

Circuit Court for Baltimore City
Case No.: T16257003

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1550

September Term, 2017

IN RE: D.A.

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 11, 2018

*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.

This appeal arises from termination of parental rights (TPR) proceedings involving D.A. in the Circuit Court for Baltimore City, sitting as the Juvenile Court. Presently before this Court is the Parties’ Joint Motion to Remand Case for Further Proceedings and Waive Briefing Schedule. In that motion, the Parties ask this Court to remand the matter to the Juvenile Court with instructions to vacate its order of guardianship, to reinstate the objection of D.A.’s mother to the petition, and to set the matter for a contested guardianship hearing. The Parties agree that the requested relief is the proper remedy where the ineffective assistance of the mother’s counsel in the Juvenile Court “precluded the mother from contesting the guardianship petition which led inevitably to the termination of her parental rights.” Also before the Court is the Parties’ Joint Motion to Postpone Argument and Amend Briefing Schedule, requesting additional time for briefing should the Court deny their Motion to Remand. We shall grant the Motion to Remand and, therefore, will deny the Motion to Postpone.

BACKGROUND

On September 22, 2016, the Baltimore City Department of Social Services (hereinafter “Department”) filed a Petition for Guardianship seeking to terminate the parental rights of D.A.’s mother, T.A. (hereinafter “Appellant”), and of D.A.’s father.¹ On September 28, 2016, the TPR Petition and Show Cause Order were served on Assistant Public Defender Jonathan Burbank, who represented Appellant in D.A.’s Child In Need of Assistance (CINA) case. On October 4, 2016, Appellant was served with the

¹ The unknown father was served by publication and did not file any objection.

TPR Petition and Show Cause Order, which stated that any objection to the petition must be filed with the Clerk of the Court at the Baltimore City Juvenile Justice Center within thirty (30) days of being served. Appellant mailed her Notice of Objection to the address provided on October 6, 2016, as demonstrated by the postmarked envelope attached to her motion and contained in the Juvenile Court record. Appellant’s Notice of Objection was stamped by the clerk’s office with a receipt date of November 18, 2016.

On December 7, 2016, the Department filed a Motion to Strike [Appellant’s] Late Objection, and a hearing thereon was scheduled for January 5, 2017. Mr. Burbank, who entered his appearance for Appellant in this matter on November 21, 2016, did not respond to the Department’s motion or notify Appellant of the hearing. Nor did Mr. Burbank appear for the hearing, but instead gave the Department’s attorney permission to proceed without him. Based upon the Department’s uncontradicted assertions, the Court found that Appellant’s notice was filed fourteen (14) days late, and struck her objection.

Thereafter, the Juvenile Court canceled the previously scheduled contested TPR hearing and set an “Instant TPR” hearing on March 13, 2017. On that date, the Court granted the TPR Petition and terminated Appellant’s parental rights. Neither Appellant nor Mr. Burbank appeared for the hearing.

On April 11, 2017, Mr. Burbank filed Appellant’s Motion to Vacate Judgment, Reinstate Objection, Set a New Trial, and Stay Adoption Proceedings (hereinafter

“Motion to Vacate”).² On May 31, 2017, the Juvenile Court, the Honorable Emmanuel Brown presiding, commenced a hearing on the Motion to Vacate, during which Mr. Burbank explained to the Court that he did not realize the Department’s motion to strike Appellant’s objection was to be heard on January 5, 2017. Mr. Burbank stated that when he learned that Appellant’s objection had been stricken sometime in January or February, he “put it on the back burner,” and admitted that, “I should have looked into it immediately. I didn’t.” After hearing argument from Mr. Burbank, as well as counsel for the Department and D.A., the Court continued the hearing to permit testimony from the clerk’s office as to the process of receiving mail and docketing filings.

On September 13, 2017, the Juvenile Court, the Honorable Melissa K. Copeland presiding, concluded the hearing which began on May 31, 2017. At the time of the hearing, Mr. Burbank had retired, and T.A. was represented by Assistant Public Defender Elizabeth Dennis. The Court heard testimony from T.A. regarding when she was served with the TPR Petition and when she filed her Notice of Objection. The Juvenile Court Clerk also testified as to the ordinary procedures the Juvenile Court Clerk’s Office employs in receiving and processing mail. Declining to rule on the motion to vacate, the Court denied T.A.’s motion to reinstate her objection to the guardianship petition. The Court reasoned that T.A. failed to establish, by clear and convincing evidence, that a clerical mistake or irregularity occurred in the processing of her Notice of Objection and

² However, Mr. Burbank did not note an appeal from the order terminating Appellant’s parental rights.

that she exercised good faith and due diligence in raising the issue of the mistake or irregularity.

On September 28, 2017, Appellant, T.A., filed her Notice of Appeal as to the Juvenile Court’s September 13, 2017 Order denying Appellant’s motion to reinstate her objection to the guardianship petition.

On October 23, 2017, T.A., by a third Assistant Public Defender, Initia Lettau, filed a Supplemental Motion to Mother’s Motion to Vacate and/or Petition Alleging Ineffective Assistance of Counsel. In her motion, T.A. argued that Mr. Burbank provided ineffective assistance by failing to object to the TPR Petition on her behalf, failing to attend or to even notify her of the January 5, 2017 hearing on the motion to strike her objection, and failing to investigate when T.A. advised him that she had noted a timely objection. T.A. also argued that Ms. Dennis provided ineffective assistance by failing to have read the case law upon which the Court based its September 13, 2017 rulings and by failing to raise a claim regarding Mr. Burbank’s ineffectiveness. The Court, on November 2, 2017, denied T.A.’s motion to vacate and stated that Ms. Dennis remained counsel of record. Ms. Dennis failed to note an appeal of the Court’s November 2, 2017 Order.

DISCUSSION

As set forth in their Joint Motion, the Parties agree that this appeal should be remanded to the Juvenile Court for contested guardianship proceedings to redress the prejudice Appellant suffered due to ineffective assistance of counsel. In *Chaden M.*, the mother was deemed to have consented to the termination of her parental rights as a result

of counsel’s failure to file a timely notice of objection on the mother’s behalf. 422 Md. 498, 514 (2011). The Court held that the mother was deprived of her right to effective assistance of counsel, and that the proper remedy was to allow a belated notice of objection. *Id.* At 515.³

We agree with the Parties that trial counsel erred when he failed to object in any way to the Department’s motion to strike T.A.’s objection to the termination of her parental rights, and that T.A. was prejudiced by this error.⁴ Therefore, the appropriate remedy in this appeal is to remand the case to the Juvenile Court with instructions to vacate the order of guardianship, reinstate the mother’s objection, and set the matter for a contested guardianship hearing.

**JOINT MOTION TO REMAND
CASE FOR FURTHER
PROCEEDINGS AND WAIVE
BRIEFING SCHEDULE IS
GRANTED. CASE IS REMANDED
TO THE CIRCUIT COURT FOR
BALTIMORE CITY, SITTING AS
THE JUVENILE COURT, WITH
INSTRUCTIONS TO (1) VACATE
ITS ORDER OF MARCH 13, 2017
APPOINTING THE DEPARTMENT**

³ The Court stated that its holding was based “on the clear and admitted failure of [the attorney], once she had entered her appearance in the matter to have fulfilled a statutory duty to file a notice of objection on behalf of her client.” *Id.* at 515, fn. 4.

⁴ Similar to the admission of counsel in *Chaden M.*, Mr. Burbank admitted to the Juvenile Court on May 31, 2017, that he failed to attend the hearing on the Department’s motion to strike Appellant’s objection, and further failed to investigate when he learned that Appellant’s objection to the petition had been stricken, as he should have. Based upon these admitted failures, and other failures, of Appellant’s counsel below, counsel for the Parties on appeal agree that Appellant was deprived of effective assistance of counsel.

AS GUARDIAN OF D.A., (2) PERMIT T.A. TO REFILE HER STRICKEN NOTICE OF OBJECTION, SO LONG AS IT IS FILED WITHIN FORTY-FIVE (45) DAYS OF THE DATE OF THE MANDATE, AND (3) HOLD A CONTESTED GUARDIANSHIP HEARING, SO LONG AS T.A. TIMELY REFILES HER STRICKEN NOTICE OF OBJECTION. JOINT MOTION TO POSTPONE ARGUMENT AND AMEND BRIEFING SCHEDULE IS DENIED AS MOOT. THE CLERK SHALL ISSUE THE MANDATE FORTHWITH. COSTS TO BE PAID BY APPELLANT.