

Circuit Court for Baltimore County
Case No. C-03-JV-21-000091

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 591

September Term, 2021

IN RE: A.C.

Graeff,
Ripken,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: November 29, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant D.L. (“Father”) appeals from an order of the Circuit Court for Baltimore County, sitting as a juvenile court, which vacated with prejudice his objection to the petition of the Baltimore County Department of Social Services (the “Department”) for guardianship with the right to consent to the adoption of Father’s natural child, A.C. (born 2/20), and deemed him to have consented irrevocably to the termination of his parental rights (“TPR”).¹ In his timely appeal, Father asks us to consider the following questions:

1. Did the trial court err or abuse its discretion in striking the father’s notice of objection?
 - a.) Did the unavailability of a meaningful opportunity for the father to consult with CINA counsel vitiate any deemed consent to TPR?
 - b.) Under the facts of this case, was the notice of objection in fact timely where it was filed within 30 days of service of the petition and show cause order upon counsel, even if it was not filed within 30 days of service upon Appellant?
2. Must the striking of the father’s objection be reversed in the absence of necessary fact finding and exercise of discretion?

For the reasons that follow, we affirm the order of the juvenile court.

FACTS AND LEGAL PROCEEDINGS

A.C. was referred to the Department in February 2020, when she and Mother tested positive for marijuana upon A.C.’s birth.² From February through June 2020, the family

¹ V.C., the child’s natural mother (“Mother”), consented to the termination of her parental rights and is not a party to this appeal.

² No father is listed on A.C.’s birth certificate. Mother identified Father as the child’s putative father, which Father disputed until his paternity was confirmed in February 2021. From the time of A.C.’s birth in February 2020 until at least July 2021, Father was

(Continued...)

friend with whom Mother and A.C. were living expressed concerns to the Department about Mother’s ability to safely parent the infant; Mother had to be reminded to feed, burp, change, and bathe A.C., and she was disengaged and uninterested in parenting the child.

A.C. was removed from Mother’s care and sheltered with the Department in June 2020, after Mother was heard yelling at the infant and throwing a cell phone at the wall above her crib. The juvenile court adjudicated A.C. a child in need of assistance (“CINA”) on July 13, 2020.^{3,4}

After her initial foster parents indicated they could not be long-term caregivers, A.C. was placed in her current foster home, with parents who are adoptive resources, in August 2020. The juvenile court changed A.C.’s permanency plan from reunification to adoption by a non-relative in December 2020.⁵

In February 2021, after his paternity was confirmed, Father advised the Department that he wished to work toward reunification with A.C. To that end, he engaged in virtual visitation with her.

incarcerated related to a neglect finding in the death of his son. Father also previously consented to the termination of his parental rights relating to another daughter, and he has a fourth child who is not in his care.

³ A “child in need of assistance” means “a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code, § 3-801(f) of the Courts & Judicial Proceedings Article (“CJP”).

⁴ Kim McGee, then an attorney with the Office of the Public Defender (“OPD”), entered her appearance on Father’s behalf in the CINA case on July 10, 2020.

⁵ Father did not appeal the change in permanency plan.

Despite Father’s stated desire for reunification, on February 22, 2021, the Department filed a petition of guardianship to terminate Mother’s and Father’s parental rights and to obtain guardianship with the right to consent to adoption or long-term care short of adoption. On February 23, 2021, the juvenile court issued a show cause order requiring Father to file a notice of objection to the termination of his parental rights within 30 days from the date of service if he wished to contest the petition.⁶

The Department served Father with the guardianship petition, show cause order, and form notice of objection on March 5, 2021. By that time, Ms. McGee was reportedly no longer working at the OPD, and she was not served with the same paperwork until April 2, 2021, via email (by consent). Ms. McGee entered her appearance as Father’s attorney in

⁶ The show cause order stated in bold, capitalized letters: **“IF YOU DO NOT MAKE SURE THAT THE COURT RECEIVES YOUR NOTICE OF OBJECTION ON OR BEFORE THE DEADLINE STATED IN PARAGRAPH 2 OF THIS ORDER YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS.”** Paragraph 2 of the order required the filing of an objection within “30 days after this Order is served on you.” In addition, the order advised: **“WHETHER THE PETITION REQUESTS ADOPTION OR GUARDIANSHIP, IF YOU DO NOT MAKE SURE THAT THE COURT RECEIVES YOUR NOTICE OF OBJECTION ON OR BEFORE THE DEADLINE STATED ABOVE, YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS.”**

The one-page form notice of objection indicated: **“IF YOU WISH TO OBJECT, YOU MUST MAKE SURE THAT THE COURT RECEIVES YOUR NOTICE OF OBJECTION ON OR BEFORE THE DEADLINE STATED IN THE SHOW CAUSE ORDER.** You may use this form to do so. You need only sign this form, print or type your name, address, and telephone number underneath your signature, and mail or deliver it to the Court at the address shown in paragraph 2 of the show cause order. **IF THE COURT HAS NOT RECEIVED YOUR NOTICE OF OBJECTION ON OR BEFORE THE DEADLINE STATED, YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS.”**

the TPR matter on May 11, 2021. She filed Father’s objection to the TPR the same day.⁷

On May 18, 2021, the Department moved to vacate Father’s late objection to the TPR, on the ground that it had been filed more than 30 days after he was served with the guardianship petition. Father responded that, although he was served with the petition on March 5, 2021, “he did not have access to legal advice until May 6, 2021[,]” when he was able to consult with his attorney during a permanency plan review hearing. He said his attorney filed his notice of objection “at the earliest opportunity after she was aware of [his] informed decision as to his parental rights.”

The Department replied that Father had provided no evidence of any barriers that would have prevented him from consulting with Ms. McGee before May 6, 2021, as she had been his attorney of record in the CINA matter since July 2020. Moreover, pursuant to the “clear[] and unequivocal” provisions of Maryland Rule 9-107(b), any objection to an adoption or guardianship must be filed within 30 days after the show cause order is served, and Father’s objection was not timely filed. And, the Department concluded, it was in A.C.’s best interest for the matter to be resolved so she could achieve permanency.

The juvenile court heard argument on the Department’s motion on June 28, 2021. Therein, Ms. McGee asserted that, until May 2021, Father had been denied access to her help in understanding his options in the TPR matter because he did not know how to reach her after she left the OPD. She claimed that she had filed his objection as soon as she was

⁷ In his brief, Father states that his attorney was served on April 13, 2021 and that she filed a notice of objection to the TPR on May 6, 2021. These dates are not borne out by the record.

able to speak to him and determined that he wanted to fight the TPR.

The Department countered that Rule 9-107(b) “states very clearly that the time for filing objection shall be filed [sic] within 30 days after the Show Cause Order is served, period[,]” with “absolutely no exceptions[.]” Therefore, the Department concluded, the juvenile court had no discretion to entertain the late-filed objection and was required to consider Father’s lack of timely objection an irrevocable deemed consent to the TPR. A.C.’s attorney agreed with the Department’s argument.

The juvenile court ruled:

Mr. L[.] was served with a termination of parental rights documents [sic] including the formal objection on or about March 5th, 2021. He filed an objection I believe on May 6th outside of the 30 day period.^[8]

The Department of Social Services and the Respondent as well, take the position that this is a matter fairly clear with regard to the law and cited me among other cases, In Re: Adoption number 93321055 which is 344 Maryland 458.

Ms. McGee on behalf of Mr. L[.] has taken the position that Mr. L[.] while he may have been served on March 5th was without legal counsel for approximately 60 days until May 5th in which there was some other type of hearing that he participated in and was finally able to get ahold of Ms. McGee.

He had tried to get ahold of Ms. McGee according to the statements that I’ve heard today through the Department of Public—the Public Defender’s Office.

Ms. McGee formerly was in the Public Defender’s Office but is currently not in the Public Defender’s Office. And Ms. McGee had mentioned the notion of Collateral Estoppel with regard to the inability of Mr. [L.] to obtain legal counsel.

⁸ The court misspoke. Father filed his notice of objection, through counsel, on May 11, 2021.

I have read and reviewed again the case I cited before, In Re: Adoption number—I'm not going to recite the number again. It is in the filings of the Department of Social Services.

I will strike the objection that's filed by Mr. L[.] for a couple different reasons. Number one, I'm reading from—I read the, again, the case is, 344 Maryland 485, page 493 has a fairly detailed version that was almost verbatim as to what [the Department's attorney] said in her argument that makes it fairly almost dogmatic that if you don't file, tough luck.

The objection, or at least the response to the motion to vacate the father's late objection it indicates that Mr. L[.] did not have access to legal advice until May 6, 2021. I don't know that he didn't have access to it, he didn't access it. That seems fairly clear from what he states. And I don't doubt that he didn't.

As the opinion notes and as both counsel who are favoring me doing what I'm doing note is that there's a form objection that comes along with the termination of parental rights filing as well as fairly easily understandable items.

I do note for the record in my review of the file, and when I went back I reviewed the file fairly thoroughly that Mr. L[.] apparently had consented to a TPR with a prior child which I don't say for any purpose other than the fact that he is somewhat aware of what goes on in these kind of circumstances which I think [the child's attorney] kind of alluded to. She didn't say that specifically, but she alluded that he had other cases and an understanding of the fact that we have time periods to adhere to.

While Mr. L[.] may feel it's unfair, I think the law i[s] fairly clear and the case cited by [the Department's attorney], the Court of Appeals case that I quoted from now here I think makes it fairly clear as to what I am to do.

Accordingly, I will strike the objection to the TPR. I suspect that obviates tomorrow. I don't know procedurally how that works with that.

The juvenile court filed its written order memorializing its oral ruling—vacating Father's late objection to the TPR with prejudice—the same day.

At the TPR hearing that had already been scheduled for the next day, Ms. McGee requested a postponement, on the ground that neither she nor Father had received notice of

the TPR hearing until the day before. The Department argued that the issue was moot and there was no need for a TPR hearing, in light of the court’s ruling vacating with prejudice Father’s late objection, which meant that both parents were deemed to have consented to the TPR.

After reviewing the record, the juvenile court determined there was no need for a TPR hearing that day, given the court’s ruling the day before.⁹ In light of Father’s claim that he had not received notice of the TPR hearing, however, the court granted Father’s request for postponement of the hearing and stayed the TPR matter, pending the outcome of Father’s timely appeal, but took no further action. On July 13, 2021, the juvenile court denied the Department’s request for an order of default, on the ground that Father had appealed the court’s order striking his late objection.

DISCUSSION

Termination of parental rights decisions are reviewed under three different but interrelated standards: clear error review for factual findings, *de novo* review for legal conclusions, and abuse of discretion for the juvenile court’s ultimate decision. *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 45 (2017). Where, as here, the best interest of the child is of primary importance, “the trial court’s determination is accorded great deference, unless it is arbitrary or clearly wrong.” *In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A*, 100 Md. App. 262, 270 (1994) (quoting *Scott v. Dep’t of Soc. Servs.*, 76 Md. App. 357, 382 (1988)).

⁹ The judge presiding over the June 29, 2021 TPR hearing was not the same judge who had ruled on the Department’s motion on June 28, 2021.

After a juvenile court adjudicates a child CINA and commits the child to the custody of the Department, the Department must develop and implement a permanency plan that is based on the best interests of the child. *See* Md. Code, § 5-525(f), (g) of the Family Law Article (“FL”). If the permanency plan becomes adoption, the Department may petition the court for guardianship. *See* FL § 5-525.1. The grant of a petition for guardianship “terminates the existing parental relationship” and transfers the parental rights to the State, so that the State may “re-transfer the parental rights to an adoptive family.” *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 48 (2019) (citing *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 496 (2007)).

Procedurally, the Department initiates TPR/adoption proceedings by filing the petition. *See* FL § 5-313(a); Md. Rule 9-103. After the petition is filed, the juvenile court must issue promptly “a show-cause order that requires the party to whom it is issued to respond as required under the Maryland Rules.” FL § 5-316(a). Rule 9-105(e) dictates the form that must be utilized for a show cause order, requiring the show cause order to advise the recipient, *inter alia*, that the consequence of the failure to file the objection with the court means that the recipient of the show cause order has “agreed to a termination of [his or her] parental rights.” The Department must then serve the court-issued show cause order on the parents. *See* FL § 5-316(b); Rule 9-105(a), (c).

Rule 9-107 provides that “[a]ny person having a right to participate in a proceeding for adoption or guardianship may file a notice of objection to the adoption or guardianship” and that, except in the case of out-of-state service, “any notice of objection to an adoption or guardianship shall be filed within 30 days after the show cause order is served.” Service

of the show cause order triggers the running of this thirty-day period. *See* Rule 9-107(b)(1).

If the petition for guardianship is filed after the child has been adjudicated CINA, the Department must also give notice of the filing of the petition to each attorney who represented the natural parents and the child in the CINA proceeding. Notice to the attorneys must be in the form of copies of the show cause order and petition and must be served personally or via certified mail. *See* FL § 5-316(b), (c); Rule 9-105(c). The 30-day period for filing an objection does not begin to run until the CINA attorneys are also properly notified. *See In re Adoption/Guardianship No. TPR970011*, 122 Md. App. 462, 480 (1998) (“We conclude. . . that serving a copy of the petition for guardianship and show cause order on the natural parent who is the subject of the proceedings, without mailing a copy to the attorney who represented that parent in the prior CINA. . . proceedings is not adequate notice to trigger the thirty day period within which an objection must be filed to avoid a deemed consent that cannot be revoked, rebutted, or challenged.”); *See also In re Adoption/Guardianship of Genara A.*, 152 Md. App. 725, 736 (2003) (“Because notice to [the parent’s CINA attorney] was not given in accordance with the statute and rule, the 30-day time period for the appellant to file a notice of objection was tolled, as a matter of law.”).

A parent may affirmatively consent to a TPR petition pursuant to FL §§ 5-321 and 5-322. Parental consent also may be statutorily deemed; if a parent does not note a timely objection to the petition, the court then deems the parent to have consented by operation of law. *See* FL § 5-320(a)(1)(iii)(C); *In re Adoption/Guardianship of Audrey B.*, 186 Md.

App. 454, 465 (2009). And, such deemed consent is irrevocable. *Adoption/Guardianship of Chaden M.*, 189 Md. App. 411, 436-37 (2009), *aff'd sub nom. In re Adoption of Chaden M.*, 422 Md. 498 (2011). *See also In re Adoption/Guardianship Nos. T00130003 and T00130004*, 370 Md. 250, 261 (2002) (stating that, “absent some extraordinary circumstance” implicating due process, a juvenile court has no authority to accept a late-filed objection); *In re Adoption/Guardianship No. 93321055*, 344 Md. 458, 486 (1997) (concluding that there is no right to revoke a deemed consent under former statute, because that consent arises by operation of law).

Here, Father was served with the show cause order and other required paperwork on March 5, 2021. His attorney in the CINA matter, Ms. McGee, was served on April 2, 2021, triggering the start of the running of the 30-day time period within which Father’s objection to the TPR would have been timely.¹⁰ That 30-day period expired on May 2, 2021, which was a Sunday, so, pursuant to Rule 1-203(a), Father’s objection was required to be filed by Monday, May 3, 2021, to be timely.

Ms. McGee, however, did not file Father’s objection until May 11, 2021, eight days too late. Despite Father’s claim that he was unable to contact Ms. McGee after repeatedly being given her incorrect contact information once she left the OPD, we find it unlikely that he was absolutely unable to locate her from March until May 2021. Ms. McGee had been his attorney of record in the CINA matter since July 2020, and the CINA paperwork and certificates of service presumably contained her updated contact information,

¹⁰ Father does not dispute the validity of service upon either him or Ms. McGee.

especially as she was aware of, and attended, the May 6, 2021 permanency plan review hearing with Father. Moreover, the OPD likely was able to provide Ms. McGee’s new address/phone number to existing clients after she left that office.¹¹

And, there is nothing in the record to suggest that Father himself could not have signed and timely returned the one-page objection to the TPR when he could not reach his attorney, as the show cause order and form notice of objection explicitly state, in bolded capital letters, that the failure of the court to receive the notice of objection on or before the deadline set forth in the show cause order would mean that Father had agreed to the TPR. Father’s failure to file a timely objection, either himself or through counsel, amounts to deemed consent to the TPR, and that consent is irrevocable. The juvenile court did not err or abuse its discretion in striking Father’s untimely notice of objection to the TPR.¹²

**ORDER OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY,
SITTING AS A JUVENILE COURT,
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**

¹¹ We also note that Ms. McGee could have, and perhaps should have, reached out to Father within 30 days of being served with the show cause order to discuss his options relating to the TPR.

¹² Although not relevant to our decision, we also point out that there is no indication of what defense Father could have interposed to defeat the TPR petition. He had disputed his paternity of A.C. from her birth in February 2020 through the confirmation of paternity in February 2021, when he was still imprisoned relating to his neglect in the death of his son. He had also had his parental rights terminated relating to another daughter. And even his virtual visitation with A.C. was sporadic, with him missing more visits than he attended. On the other hand, Mother had consented to the termination of her parental rights and to adoption by A.C.’s foster parents, and the record indicates that A.C. was well bonded to her foster parents and thriving in their care.