Circuit Court for Baltimore County
Case No. C-03-JV-24-000135

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1560

September Term, 2024

In Re: S.S.

Shaw,
Albright,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: September 12, 2025

The Baltimore County Department of Social Services filed a Petition for Guardianship to terminate Appellant's parental rights to his son, S.S., in the Circuit Court for Baltimore County. On the hearing date, Appellant appeared with his appointed counsel and requested a postponement in order to obtain a new attorney. The judge denied his request and the case proceeded with Appellant being represented by his appointed counsel. At the conclusion of the hearing, the Department's petition was granted. Appellant timely appealed and he presents one question for our review:

1. Did the juvenile court abuse its discretion in denying father's motion for a postponement?

We hold that the circuit court did not abuse its discretion, and, accordingly, we affirm the judgment.

BACKGROUND

On August 28, 2012, S.S. was born in North Carolina to K.S. ("Mother") and to K.H. ("Appellant" or "Father"). He lived primarily with Mother until 2021. In 2014, he lived with Father in Delaware for a few weeks, and he lived with Mother and his paternal grandmother for a few months when he was three or four years old.[1] When S.S. lived with his paternal grandmother, Father would visit him when he was not working. Father has not seen S.S. since 2019, and Father has had limited telephone conversations with S.S. over the years. His last call with S.S. was in 2023.

[1] The transcript contains conflicting information. During Father's testimony, he stated that the period was two to three months, and he also stated that it was roughly a year.

In July 2021, S.S. was living in Baltimore County with Mother, his three half-siblings,[2] and their biological father, Mr. L.,[3] when the Department of Social Services ("the Department") began assisting the family. Department workers responded to the family residence because the Department had received reports of domestic violence involving Mother and Mr. L. Department workers observed that the family home in Dundalk did not have heat, running water, or kitchen appliances. They sent a plumber to inspect the home and the plumber determined the home was beyond repair. The family was moved into temporary housing at a shelter.

In March 2022, Mother was asked to leave the shelter after she violated the shelter's rules by appearing to be under the influence of substances and for "yelling at her children." She and the children moved back into the unfit home in Dundalk, but she also traveled to North Carolina. During this time, she tested positive for cocaine on multiple occasions, and on April 6, 2022, the Department lost contact with the family. On April 15, Mother was found unconscious from a suspected drug overdose and taken to the hospital.

The Department conducted an unannounced home visit on April 20 and found the children alone in the home. Mother returned, said she would take the children to North Carolina, and she then threatened to commit suicide in front of the children. The Department workers took S.S. and his half-siblings from Mother's care that day. They

[2] S.S.'s siblings are not the subject of this appeal.

[3] S.S. referred to Mr. L as his "dad" when talking with the Department social workers.

determined that S.S. had not been attending school, he had not seen a doctor or a dentist, as referred by the Department, and he was infested with lice.

On April 21, 2022, the Department filed a Child in Need of Assistance ("CINA") petition for S.S., and he was placed in shelter care. On May 31, the court determined that S.S. was a CINA, and at the disposition hearing, he was committed to the Department. S.S. and his half-sister, C.L., were placed in foster care with Mrs. T.H. and her husband, and they have lived with them since that placement. S.S. receives individualized tutoring and therapy services. He plays sports and has bonded with his foster parents. S.S. has stated that he would prefer to live with his foster parents if he cannot live with Mother. Mrs. T.H. and her husband have expressed interest in adopting him.

The Department initially explored placing S.S. with his paternal grandmother who offered herself as a placement option in April 2022. Because she lived in Delaware, an Interstate Compact on the Placement of Children Study was required. The paternal grandmother submitted background information, had telephone conversations with S.S., and visited him in person multiple times. In January 2023, the paternal grandmother had a medical issue, and she did not maintain contact with the Department or S.S. Phone calls between the paternal grandmother and S.S. resumed in August 2024.

Father was not present at the shelter care hearing because he was incarcerated.[4] A Department caseworker connected with Father through the paternal grandmother. The

[4] Father has been incarcerated for much of S.S.'s life. He was incarcerated from 2014 to 2015, and from 2017 to September 2018. Father has been in prison in Delaware since August 2019. Father was set to be released from prison in February 2025, but he will

caseworker recommended to Father and, in her reports, that he maintain contact with them while incarcerated and that he complete an anger management class, parenting class, mental health assessment, drug treatment evaluation, and obtain housing and a job upon his release.[5] The caseworker gave Father the telephone number for the Office of the Public Defender.[6]

On January 12, 2023, the court determined that S.S.'s permanency plan would be reunification with his parent(s). On August 21, 2023, the court changed the permanency plan from reunification to a concurrent plan of adoption by non-relatives and reunification. The Department filed a Petition for Guardianship to terminate Mother and Father's parental rights to S.S. on February 5, 2024. Father objected to the petition, and on April 8, 2024, Attorney Lee Jacobson began representing Father in the court proceedings.

A Termination of Parental Rights hearing was scheduled for September 19 and 20, 2024, and Father was scheduled to participate in mediation on July 9, 2024. The court issued a writ to allow Father to attend the mediation remotely, however, he did not appear. The record does not contain a reason why Father did not attend the mediation, nor was there a request to reschedule the mediation. Mother did attend the mediation and agreed

be unable to leave Delaware due to the terms of his release. At one point during Father's incarceration, he was informed that S.S. and Mother were homeless and that there were domestic violence concerns between Mother and Mr. L. Father never filed for custody because he said that he "was into the wrong things" at the time.

[5] Father took an anger management class, but the other classes were not available to him at the prison. He did not have any drug infractions at the prison, although he was unable to enter into a treatment program.

[6] Father represented himself at CINA proceedings through November 2023.

to terminate her parental rights to S.S. She entered into a post-adoption contact agreement on September 4, 2024.

Prior to the start of the TPR hearing, Father requested a postponement:

> MR. JACOBSON: Yes, Your Honor. I had a long discussion with my client this morning and he would like to address the Court with respect to postponement and obtaining other counsel. Mr. H.?
>
> THE COURT: Yes, sir. I'll hear from you.
>
> MR. H.: Yes. I am not comfortable with signing my rights over. And I would like to get someone that's going to represent me to the best of their ability and I'm not comfortable with signing my rights over.
>
> THE COURT: Nobody is forcing you to sign anything, sir. That's why we have a contested hearing. That is the purpose of this, and if you are not in agreement, the matter will proceed to a hearing today.
>
> MR. H.: Yes.
>
> THE COURT: But I'm not postponing it. This is your hearing date.
>
> MR. H.: Yeah, I was trying to pay the counsel for the for the representing and ----
>
> THE COURT: Mr. Jacobson is your attorney. He is an excellent attorney. He tries these cases before this Court on a regular basis. He is the assigned attorney to you, sir. I have no qualms about his qualifications or his ability to do so. If you wish to discharge counsel, you certainly have the right to proceed on your own, but I'm not postponing the case today.
>
> MR. H.: Yes, that's what I'm trying to do, discharge my counsel.
>
> THE COURT: Well, I hear you and I understand what you're telling me, but I haven't heard any just cause to discharge Mr. Jacobson. I have not heard any reason why the case should be postponed.
>
> MR. H.: Because Jacobson has already established that I will not be able to proceed with fighting this case and I would like someone that's going to represent me to the best of their ability. And he's already given me doubt,

> saying that I'm not going to be able to obtain this case, or I'm not going to be able to win or – so.
>
> THE COURT: Well, Mr. Jacobson is giving you the advice of his counsel. That does not mean that he's not going to represent you to the best of his ability. Any conversation that you and Mr. Jacobson have had regarding his opinion as to the likelihood of you being successful has nothing to do with his ability to represent you in court.
>
> And I am satisfied that he would do so, regardless of whatever conversation the two of you had as to what he believes to be the merits. He may have been giving you his advice and his counsel as your counsel as to what he believes to be the success of your being, of your winning in this matter, but that does not mean that he's not prepared to fight this matter to the fullest extent possible.
>
> So I don't believe the fact that you've had conversation with him is just cause to discharge him and postpone this matter. So your options are today to proceed with Mr. Jacobson representing you or, should you wish to discharge him, representing yourself today?
>
> MR. H.: I'm just going to proceed, I guess. I guess I don't have a choice.
>
> THE COURT: Do you want to proceed with Mr. Jacobson still representing you?
>
> MR. H.: If I have to, yes.
>
> THE COURT: Okay. Okay.

The court denied Father's request for a postponement and the hearing commenced with Mr. Jacobson as Father's counsel. Father[7] testified, as well as two social workers and Mrs. T.H. Father's attorney cross-examined the witnesses and then called the paternal

[7] Father testified that he needed to "get [himself] together, and [he had] to go through the things that I need to make sure that I'm physically equipped and equipped to take care of [S.S.]" He continued "for me to try and come home and try to snatch him away from foster care where he is and placement would be selfish. I'm not asking for that."

grandmother to testify. At the outset of the Father's attorney's questions, the paternal grandmother stated that Father had ADHD and he "get[s] easily confused when [people] start throwing questions and numbers at him."

The court granted the Department's petition at the conclusion of the hearing and terminated Father's parental rights. The court found, after "consider[ing] all of the factors set forth in 5-323 . . . by clear and convincing evidence . . . [Father] is unfit as he has never parented [S.S.] beyond six weeks. He is still incarcerated, and he presents no viable plan for what's going to happen once he is released from incarceration." The court also found there were exceptional circumstances making it in S.S.'s best interests to terminate Father's parental rights. Father timely appealed.

STANDARD OF REVIEW

We review a juvenile court's factual findings for clear error, its legal findings "without deference . . . unless the error is harmless," and its ultimate conclusion for an abuse of discretion. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018) (citing *In re Adoption of Ta'Niyah C.*, 417 Md. 90, 100 (2020)). A court's decision to deny a motion for continuance is reviewed under an abuse of discretion standard. *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). An abuse of discretion is a decision that is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Id.* (quoting *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003)).

DISCUSSION

I. The court did not err in denying Appellant's motion for postponement.

Appellant argues that the judge abused his discretion in denying the request for a postponement. He contends that the court did not conduct an examination to determine the effectiveness of his counsel. He argues the court never inquired into whether his counsel "discussed the nature of the TPR proceedings with him, prepared him to testify at trial, or discussed the alternatives to proceeding with a contested hearing." He also argues that the case was ripe for mediation but that his attorney "never inquired on the record why father was not present for mediation and there is no record to indicate whether the option of entering into a post-adoption contact agreement with the foster parents was ever actually presented to him."

Appellees argue that the court did not abuse its discretion in denying Appellant's request. Appellees assert that there was no basis for a postponement; it was "not mandated by law", and Appellant "did not experience an unforeseen event at trial that he could not have anticipated." Appellees contend that Appellant had effective assistance of counsel.

Maryland Rule 2-508 provides, that "[o]n motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require." Md. Rule 2-508(a). A court's decision to grant or deny a postponement is "within the sound discretion of the trial judge." *Touzeau*, 394 Md. at 669 –70 (internal citations omitted). It is an abuse of discretion for a trial judge to deny a postponement when it would violate a party's rights. *See Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 244 (2011) (holding that the trial court abused its discretion by denying

a motion for postponement when it "failed to reasonably accommodate Petitioner's right to engage in religious conduct and to meaningfully participate in his trial").

The Criminal Procedure Article of the Maryland Code, § 16-204(b)(1), (b)(1)(vi)(1) states that indigent parents "shall be provided representation" in "a family law proceeding under Title 5, Subtitle 3, Part II or Part III of the Family Law Article . . . in connection with guardianship or adoption." Parents are owed the "right to the effective assistance of counsel" in termination of parental rights proceedings. *In re Adoption/Guardianship of Chaden M.*, 189 Md. App. 411, 431 (2009). To prove ineffective assistance of counsel in a termination of parental rights proceeding, an appellant must establish two prongs evaluating counsel's performance and prejudice to the client. *In re J.R.*, 246 Md. App. 707, 758 (2020) (citing *In re Adoption of Chaden M.*, 422 Md. 498, 510 (2011)). An appellant must establish that "'counsel's representation fell below an objective standard of reasonableness.'" *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). The review of this prong is "'highly deferential.'" *Id.* (quoting *Strickland*, 466 U.S. at 689). Appellant must also show that "'but for counsel's unprofessional errors, the result of the proceeding would have been different [.]'" *Id.*

In *Touzeau*, our Court affirmed a trial court's denial of the postponement, finding that the court did not abuse its discretion. *Touzeau*, 394 Md. at 656. There, a father and a mother had engaged in years of litigation regarding custody of their daughter. *Id.* at 656–66. After the parents divorced, Mother decided to relocate, and Father filed a motion for modification of custody in September of 2004. *Id.* at 658. The court ordered a

Custody/Visitation Evaluation Report in September of 2004, and in January of 2005, the evaluator submitted a report recommending that father have "residential and legal custody" of their daughter. *Id.* at 659. Mother requested a continuance "in light of the fact that this is a serious nature regarding my daughter, so that I may be able to proceed with counsel." *Id.* at 660. At the custody modification hearing in February of 2005, the court denied Mother's motion for a continuance, finding that she had been given adequate time to obtain counsel. *Id.* at 662. The hearing was held with Mother proceeding pro se. *Id.* Father was ultimately granted residential and legal custody of their daughter and Mother appealed. *Id.* at 664. Our Court concluded that Mother had months to file for a postponement, but waited until eleven days before the trial date, and that the parties were made aware in September that the results from the custody/visitation evaluation would be released in January. *Id.* at 664–65.

The Supreme Court of Maryland granted certiorari and held that the trial court did not abuse its discretion in denying Mother's request for a continuance. *Id.* at 678. The Court found, first, that no statute or rule mandated the granting of a continuance. *Id.* at 670. The Court also determined that there was not an exceptional circumstance requiring a continuance as Mother's case "lack[ed] the elements of surprise and due diligence." *Id.* at 675. An unfavorable custody evaluation was not a surprise in the context of an adversarial custody proceeding and the record showed that Mother did not look for counsel for four months after the initial emergency motion. *Id.* at 775-76. Mother's argument was centered around the theory that her fundamental right to parent was being infringed upon,

and thus she had "a due process right under Article 24 of the Maryland Declaration of Rights to be represented by counsel . . . which was abrogated by the denial of her motion for continuance." *Id.* at 666. The Court found that Mother's right to parent did "not necessarily implicate the range of due process protections statutorily afforded to parents" in termination of parental rights proceedings, but regardless, even in termination of parental rights proceedings, "the full panoply of constitutional due process protections to litigants, as afforded to defendants in criminal cases" is not required. *Id.* at 676 (citing *In re Blessen H.*, 392 Md. 684, 705–08 (2006).

In the present case, like in *Touzeau*, there is no statute or rule that obligated the court to grant Appellant's request for a postponement. Also, like in *Touzeau*, Appellant failed to establish that an exceptional, unforeseen circumstance necessitated a postponement. Clearly, Appellant had a right to be represented at the proceeding and he was. Appellant's dissatisfaction with his attorney's advice does not constitute ineffective assistance of counsel. Further, the record does not show that Appellant's counsel's representation was below any objectively reasonable standard and that the result would have been different "but for" his counsel's "unprofessional errors."

Appellant also argues that the court's lack of inquiry into the basis for his request was an abuse of discretion. The record reflects that the court gave Appellant an opportunity to explain why he wanted a postponement and why he believed his counsel was ineffective. Appellant responded that he did not want to sign his rights away and that his counsel

advised him that he was unlikely to obtain a favorable result. The court found that those reasons did not constitute good cause for a postponement, and we agree.

We note that Appellant has made no assertions about his counsel's lack of preparation for the hearing or performance during the hearing other than to say that his counsel "never inquired on the record why father was not present for mediation," which was not a judicial proceeding. Appellant argues that the court should have granted him another opportunity to go to mediation to potentially enter into a post-adoption contact agreement. This assertion, however, does not establish that counsel's representation fell below an objective standard of reasonableness. Nor does it establish that the court's failure to make such an inquiry was an abuse of discretion. The court's compliance with the statutory guidelines to hold TPR hearings expeditiously was clearly in the best interest of S.S. Appellant, also, has failed to show he was prejudiced. The evidence in the hearing was largely undisputed regarding Appellant's continued incarceration, a lack of bond with his son, and his inability to parent.

In sum, we hold that the court did not abuse its discretion in denying Appellant's request for a postponement.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.