time it rendered its decision, including: the timeliness of the request for continuance; the likely length of the delay; the age and complexity of the case; the granting of other continuances in the past; the impact of delay on the litigants, witnesses, opposing counsel and the court; the perceived legitimacy of the reasons proffered in support of the request; [and] the [party's] personal responsibility for the timing of the request . . . ." (Internal quotation marks omit-

ted.) *State* v. *Coney*, 266 Conn. 787, 801–802, 835 A.2d 977 (2003).

On the basis of our review of the record and the factors articulated by our Supreme Court, we conclude that the court did not abuse its discretion when it denied the respondent's motion for a continuance. "[T]he age and complexity of the case; the granting of other continuances in the past; [and] the impact of delay on the litigants, witnesses, opposing counsel and the court"; id., 802; were all discussed at length in part I of this opinion. That discussion need not be repeated, although we incorporate it here. As to the remaining factors, the request for a continuance was made on the morning of the trial, for which all other parties, counsel, and witnesses had appeared.[6] "We are especially hesitant to find an abuse of discretion where the court has denied a motion for continuance made on the day of the trial." (Internal quotation marks omitted.) *State* v. *Victor C.*, 145 Conn. App. 54, 69, 75 A.3d 48, cert. denied, 310 Conn. 933, 78 A.3d 859 (2013). The length of the requested continuance was unspecified. As to the perceived legitimacy of the reason proffered in support of the request, although illness could form a legitimate reason for a continuance, the respondent's counsel previously had been advised that the respondent would not be excused from any further court appearances without written documentation that she was prevented from attending because of a medical issue. Given that the respondent failed to proffer any documentation, either at the time of the absence from trial or any time thereafter, the court reasonably could have determined the unsubstantiated excuse to be inadequate. On the basis of the foregoing, we conclude that the court's denial of the respondent's motion for a continuance was not an abuse of its discretion.

The judgments are 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 16, 2023, the date that this decision was released as a slip opinion is the operative date for all substantive and procedural purposes.

[1] The court also terminated the parental rights of Michael J., the father of N and M. Tyrome S., the father of T, consented to the termination of his parental rights. Because neither father is participating in this appeal, we refer in this opinion to the respondent mother as the respondent.

[2] The attorney for the minor children has filed a statement adopting the appellate brief of the petitioner.

[3] The cases relied on by the respondent involve different circumstances. In both *In re Lukas K.*, supra, 300 Conn. 476, and *In re Juvenile Appeal (Docket No. 10155)*, 187 Conn. 431, 443, 446 A.2d 808 (1982), the respondent parent was incarcerated. In *In re Matthew P.*, supra, 153 Conn. App. 673, the respondent reviewed the transcripts and recalled certain witnesses on a later date. As noted by the petitioner, in the present case, "[t]he trial concluded on January 10, 2023, and a decision issued on January 17, 2023. In the intervening days, counsel never filed a request for a further hearing date, submitted written documentation about [the respondent's] absence, or made any offer of proof about what might have happened differently if

[the respondent] had been present."

[4] The respondent's failure to appear was not limited to court proceedings. As the trial court found, "[m]ore often than not, [the respondent] misses visits [with the minor children] entirely and does not call to cancel. At that point the [minor children] have all been transported to the visit and are deeply disappointed by [the respondent's] failure to be there." As a result, each minor child "acts out upon their return to the foster home and in school the following day."

[5] During oral argument before this court, the respondent's counsel was asked whether the respondent disputes the court's finding that the court previously had advised her counsel that any future absence would require corroboration by written documentation. The respondent's counsel responded that she does not challenge that finding.

[6] We note that the file reflects that the court previously had expressed the importance of proceeding on the scheduled trial date. On December 22, 2022, the court denied the motion to withdraw filed by Tyrome S.'s attorney. See footnote 1 of this opinion. The file indicates that the "[t]rial has been delayed several times. Several delays caused by [the respondent]." After denying the motion to withdraw, the court advised Tyrome S. that he could retain his own counsel "but said counsel must be ready to go to trial on January 11, 2023."