

# Appendix A

STATE OF MAINE

SUPREME JUDICIAL COURT  
Sitting as the Law Court  
Docket No. Yor-22-329

In re Children of Kinley M.

## ORDER ON PENDING MOTIONS, CONSOLIDATING APPEALS, APPOINTING COUNSEL, AND ESTABLISHING PROCEDURE FOR APPEAL

On October 3, 2022, the trial court entered orders terminating Kinley M.'s parental rights to her children in docket numbers YORDC-PC-2021-01 and -02. On October 7, 2022, Kinley filed a notice of appeal from those orders.

Kinley, who is currently incarcerated on several criminal charges related to these child protection matters,<sup>1</sup> has recently filed six documents<sup>2</sup> with this Court relevant to this appeal:

- On October 12, 2022, Kinley filed a letter containing two requests. First, Kinley requests "paperwork & instruction to make 2 separate appeals to the Supreme Judicial Court regarding a protective custody order & order denying removal of Judge & continuance." Second, Kinley requests any paperwork necessary to obtain appellate counsel.
- On October 19, 2022, Kinley filed a document titled "Motion for

<sup>1</sup> Kinley has been charged with burglary (Class A), reckless conduct with a dangerous weapon (Class C), criminal threatening with a dangerous weapon (Class C), and assault (Class D).

<sup>2</sup> In addition to the five documents docketed in this appeal, Kinley has filed a petition for a "writ of mandamus/habeas corpus" which is proceeding under Supreme Judicial Court docket number SJC-22-13.

“Enlargement of Time to File Appeal.”

- Also on October 19, 2022, Kinley filed a letter requesting the appointment of appellate counsel, paperwork to request counsel, and paperwork to file a habeas petition.
- Also on October 19, 2022, Kinley filed a document titled “Mother’s Motion for Further Finding or Amendment of Judgment or New Trial.” The document requests a “new trial with a new judge [and] effective assistance of counsel.”
- On October 21, 2022, Kinley filed a 39-page document labeled as a copy of a petition for a writ of mandamus filed in federal court.
- Also on October 21, 2022, Kinley filed a document titled “Motion for Clarification/Conversion into Appeal,” requesting that this Court accept her federal petition as her appellate argument if her motions for appointment of counsel and to enlarge time are denied.

Kinley’s requests regarding her taking an appeal from various orders are moot because she timely filed a notice of appeal that allows her, subject to any limitations of law, to challenge any orders entered during the course of the child protection proceedings. Her requests for enlargement of time are moot to the extent that they request additional time to take an appeal. To the

extent that her requests for enlargements of time are intended to request an enlargement of time for her brief, the Court will grant a short enlargement of time for Kinley's brief.

Kinley's requests regarding her desire to commence a petition for a writ of habeas corpus must be denied because there are no forms or other assistance that this Court can provide her. There are no court forms for that purpose, and this Court cannot give Kinley legal advice on how to proceed. Kinley must perform her own legal research using any resources available at the facility in which she is housed or through any public Maine law library, such as the Maine State Law and Legislative Reference Library in Augusta, which provides assistance to Maine residents over the phone and by mail.

Kinley's "Motion for Further Finding or Amendment of Judgement or New Trial" requests relief that can be granted only after consideration of the merits of the appeal.<sup>3</sup> The Court cannot vacate a trial court judgment on a procedural motion.

Kinley's request that this Court accept a copy of her petition for a writ of mandamus as her appellate argument is moot because the request is conditioned on this Court denying her "access to appellate counsel [and]/or

<sup>3</sup> To the extent that Kinley intended her motions to be motions under M.R. Civ. P. 52(b), 59(a), or 59(e), the motion must be filed in the trial court within 14 days after entry of judgment.

expansion of time to appeal," and the Court is providing her with appellate counsel and additional time to file her brief.

That leaves Kinley's request for court-appointed appellate counsel. The Court has reviewed the record, particularly the trial court's "Order Again Appointing Standby Counsel," dated August 4, 2022, and "Order Responding to Objection to Appointment of Standby Counsel," dated September 8, 2022.

The record indicates that Kinley, who was represented by ten attorneys in the trial court, is a very difficult client. Kinley's behavior toward her attorneys has been so egregious that the trial court concluded that her actions rose to the level of forfeiture of the right to counsel. Because of Kinley's inability to work with counsel and because Kinley did not complete the required indigency affidavit for appointment of counsel, the trial court appointed Victoria J. Silver, Esq., to serve as only standby counsel at the hearing on the petition for termination of Kinley's parental rights.<sup>4</sup>

Because the nature of representation on appeal is different from the nature of representation in the trial court, this Court has independently considered Kinley's request for appellate counsel.

Because a fundamental right is at stake in child protection proceedings, an indigent parent has a right to appointed counsel. 22 M.R.S § 4005(2); *In re*

---

<sup>4</sup> When Kinley failed to appear at the hearing on the Department's petition to terminate her parental rights, the trial court permitted Attorney Silver to act as full counsel for Kinley.

Child of Nicholas G., 2019 ME 13, ¶ 16, 200 A.3d 783. However, the right to counsel is not absolute. A court may decline to appoint new counsel if a parent has expressly waived the right to counsel or forfeited the right through their actions. In re Child of Stephen E. 2018 ME 71, ¶ 7 n.4, 186 A.3d 134.

This Court has weighed the trial court's well-reasoned concerns, Kinley's due process right to counsel, Kinley's ongoing incarceration, and the children's interests in expeditious consideration and in finality.

Although the trial court was concerned about Kinley's financial status given that she was represented by retained counsel and had failed to file an indigency affidavit, given Kinley's incarceration and the interests at stake, this Court will appoint appellate counsel. Dawn M. Corbett, Esq., has agreed to represent Kinley on appeal. However, cognizant of Kinley's behavior in the trial court, this Court will establish guidelines for that representation.

It is ORDERED as follows:

1. **Consolidation.** Kinley's appeals from orders terminating her parental rights entered in docket numbers YORDC-PC-2021-01 and -02 are

CONSOLIDATED under Law Court docket number Yor-22-329.

2. **Appointment of Counsel and Scope of Representation.**

a. Attorney Corbett is appointed to represent Kinley on appeal,

subject to the conditions described below. Attorney Silver and all other attorneys who have represented Kinley must transfer their complete files to attorney Corbett on or before November 29, 2022. See M.R. Prof. Conduct 1:15(f). The Clerk of the Law Court is directed to send a copy of this order to each of Kinley's previous attorneys.

- b. Attorney Corbett's responsibilities are to review the record, consult with the Department of Health and Human Services on the contents of the appendix, and draft an appellant's brief and any reply brief.
- c. Attorney Corbett need not file any motions on behalf of Kinley and may not assist Kinley with any other matter in this Court or any other court.
- d. Subject to paragraph e. below, Attorney Corbett must discuss the contents of the appellant's brief with Kinley reasonably in advance of filing the brief but must argue only those issues that she considers to be meritorious. As indicated below, the Court will provide Kinley with an opportunity to personally file a supplemental brief containing any additional arguments that she wishes to make.

e. If there is a breakdown in the attorney-client relationship, Attorney Corbett may notify the Clerk of the Law Court and complete the drafting of the brief (and any reply brief) without further consultation with Kinley.

f. Unless this Court subsequently orders otherwise, Kinley may personally (and not through Attorney Corbett) file any motions or requests regarding her appeal directly with the Court. She must either (1) send copies to counsel for the Department of Health and Human Services, Attorney Corbett, and guardian ad litem Steven M. Carey, Esq., and indicate in her motion that she has done so, or (2) certify that she is unable to provide copies and request that the Clerk of the Law Court serve the other parties with copies.

### **3. Briefing Schedule.**

a. The Department of Health and Human Services must file the appendix on or before **December 13, 2022**.

b. Attorney Corbett must file the appellant's brief on or before **January 2, 2023**.

c. Kinley may personally file a supplemental brief on or before **January 24, 2023**, containing any additional arguments that Attorney Corbett did not include in the primary brief. Kinley need

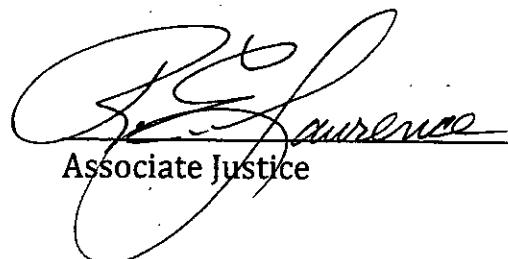
not follow the requirements of the appellate rules for her supplemental brief, except that the brief may not exceed 40 pages and the pages may have writing on only one side. The brief may be handwritten and need not be bound, and Kinley need file only a single copy. The Clerk of the Law Court is directed to send copies of the supplemental brief to the parties if Kinley is unable to do so.

d. The Department must file its appellee's brief on or before **February 21, 2023.**

4. **Remaining issues.** Except as otherwise ordered above, all requests that Kinley has made in the documents that she has filed to date are DENIED to the extent that the Court has jurisdiction to act on them and are otherwise DISMISSED.

Dated: November 15, 2022

For the Court,



B. Lawrence  
Associate Justice

RECEIVED

NOV 15 2022

Clerk's Office  
Maine Supreme Judicial Court

IN RE CHILDREN OF KINLEY M.

Submitted on Briefs May 23, 2023  
Decided May 30, 2023

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

MEMORANDUM OF DECISION

Kinley M. appeals from a judgment of the District Court (York, *Duddy, J.*) terminating her parental rights to three children. 22 M.R.S. § 4055(1)(B)(2)(b)(i)-(iv) (2023). Contrary to the mother's contentions, the court was not required to sua sponte appoint a guardian ad litem for her pursuant to M.R. Civ. P. 17(b). *See In re Child of Sherri Y.*, 2019 ME 162, ¶¶ 10, 18, 221 A.3d 120; *In re Child of Mercedes D.*, 2018 ME 149, ¶¶ 16-17, 196 A.3d 888. "Suffering from mental health issues does not necessarily render one incompetent to participate in a hearing." *In re Child of Sherri Y.*, 2019 ME 162, ¶ 15, 221 A.3d 120. Further, any failure of the Department of Health and Human Services to comply with its obligations does not preclude the termination of her parental rights. *See In re Child of Amelia C.*, 2020 ME 28, ¶ 8, 227 A.3d 156; 22 M.R.S. § 4041 (2023). The mother's incarceration was but one factor the court considered, and competent record evidence supported at least one finding of parental unfitness by clear and convincing evidence. *See In re Alijah K.*, 2016 ME 137, ¶ 16, 147 A.3d 1159.

*never requested*

*incorrect*

The court also did not abuse its discretion in declining to continue the termination hearing at the mother's request as she failed to present "sufficient grounds" and "substantial reasons" for doing so. *In re J.B.*, 2015 ME 25, ¶ 5, 112 A.3d 369. The mother received due process because she was given notice of the hearing and an opportunity to be heard. *See In re Children of Benjamin W.*, 2019

ME 147, ¶ 10, 216 A.3d 901. Contrary to the mother's contention, the court has jurisdiction over child protection proceedings. *See* 22 M.R.S. § 4031(1) (2023).

We do not address the mother's other challenges which attempt to relitigate earlier stages of the proceeding and thus were not cognizable in this appeal. *In re Children of Corey W.*, 2019 ME 4, ¶ 12, 199 A.3d 683. The remainder of the mother's arguments were not sufficiently developed on appeal or presented to the court. *See In re Anthony R.*, 2010 ME 4, ¶ 8, 987 A.2d 532. Accordingly, the court did not err or abuse its discretion in determining that the mother is unable to protect her children from jeopardy or take responsibility for them within a time that is reasonably calculated to meet their needs, and that the termination of her parental rights is in the children's best interests. *See* 22 M.R.S. § 4055(1)(B)(2)(a)-(b)(i)-(iv).

*challenges to court record*

The entry is:

Judgment affirmed.

---

Dawn M. Corbett, Esq., Law Office of Dawn M. Corbett, PA, Ellsworth, and Kinley M, pro se, for appellant Kinley M.

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

---

York District Court docket numbers PC-2021-01 and PC-2021-02  
FOR CLERK REFERENCE ONLY

*still represents*

**Additional material  
from this filing is  
available in the  
Clerk's Office.**