

Circuit Court for Baltimore City
Case No. T15135009

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2332

September Term, 2018

IN RE: M.C.

Graeff,
Friedman,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: February 12, 2019

*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 is the third time that appellant, K.G. (“Father”), has appealed an order from the Circuit Court from Baltimore City, sitting as a juvenile court, which terminated his parental rights over his daughter, M.C. In this appeal, Father presents a single question for our review, which we have rephrased as follows:

1. Did the circuit court err in terminating Father’s parental rights without considering new evidence concerning the child’s best interests?
2. Did the circuit court err in terminating Father’s parental rights where he was not given notice of the remand hearing?

As we will show, Father failed to preserve either of these issues for appeal. Accordingly, we decline to address them.

FACTS AND PROCEEDINGS

Because Father’s allegations of error exclusively concern the most recent remand from this Court, we shall provide only a brief recitation of the underlying facts and proceedings. M.C. was born in 2013 to C.C. and Father. In October 2016, following a two-day hearing wherein C.C. conditionally consented to the termination of her parental rights, the court terminated Father’s parental rights. Father appealed. While the appeal was pending in this court, Father and the Baltimore City Department of Social Services filed a Consent Motion to Vacate Court Order and Remand Case for Further Proceedings, claiming that the juvenile court erred by failing to expressly find that Father was either unfit to parent M.C., or that exceptional circumstances existed to terminate his parental rights pursuant to Md. Code (1984, 2012 Repl. Vol.), § 5-323(b) of the Family Law Article (“FL”).

On March 28, 2017, this Court granted the consent motion and remanded the case “for the limited purpose of conducting a hearing . . . to determine whether [Father] [was] unfit to have a continued parental relationship with [M.C.], or whether there [were] exceptional circumstances that would make a continued parental relationship with M.C. detrimental to her best interests.” At a hearing on April 13, 2017, Father’s counsel requested the opportunity to argue whether Father was unfit or whether exceptional circumstances existed. Father’s counsel specifically stated that he was “not suggesting [the parties] reopen the record[,]” but nevertheless maintained that this Court’s March 28 consent order permitted further argument. The juvenile court denied the request for argument.

On May 8, 2017, the juvenile court issued a written order, finding by clear and convincing evidence, that exceptional circumstances warranted terminating Father’s parental rights. Father appealed this decision, and a panel of this Court affirmed in an unreported opinion. *In re Adoption/Guardianship of M.C.*, No. 614, Sept. Term, 2017 (filed Nov. 2, 2017). Following that opinion, Father filed a motion for reconsideration, relying on this Court’s opinion in *In re Adoption/Guardianship of H.W.*, 234 Md. App. 237 (2017).¹ On February 20, 2018, the panel granted Father’s motion, and remanded the case for further proceedings to ensure compliance with this Court’s *H.W.* opinion.

After this Court issued the February 20, 2018 remand, but before the juvenile court

¹ None of the parties included a copy of this motion for reconsideration in their respective appendices, and the motion is not in the record provided.

held a hearing on that remand, the Court of Appeals reversed our decision in *H.W. In re Adoption/Guardianship of H.W.*, 460 Md. 201 (2018). Following this reversal, on August 20, 2018, the parties appeared before the juvenile court for a brief hearing regarding the February 20 remand.

At this hearing, the parties discussed the significance of this Court's second remand in light of *H.W.* being overturned. As he had done at the April 13, 2017 hearing, Father's counsel again requested additional argument, and the juvenile court again denied the request. Because Father was not present for the hearing, the juvenile court stated that it would issue an order in writing. On August 29, 2018, the juvenile court issued an order substantially similar to its May 8, 2017 order, terminating Father's parental rights. Father timely appealed.

DISCUSSION

I.

Father first argues that the juvenile court erred in its August 29, 2018 order by relying on evidence that was two years old. He asserts that, "the [juvenile] court's finding was not based on M.C.'s current best interests, but on her interests two years prior." Father characterizes the court's error as "refusing to take any testimony based on a mistaken presumption that [the Court of Special Appeals] limited such consideration[.]" However, because Father's counsel did not request the court to take additional testimony during the August 20, 2018 hearing, this argument is not preserved. We explain.

A careful review of the transcript from the August 20, 2018 hearing reveals that

Father's counsel never requested the opportunity to take testimony. At most, Father's counsel simply requested the opportunity to make further argument before the juvenile court when he stated, "Well I'll make a request that there be additional argument and [the court] can overrule me." We further note that Father's counsel made no proffer as to why the juvenile court should receive new evidence. Accordingly, Father failed to preserve this argument for appeal. *See* Maryland Rule 8-131(a) (stating that an appellate court will not ordinarily decide an issue unless raised in or decided by the trial court).

II.

Father's other appellate argument is that the juvenile court erred by proceeding with the August 20, 2018 hearing despite his absence. Father argues that "While parents in a civil case lacks [sic] the [S]ixth [A]mendment right to be present, they still enjoy a right to be present as a component or aspect of the right to procedural due process." Like his argument that the juvenile court erred by failing to receive additional testimony, Father's counsel never asserted that Father's presence was required at the August 20, 2018 hearing. Accordingly, Father has waived this argument.

As stated above, the August 20, 2018 hearing was an opportunity for the juvenile court to acknowledge this Court's remand on the motion for reconsideration. At the hearing, the juvenile court noted that Father was not present. Father's counsel simply responded, "Yeah, he's not here[,]" and asserted his belief that arguments were appropriate at the hearing. In light of Father's absence, the juvenile court declared that it would issue its new order "in writing because of [Father's] absence."

At no point during the hearing did Father's counsel argue that Father should be present, nor did he request a continuance. Accordingly, Father failed to preserve this argument for appellate review. Finally, we note that there is no Sixth Amendment right for a parent to be present at a termination of parental rights hearing.² *See In re Adoption/Guardianship No. 6Z980001*, 131 Md. App. 187, 192 (2000).

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

² We further note that at oral argument, Father's appellate counsel conceded that Father's trial counsel did receive notice of the hearing in accordance with the Maryland Rules.