MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 22-89
Docket No. Cum-21-393

IN RE CHILD OF CHANTA G.

Submitted on Briefs September 21, 2022
Decided October 6, 2022

Panel: STANFILL, C.J., and MEAD, JABAR, HORTON, CONNORS, and LAWRENCE, JJ.

MEMORANDUM OF DECISION

Chanta G. appeals from a jeopardy order as to her child entered in the District Court (Portland, *Woodman, J.*) on the petition of the Department of Health and Human Services. Contrary to the mother's contentions, there is sufficient evidence in the record to support the court's determination, by a preponderance of the evidence, that the child is in circumstances of jeopardy to the child's health or welfare.[1] *See* 22 M.R.S. §§ 4002(6),[2] 4035 (2022); *In re Child of Ryan F.*, 2020 ME 21, ¶¶ 30-31, 224 A.3d 1051. To the extent that the jeopardy order arguably failed to meet the requirement in 22 M.R.S. § 4035(4-A)(2022) that a jeopardy order must be issued "within 120 days of the filing of the child protection petition," we decline to disturb the order on that basis.[3] *See In re Cameron W.*, 2010 ME 101, ¶ 4 n.1, 5 A.3d 668; *State v. Mayberry*, 2001 ME 176, ¶ 7, 787 A.2d 135; *Davric Me. Corp. v. Me. Harness Racing Comm'n*, 1999 ME 99, ¶ 13, 732 A.2d 289; *State v. Clark*, 642 A.2d 159, 160-61 (Me. 1994).

[1] In its order, the court referred to observations made by court marshals of the mother "laying on the bench outside the courtroom and then . . . proceed[ing] to lay down in the vestibule between the hallway and the courtroom," after the court took a recess when the mother appeared sleepy and unwell and indicated to the court that she needed to use the restroom during the first day of the jeopardy hearing. The mother is correct in her assertion that these findings are unsupported in the

The entry is:

Judgment affirmed.

Brittany Sawyer, Esq. Holmes Legal Group, LLC, Wells, for appellant mother

Aaron M. Frey, Attorney General, and Hunter C. Umphrey, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee Department of Health and Human Services

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record because no court marshals were ever placed under oath to testify to what they allegedly had seen.

Nonetheless, "[a] factual error in a child protection order is harmless if it is highly probable that the error did not prejudice the parents or contribute to the result in the case." *In re Child of Ronald W.*, 2018 ME 107, ¶ 7 n.2, 190 A.3d 1029 (quotation marks omitted); *see* M.R. Civ. P. 61. Here, it is evident that the court's unsupported findings regarding the court marshals' observations were of minimal importance to the court's analysis given that the court made ample findings that are adequately supported by evidence admitted at the jeopardy hearing. Because the record here contains ample evidence for the court to base its jeopardy determination on, the factual error as to the court marshals' observations of the mother is harmless. *See In re Child of Danielle F.*, 2019 ME 65, ¶ 3 n.2, 207 A.3d 1193. Separately, to the extent that the mother contends that the Department failed to adequately provide her services, competent evidence in the record supports the court's finding that the Department made reasonable efforts to prevent the child's removal from the mother.

[2] Title 22 M.R.S. § 4002(6) was amended in 2021 but the amendments are not relevant in this case. *See* P.L. 2021, ch. 176, §§ 3, 4 (effective Oct. 18, 2021) (codified at 22 M.R.S. § 4002(6) (2022)).

[3] The mother also argues on direct appeal that she would not have been found to pose jeopardy to the child if she had not received ineffective assistance of counsel. The mother raised an ineffective assistance claim on direct appeal while simultaneously pursuing an ineffective assistance claim by means of a M.R. Civ. P. 60(b)(6) motion before the trial court. Our case law makes clear, however, that parents seeking to challenge ineffective assistance of counsel must choose one of the two avenues for relief. *See In re Alexandria C.*, 2016 ME 182, ¶¶ 11, 23, 152 A.3d 617. Recognizing this, we stayed the appeal to allow for the mother's Rule 60(b)(6) motion to be adjudicated by the trial court to permit any appeal from that motion to be heard with the merits of the appeal. The trial court denied the mother's motion and the mother did not appeal that denial. Because the only remedy that the mother could receive from our review on direct appeal would be the same process that the mother has already received at the trial court level—an adjudication of the full merits of that claim, *see In re Aliyah M.*, 2016 ME 106, ¶ 12, 144 A.3d 50—we conclude that the mother's ineffective assistance claim on direct appeal has been rendered moot by the trial court's denial of her Rule 60(b)(6) motion and her failure to appeal the denial.