

Circuit Court for Baltimore City  
Case No. T20014003

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 953

September Term, 2020

---

IN RE: I. C.

---

Kehoe,  
Arthur,  
Wells,  
JJ.

---

Opinion by Kehoe, J.

---

Filed: May 4, 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. *See* Md. Rule 1-104.

D. D. appeals from a judgment of the Circuit Court for Baltimore City, sitting as a juvenile court, that terminated her parental rights in I. C., one of her children. Ms. D. presents three contentions, but in our view they coalesce into one:

Did the juvenile court err when it refused to permit Ms. D. to participate in the termination of parental rights action on the incorrect assumption that she had not timely filed an objection to the termination of her parental rights?<sup>1</sup>

Because we agree with Ms. D. and the Department of Social Services of Baltimore City that the court erred, we will reverse the judgment and remand this case for a new trial.

### **Background**

On January 14, 2020, the Department filed three termination of parental rights actions involving Ms. D. in the Circuit Court for Baltimore City. The first, docketed as case number T20014003, involves I. C., Ms. D., and I. C.'s putative father, D. C. This is the case that is actually before us. The remaining termination of parental rights actions involve two other

---

<sup>1</sup> Ms. D. frames the issues as:

1. Was mother deprived of due process when the court deemed her to have consented to the guardianship petition even though she filed a timely written objection?
2. Was mother deprived of due process when the court did not allow her to appear at the termination hearing when she was no longer represented by counsel?
3. Did the court err in discharging mother's counsel when the procedural requirements of Maryland Rule 2-132 were not met and the court obtained no waiver from mother of her statutory right to the effective assistance of counsel?

children of Ms. D. and R. B., the children's father. Those cases are docketed as case numbers T20014004 and T20014005 and are pending in the circuit court.

Our focus is on I. C.'s case. As we have indicated, the Department filed the termination of parental rights action in January 2020. After the petitions were filed, the juvenile court issued show cause orders for service on Ms. D. and Mr. C.<sup>2</sup> The show cause orders informed them that they had a right to object to the guardianship and warned them that, in order to preserve that right, they needed to file a written notice of their objection with the court within thirty days of the date the show cause order was served on them. Although the Department was unable to locate Ms. D. and she was never personally served, the Department did serve a copy of the show cause order on Kristen F. Lim, Esquire, the lawyer who had been representing Ms. D. in the child in need of assistance action pertaining to I. C. On January 30, Ms. Lim signed a notice of objection on behalf of her client, filed it with

---

<sup>2</sup> See Md. Code Fam. Law § 5-316, which states in pertinent part:

- (a) Promptly after a petition for guardianship is filed under this Part II of this subtitle, a juvenile court shall issue a show-cause order that requires the party to whom it is issued to respond as required under the Maryland Rules.
- (b) On issuance of a show-cause order as to guardianship of a child, a petitioner shall serve the order on:
  - (1) each of the child's living parents who has not consented to the guardianship;
  - (2) each living parent's last attorney of record in the CINA case; and
  - (3) the child's last attorney of record in the CINA case.

\* \* \*

the court and served copies of the objection on counsel for the Department. The Department did not file a response to Ms. D.’s notice of objection. *See* Md. Rule 9-107(d).<sup>3</sup>

On July 9, 2020, the Department filed a motion to effect service on Ms. D. by means of publication and posting. The court granted the motion, and the service by publication and posting process was completed by July 31, 2020. Ms. D. did not file another notice that she objected to the relief sought by the Department.

On March 18, 2020, the Officer of the Public Defender filed a line striking Ms. Lim’s appearance and entering Jennifer L. Austin, Esquire, as attorney for Ms. D. On September 30, 2020, Ms. Austin filed a motion to withdraw her appearance because Ms. D. had “notified counsel that she no longer wished to be represented by [Ms. Austin] in any

---

<sup>3</sup> Rule 9-107 states in pertinent part:

(a) General. Any person having a right to participate in a proceeding for adoption or guardianship may file a notice of objection to the adoption or guardianship. The notice may include a statement of the reasons for the objection and a request for the appointment of an attorney.

(b) Time for Filing Objection. (1) Except as provided by subsections (b)(2) and (b)(3) of this Rule, any notice of objection to an adoption or guardianship shall be filed within 30 days after the show cause order is served.

\* \* \*

(d) Response. Within 10 days after being served with a notice of objection, any party may file a response challenging the standing of the person to file the notice or the timeliness of the filing of notice.

(e) Hearing. If any party files a response, the court shall hold a hearing promptly on the issues raised in the response.

\* \* \*

proceedings.” The court granted the motion on October 1, 2020 and no attorney entered an appearance on Ms. D.’s behalf thereafter.

On October 14, 2020, the Department filed a proffer in which it asserted that Ms. D.’s whereabouts were unknown, that she had been served by publication and posting, and that she had not filed an objection to the petition thereafter. The proffer further recited that Ms. D.’s “last CINA attorney of record” had been served and had filed an objection. This notwithstanding, the proffer recited that Ms. D. “is deemed to have consented by operation of law” to the relief sought in the petition because she had failed to file an objection within 30 days of the date of service by publication and posting, which was July 31, 2020. Conspicuously missing from the proffer was the fact that neither the Department nor anyone else had filed a response to Ms. D.’s objection pursuant to Md. Rule 9-107(d). The circuit court accepted the proffer.<sup>4</sup>

The juvenile court held a hearing on the guardianship petition. Ms. D. attempted to participate in the hearing by telephone but was told that she was not permitted to do so. (Although the record isn’t clear on the point, it appears that Ms. D. had spoken to someone in the Clerk’s Office who then informed the juvenile court of the conversation.)

---

<sup>4</sup> The proffer made a similar assertion as to I. C.’s putative father, D. C. Mr. C.’s parental rights were also terminated. He has not filed an appeal from the judgment.

In its order granting the Department’s petition, the court found that Ms. D. “did not object to this guardianship and is therefore deemed to have consented to this guardianship[.]”<sup>5</sup> Ms. D. timely filed a notice of appeal.

### **The parties’ motions**

After Ms. D. filed her brief, the Department filed a motion to extend the time for it to file its brief “pending [a] proposed consent [motion to] remand” the case to the circuit court. Shortly thereafter, the parties filed a “Joint Motion to Remand Case for Further Proceeding and Waive Remaining Briefing Schedule.” On March 26, 2021, a panel of this Court entered an order accepting the joint motion “in lieu of the appellees’ brief in this appeal,” and transferring the case to the submitted on brief docket pursuant to Md. Rule 8-523.

In the joint motion, the parties point out the obvious: Ms. Lim, acting on Ms. D.’s behalf, timely filed an objection to the termination of parental rights action and the Department did not file a response to the objection pursuant to Md. Rule 9-107(d). The parties continue:

Because Ms. D. timely filed a notice of objection on January 30, 2020, to the termination of her parental rights, she was entitled to a contested guardianship hearing. *See* Fam. Law § 5-318(b) (“Before a juvenile court

---

<sup>5</sup> Md. Code Fam. Law § 5-320(a)(1)(iii)(1)(C) provides that a parent is deemed to have consented to a guardianship if he or she fails “to file a timely notice of objection after being served with a show-cause order in accordance with this subtitle[.]”

grants [a nonconsensual] guardianship under § 5-320(a)(2) of this subtitle, the juvenile court shall hold a trial on the merits of the petition.”).

Nevertheless, despite having filed a timely objection, Ms. D.’s parental rights to I.C. were terminated by operation of law through no fault of her own and Ms. D. was deprived of her right to have a contested hearing.

Because there are contested guardianship proceedings already scheduled on July 20 and 21, 2021, in the Circuit Court for Baltimore City in case numbers T20014004 and T20014005, involving R.B., the father of Ms. D.’s twins, the parties request that this Court vacate, as to Ms. D. only, the October 19, 2020 order of the Circuit Court for Baltimore City, sitting as a juvenile court, in Case No. T20014003; remand Ms. D.’s case to the juvenile court to document that on January 30, 2020, Ms. D. filed a timely notice of objection to the guardianship petition filed by the Department in this case; and, in the contested termination of parental rights proceedings already scheduled in case numbers T20014004 and T20014005 on July 20 and 21, 2021, for R.B., the father of Ms. D.’s twin children, K. D.-B. and D. D.-B., permit Ms. D. to become a full participant in the contested proceedings to decide whether terminating her parental rights to I.C., K.D.-B., and D.D.- B., best serves her children’s interests. The parties agree that this offers a remedy that satisfies the dual concerns of fundamental fairness and judicial economy.

(Citations to the record and paragraph numbering omitted.)

As we will explain below, we will grant the joint motion in part.

### **The standard of review**

In termination of parental rights cases, we utilize three interrelated standards in review of a juvenile court’s decision.

[First,] when the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Second, if it appears that the court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the court founded upon sound legal principles and based upon factual findings that are not

clearly erroneous, the court’s decision should be disturbed only if there has been a clear abuse of discretion.

*In re Adoption/Guardianship of J.T.*, 242 Md. App. 43, 61 (2019).

### **Analysis**

#### A. Case No. T20014003

Ms. D. argues on appeal that judgment of the juvenile court terminating her parental rights in I. C. must be reversed. We agree.

It is well settled that, if parents fail to timely object after being properly served with a show cause order issued pursuant to Fam. Law § 5-316, they are deemed to have consented to the termination of their parental rights. *See In re Adoption/Guardianship No. 93321055*, 344 Md. 458, 494 (1997) (“[T]he failure to file a timely objection as an irrevocable deemed consent to the petition does not facially offend any due process right of the parent.”). But the obverse is equally true—if a parent timely objects then he or she has not consented. Ms. Lim filed an objection on Ms. D.’s behalf. An objection to a petition for termination of parental rights is the effective equivalent of an answer in other forms of civil litigation. Answers are pleadings. Md. Rule 2-302. A lawyer who files a pleading on behalf of a party enters her appearance on her client’s behalf. Md. Rule 2-131(c). Thus, there is nothing in the record that suggests that the notice of objection filed by Ms. Lim was improper or ineffective.

Even if there were some hidden impropriety, the Department waived its right to raise it by failing to file a response to the objection pursuant to Md. Rule 9-107(d). Because Ms.



D. had validly and effectively objected to termination of her parental rights, the Department had no business whatsoever in submitting a proffer to the juvenile court asserting that Ms. D. had consented to the petition as a matter of law. The juvenile court erred when it accepted the proffer, further erred when it refused to permit Ms. D. to participate in the hearing on the petition, and still further erred when it granted the petition as to Ms. D. The judgment terminating Ms. D.'s parental rights is irredeemably flawed and we reverse it.

To avoid any possible confusion on remand, we instruct the juvenile court that Ms. D. has effectively objected to the termination of her parental rights in I. C. Absent a change in her position, the only way that her parental rights can be terminated is after a trial on the merits pursuant to Fam. Law § 5-323 and Md. Rule 9-109.

B. Case Nos. T20014004 and T20014005

The parties additionally ask us to order the juvenile court to permit Ms. D. to participate in the termination of parental rights proceedings for two of her children, K.D.-B. and D.D.-B. These cases are docketed as T20014004 and T20014005, and trials are scheduled for July 2021.

The parties have not provided us with a great deal of information about these two actions. Through an analytical process that rests somewhere between guesswork and surmise, we gather that R.B., the father of these children, filed a timely objection to the termination of his parental rights. We also assume that, just as in I. C.'s case, Ms. D. filed a timely objection through counsel. We further surmise that, just as in I. C.'s case, the Department nonetheless convinced the juvenile court that Ms. D. should be deemed to have

consented to the termination of her parental rights as a matter of law. The parties are asking us to instruct the juvenile court in those actions that Ms. D. has validly and effectively objected to the relief sought by the Department in the petitions. We decline to do so for two reasons.

The first is that we have no authority whatsoever to give directions to trial courts in pending actions in which no appealable judgments have been entered. Second, Ms. D.'s brief, her appendix and the joint motion contain very little concrete information about the proceedings in Case Nos. T20014004 and T20014005. Even if we had the authority to grant the relief requested by the parties, a combination of guesswork and surmise is an inadequate basis for doing so.

If the Department's trial counsel have in fact persuaded the juvenile court to conclude erroneously that Ms. D. has waived her right to object to the termination of her parental rights as to K. D.-B., and D. D.-B., then it is incumbent upon the Department's trial counsel to straighten the problem out. We assume that they will adhere to the law and their professional responsibilities.<sup>6</sup>

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE CITY  
TERMINATING D. D.'S PARENTAL**

---

<sup>6</sup> If for no other reason, they have an ethical obligation to do so. *See, e.g.*, Md. Rule 19-303.3 Comment [2]:

[T]he attorney must not allow the tribunal to be misled by false statements of law or fact or evidence that the attorney knows to be false.

**RIGHTS IN I. C. IS REVERSED. THE  
CASE IS REMANDED FOR  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION.**

**COSTS TO BE PAID BY THE MAYOR  
AND CITY COUNCIL OF BALTIMORE.**