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In re Mandy M., 239 A.3d 1152, 1155 (R.I. 2020)

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Family Law. *In re Mandy M.*, 239 A.3d 1152, 1155 (R.I. 2020). In a proceeding to terminate parental rights, a Family Court justice is not compelled to appoint substitute counsel should a parent elect to discharge counsel and proceed as a *pro se* litigant. Termination of parental rights is proper if a parent fails to comply with services prescribed to remedy the situation that necessitated the removal of a child.

TRAVEL AND SUMMARY

The respondent—the natural father of Mandy M. (Mandy)—appealed a decree terminating his parental rights, contending that (1) he was denied the right to effective counsel and (2) the evidence did not support a finding of parental unfitness.¹ The Rhode Island Supreme Court determined that the respondent’s right to effective counsel was not denied when the trial justice granted the respondent’s motion to discharge his counsel, explained the consequences of proceeding as a *pro se* litigant, and recommended that standby counsel remain in place.² The Court affirmed the trial justice’s decision, finding it was in Mandy’s best interest to terminate the respondent’s parental rights.³

Mandy was hastily placed in the care and custody of the Department of Children, Youth, and Families (DCYF) following her birth in October 2014.⁴ DCYF’s decision to remove Mandy was based on her mother’s history of mental health struggles and previous reports of neglect concerning her other children.⁵ Following that decision, the respondent sought DCYF services prescribed “to correct the situation that led to [his daughter] being removed.”⁶ DCYF’s case plan for the respondent included, *inter alia*, a

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1. *In re Mandy M.*, 239 A.3d 1152, 1154 (R.I. 2020).
 2. *Id.*
 3. *Id.*
 4. *Id.*
 5. *Id.* at 1155.
 6. *Id.*

visitation schedule, a parent-child evaluation, and domestic violence counseling.⁷ The respondent failed to complete his case plan responsibilities due largely to his frequent incarcerations for violating a no-contact order issued on behalf of Mandy's mother.⁸

During this time, DCYF continued to work with the respondent to verify his employment, the suitability of his housing, and his compliance with other responsibilities that would ensure reunification was in Mandy's best interest.⁹ The respondent regularly refused to cooperate with DCYF outside of scheduled visits with Mandy.¹⁰ In February 2016, after exhaustive efforts to provide the respondent with required remedial actions—including domestic violence counseling, substance abuse treatment, and other recommended measures—DCYF filed a petition to terminate the respondent's rights pursuant to Rhode Island General Laws section 15-7-7.¹¹

In October 2016, at the start of the trial, the respondent's counsel moved to withdraw his appearance on the grounds that he and the respondent had failed to reach a consensus on strategy.¹² The respondent affirmatively expressed his desire to discharge his counsel and did not insist on standby counsel.¹³ After the trial justice elucidated the consequence of proceeding as a *pro se* litigant, he cautioned for standby counsel to remain in place should the respondent require further legal support.¹⁴ The motion was granted, and the subsequent trial date was set for December 2016.¹⁵ In the ensuing trial, the respondent wavered in his decision to continue as a *pro se* litigant.¹⁶ The trial justice reminded him of the court's

7. *Id.* at 1156.

8. *Id.* at 1157.

9. *Id.* at 1158.

10. *Id.*

11. R.I. GEN. LAWS § 15-7-7 (Requiring a parent be found unfit as delineated under this law; that the minor be placed in DCYF care for a minimum of twelve months; and that during those twelve months, the parent(s) be "offered or receive[] services to correct the situation that led to the child being placed" prior to removal. Removal is proper should a parent be unable to establish with "substantial probability" that the child would otherwise be returned to their care within a reasonable amount of time.). *Mandy*, 239 A.3d at n.2, 1154.

12. *Id.* at 1155.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

leave with respect to his motion to withdraw counsel.¹⁷ The judge then inquired once more if the respondent was prepared to proceed. Both he and his standby counsel agreed to proceed.¹⁸

Upon finding the respondent unfit, the court issued a decree terminating his parental rights for want of a “substantial probability” that the child would be returned to his care “within a reasonable amount of time.”¹⁹ The court pointed to the respondent’s chronic resistance to DCYF-prescribed case plans, citing his failure “to really look at the case plans, insisting that they were not necessary.”²⁰ Mandy had been in DCYF custody for over three years, spending most of that time in the loving care of her foster parents, who now wished to adopt her.²¹ The court reasoned that termination of the respondent’s rights was in Mandy’s best interests, as it permitted Mandy’s foster parents to seek adoption.²²

In July 2017, following the issuance of the decree terminating his parental rights, the respondent filed an appeal *pro se*.²³ The Rhode Island Supreme Court entered a conditional order of dismissal in February 2018 after the respondent failed to timely file a pre-briefing notice and remanded the case to the Family Court.²⁴ Mandy’s foster parents adopted her on May 15, 2018.²⁵ In September 2018, the respondent’s newly appointed counsel delivered a pre-briefing statement on his behalf.²⁶ The Court vacated the dismissal of the respondent’s appeal and agreed to hear this case.²⁷

ANALYSIS

Upon review, the Court sought to determine whether the respondent was deprived of his right to effective counsel and whether the evidence was sufficient to support a finding of parental

17. *Id.*

18. *Id.*

19. *Id.* at 1158.

20. *Id.*

21. *Id.*

22. *Id.* at 1157.

23. *Id.* at 1158.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

unfitness.²⁸ While the right to due process may oblige the appointment of counsel in particular proceedings to terminate parental rights, the Court held that a trial justice is not obligated to assign substitute counsel should a parent elect to discharge their appointed counsel.²⁹ The Court was persuaded by the fact that the respondent and his counsel moved to withdraw in agreement.³⁰ The respondent did not object to the motion, nor did he request substitute counsel after the trial justice cautioned of the consequences of the decision, but instead acquiesced to proceeding *pro se*.³¹ Despite the respondent holding himself out as employed, and not indigent and needing a court-appointed attorney, the trial justice requested standby counsel for good measure.³² In light of the record, the Court found that the respondent's right to effective counsel was not denied because the respondent knowingly relieved himself of his right.³³

The Court held that the evidence was sufficient to support a finding of parental unfitness.³⁴ Mandy remained in DCYF custody for over three years while DCYF offered the respondent reasonable efforts to support reunification.³⁵ The respondent refused to participate in recommended programs and required services outside visitation with his daughter.³⁶ There was clear and convincing evidence that "a substantial probability that the child [would] be able to be returned safely to the father's care within a reasonable period" did not exist.³⁷ The respondent was found unfit because he repeatedly declined to take advantage of the assistance that would enable Mandy to return safely to his care and custody.³⁸

Following a finding of unfitness and establishing that reasonable efforts were made to support reunification, the Court considered

28. *Id.* at 1159.

29. *In re Bryce T.*, 764 A.2d 718, 721 (R.I. 2001) (quoting *Lassiter v. Dep't. of Soc. Ser. of Durham Cnty., N.C.*, 452 U.S. 18, 31 (1981)).

30. *Mandy*, 239 A.3d at 1160.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 1158, 1161.

36. *Id.* at 1161.

37. *Id.*

38. *Id.*

Mandy's best interests above all other considerations.³⁹ When weighing the best interests of the child, the Court contemplates "the right of a minor child to reasonable care and maintenance, freedom from abuse or neglect, and the right to be given an opportunity to spend the remainder of his or her childhood in a family setting in which the child may grow and thrive."⁴⁰ The Court found it would be in Mandy's best interest to terminate the respondent's parental rights, permitting her to remain permanently in the loving and nurturing home provided by her foster parents.⁴¹ The Court took great care when weighing the "significance of severing the bond between parent and child..."⁴² Ultimately, the Court believed that under these facts, termination of the respondent's parental rights was in Mandy's best interest.⁴³

COMMENTARY

While the Court affirmed the necessity of effective legal counsel in termination proceedings, it concurrently satisfied its obligation to protect an individual's right to *pro se* representation.⁴⁴ In every instance, the termination of parental rights is a matter of serious thought, and seldom are such decisions easy to make.⁴⁵ Termination of parental rights is a drastic and irreversible remedy that removes a parent's right to be a part of their child's life. The gravity of these decisions requires that parents have the utmost qualified zealous advocate. The Rhode Island Supreme Court has taken noteworthy steps to ensure parents are afforded adequate legal representation.⁴⁶ However, should a parent elect to represent themselves in these proceedings, it is their legal right to do so, and short of limited exceptions, no court has the authority to say otherwise.⁴⁷

39. *In re Violet G.*, 212 A.3d 160, 167 (R.I. 2019).

40. *In re Christopher B.*, 823 A.2d 301, 317 (R.I. 2003) (quoting *In re Stephanie*, 456 A.2d 268, 271 (R.I. 1983)).

41. *Mandy*, 239 A.3d at 1161.

42. *Violet*, 212 A.3d at 168 (quoting *In re Alexis L.*, 972 A.2d 159, 170 (R.I. 2009)).

43. *Mandy*, 239 A.3d at 1161.

44. *Id.* at 1155.

45. *See id.* at 1158 (trial justice stating that the "respondent's case was a complicated and difficult case.").

46. *Id.* at 1160.

47. 28 U.S.C. § 1654 (2018) ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules

In this instance, the trial justice conceivably exceeded its mandate considering the gravity of the controversy, recommending standby counsel while observing the respondent's legal right to proceed *pro se*.⁴⁸ When determining whether the respondent's rights to effective counsel had been denied, the Court considered all considerations and proceeded prudently.⁴⁹

There is no doubt that the Rhode Island Supreme Court took great care when deciding whether terminating the respondent's parental rights was in Mandy's best interest.⁵⁰ The Court's diligence in its duty reinforces the judicial system's focus on the child's best interest above all other things. Although the decision to terminate the respondent's parental rights is disappointing, the respondent was afforded every opportunity to take the necessary steps to ensure his daughter would be returned safely to his care.⁵¹ The finding of parental unfitness and termination of the respondent's parental rights permitted Mandy's foster parents to adopt her, ensuring her reasonable care in the only home she had known.⁵²

CONCLUSION

The Rhode Island Supreme Court is entrusted with protecting an individual's parental rights while safeguarding a child's best interest if a parent is found unfit.⁵³ The Court fulfilled its responsibility to protect the respondent's right to effective counsel after the respondent elected to proceed as a *pro se* litigant.⁵⁴ When affirming the trial justice's decision to terminate the respondent's parental rights and allowing Mandy to remain in the loving care of her foster parents, the Court also satisfied its duty to Mandy.⁵⁵

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of such courts, respectively, are permitted to manage and conduct causes therein.”).

48. *Mandy*, 239 A.3d at 1155.

49. *Id.*

50. *Id.* at 1161.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*