

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

17-P-165

ADOPTION OF SHARON.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The mother appeals from a decree entered by a judge of the Juvenile Court terminating her parental rights to her daughter, Sharon, who was born in November, 2010.² The sole issue she raises is whether the judge abused his discretion by denying her request to appoint new counsel on the day of trial or grant her a continuance. We affirm.

Background. Because the issue on appeal concerns only the mother's right to counsel, we do not recite the facts which led to the termination proceedings. It suffices to note the following about the procedural history of the case. The Department of Children and Families (DCF) became involved with the mother and her family in January 2014. At that time, Sharon was three years old, and the mother had two younger children. One child was eighteen months old and the other was five months

¹ A pseudonym.

² The father did not appeal from the termination of his parental rights.

old. DCF filed a petition for the care and protection of all three children on April 30, 2014. Temporary custody was granted to DCF and James Sheridan was appointed to represent the mother. Ultimately, the mother stipulated to an adjudication of unfitness and subsequently signed stipulations for the permanent guardianship of her two younger children. Sheridan represented the mother throughout these proceedings. When the termination trial involving Sharon commenced on April 13, 2016, Sheridan had represented the mother for approximately two years.

Just before the trial began, Sheridan informed the judge that the mother was requesting that he, Sheridan, withdraw from the case; he also made a verbal motion on the mother's behalf for a continuance to seek substitute counsel. The judge then asked the mother to explain her reasons for the request. She expressed her concern (and disapproval) that Sheridan had spoken with the social worker assigned to the case about issues the mother had brought to Sheridan's attention. These communications bothered the mother because, as she put it, "I don't think that they should be talking back and forth, period." The judge was not persuaded that the mother had a valid basis for requesting new counsel and denied her motions. The judge informed the mother that she could proceed with Sheridan or represent herself.

The mother then proceeded pro se, with Sheridan as standby counsel, for a brief period until she became upset and left the courtroom. Sheridan related that the mother was "overwhelmed with emotion," in part due to the fact that she had been in the process of negotiating a stipulation with DCF concerning a permanent guardianship for Sharon. He requested a short continuance to provide the mother with an opportunity to further consider the proposed stipulation. The motion for a continuance was opposed by DCF and Sharon.

Meanwhile, as the judge was addressing the situation with the attorneys, the social worker reported that the mother was in the lobby and wanted to talk with Sheridan. The judge took a recess, during which Sheridan spoke with the mother. When the trial recommenced, the mother returned to the courtroom. The judge asked the mother if she would like to proceed with Sheridan representing her and she responded affirmatively:

The Court: "The Court notes that Mother left the courtroom after she indicated that she could represent herself. Mr. Sheridan has been appointed as standby counsel. Mr. Sheridan has represented the mother for almost two years."

"Given that Mother presented to the Court as being emotionally upset and that's a position confirmed not only by the social worker but also by Mr. Sheridan who knows her well, I will ask you, Mother, and give you the opportunity to change, would you like Mr. Sheridan to handle this case for you?"

The Mother: "Yes."

The Court: "All right. So Mr. Sheridan, you are restored as counsel of record for Mother."

"Okay. So I think that is a wise course of action, Mother; and your rights are well preserved by that decision. Okay."

The trial started anew but did not conclude that day. The mother was not present in court when the trial resumed about two weeks later nor was she present when the trial concluded.

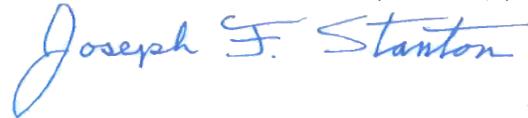
Discussion. The mother contends that the judge abused his discretion in denying her motion for new counsel and in denying her motion to continue the trial. Specifically, she claims that the judge improperly presented her with an ultimatum to either proceed with Sheridan or proceed without counsel.

"The right to counsel does not include the right to dictate who should be appointed, although a motion for substitution of counsel should be allowed if the [party making the request] demonstrates good cause." Adoption of Olivia, 53 Mass. App. Ct. 670, 675 (2002). The burden of demonstrating good cause is on the party making the request. See Commonwealth v. Britto, 433 Mass. 596, 600 (2001). Our cases hold that good cause exists where there is "an irreconcilable breakdown in communication." Commonwealth v. Carsetti, 53 Mass. App. Ct. 558, 564 (2002), quoting Britto, supra. Here, however, the record shows that the breakdown in communication between the mother and Sheridan was brief and was, in fact, reconcilable. Furthermore, as the judge observed, Sheridan had represented the mother for two years and knew her well. Sheridan was prepared for trial and the mother does not claim ineffective assistance of counsel. Although the

judge's colloquy with the mother was brief,³ we are confident that he weighed the competing interests, considered the reason the mother sought to change counsel, and appropriately concluded that there was no basis to appoint new counsel or grant a continuance. We therefore conclude that the judge did not abuse his discretion when he denied the mother's motion to discharge counsel and denied her motion for a continuance.

Decree affirmed.

By the Court (Vuono,
Desmond & Ditekoff, JJ.⁴),



Clerk

Entered: January 10, 2020.

³ When exercising the "discretion to grant a request for new counsel . . . or to allow a motion for a continuance, . . . the judge should make findings showing a balancing between the defendant's rights and the interests of the Commonwealth and demonstrating that discretion was in fact exercised." Carsetti, 53 Mass. App. Ct. at 561.

⁴ The panelists are listed in order of seniority.