OPD OFFICE OF THE PARENT DEFENDER

TUESDAY'S TIP #21 – CONSTITUTIONALIZING CONTINUANCES

Published 7/25/2023

Situation: The case is set to be heard and your client or an important witness is nowhere to be found.

The Problem: Continuance requests seem like a longshot, especially when the client is not present.

Law: For adjudications, continuances of hearings are based on good cause to receive additional information, including additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile. "[C]ontinuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile." Waiting on the resolution of pending criminal charges for the same reason as the petition is not sufficient. N.C.G.S. 7B-803

For terminations, N.C.G.S. 7B-1109(d) allows for continuances for up to 90 days from the filing of the initial petition for additional information. Any continuances beyond 90 days are for extraordinary circumstances only.

On appeal, the issue will be reviewed for abuse of discretion unless the parent's constitutional right to custody, care, and control of their children is specifically invoked – *E.g.*, *In re C.A.B.*, 381 N.C. 105, 112 (2022) – or the parent's right to effective assistance of counsel is raised including the right to have adequate time to prepare. *In re Bishop*, 92 N.C. App. 662, 666 (1989).

Beyond constitutionalizing and rights, the reasons for the continuance should be "fully established." *In re L.A.J.*, 381 N.C. 147, 151 (2022). Vague reasons are likely not enough and instead requests should be supported with affidavits, offers of proof, or specific forecasts of testimony. *In re A.L.S.*, 374 N.C. 515, 518 (2020); *In re L.G.*, 274 N.C. App. 292, 297 (2020). That said, unusual facts can still show the need for a continuance. *C.A.B., supra* at 122 (due process violation to deny continuance when Respondent was in prison lockdown due to COVID, termination grounds required assessing Respondent's progress in prison, and no other witness with direct knowledge of his prison life was available); *In re D.W.*, 202 N.C. App. 624, 629 (2010) (error to deny continuance when Respondent suffered from mental disability, no evidence Respondent received notice of the hearing, and trial court was deprived of Respondent's testimony).

Action Steps:

1. Before the hearing, discuss with your client potential strategies to know what evidence and information you will need to counter the petition allegations or termination grounds.
2. Prepare documentary exhibits, parent reports, or oral arguments/witness questions on such evidence for the upcoming hearing.
3. If the client or a different expected witness is not present, request a continuance, invoke the parent's constitutional rights and the need for adequate time to prepare, and make specific offers of proof or forecasts of expected testimony. Mention the statutory bases and grounds as well.

Conclusion: Don't waive your client's constitutional rights to be present or to be able to present a defense. Make specific arguments on the reasons, facts, and evidence to support those rights that would have been presented if available and will be presented with a continuance.