Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-227

OCTOBER TERM, 2008

In re M.C., Juvenile	}	APPEALED FROM:
	}	
	}	Windsor Family Court
	}	
	}	DOCKET NO. 203-11-99 Wrjv
		Trial Judge: Cortland Corsones

In the above-entitled cause, the Clerk will enter:

Mother appeals from the family court's order denying her request to object to a modified permanency plan for her son, M.C. She argues that the court abused its discretion in denying her request for a hearing. We affirm.

M.C. has been in the custody of the Department for Children and Families (DCF) since 1999; he will turn eighteen in January 2009. He has lived in the same foster home since July 2004, and he wishes to remain there. Since M.C. has been in DCF custody, mother has repeatedly demonstrated an inability to work with her appointed counsel, resulting in five motions to withdraw, three of which were granted. Mother has also filed numerous motions to continue and several motions to recuse the presiding family court judge.

As context for the family court's ruling in this case, we briefly recount mother's behavior during the 2007 permanency review process, which directly preceded the review at issue here. In April 2007, DCF presented its permanency plan to the court. Mother was absent from the hearing but indicated through her attorney that she opposed the plan and that she also wanted her attorney to withdraw. A hearing on the motion to withdraw followed in May 2007. At that hearing, the court recounted the circumstances surrounding mother's removal of her first attorney in July 2004 and characterized mother's current motion as "more of the same." The court found mother's complaints about her attorney unsupported by the facts and her request misdirected and unpersuasive. It nonetheless granted the attorney's motion to withdraw, crediting the attorney's assertion that the attorney-client relationship was irretrievably broken. New counsel was then appointed, and another hearing was held in September 2007. At this hearing, mother agreed with DCF's recommendation that M.C. continue in long-term foster care, but she took issue with several factual statements contained in DCF's report. A contested hearing on these issues followed in October 2007, subsequent to which the court issued an entry order modifying several statements. During this process, M.C. and his brother, who was also in DCF custody, expressed their frustration with mother's behavior and the ongoing pattern of having permanency plans proposed, contested, and then having them drag on for months, with

the end result being that no final contested hearing occurred. A witness also testified on the children's behalf, explaining how disruptive mother's behavior was to the children and noting the continued and repeated uncertainty and conflict that it engendered.

The next permanency review hearing—at issue in this case—was scheduled for March 24, 2008, with notice provided to mother's attorney-of-record in January 2008. On March 13, 2008, DCF filed its permanency planning report and a notice of permanency hearing with the court. The plan recommended that M.C. remain in his current long-term foster placement with a transfer of guardianship to his foster parents expected in August 2008. DCF's plan was apparently based on financial considerations. The permanency hearing took place as scheduled on March 24. Mother's attorney attended the hearing, but indicated that she had just learned of both the permanency plan and the permanency hearing that morning. Mother's attorney asked the court for ten days in which to consult with mother and file any objections to the permanency plan. The court agreed to mother's request and issued its permanency findings and order that day, approving the goal of the case plan. The court's order expressly stated that mother had ten days from March 24 to file any objections to the plan, and if she failed to comply, the permanency plan would be in full force and effect.

Mother did not file any objections within the ten-day period. Instead, on April 15, approximately three weeks later, mother filed a pro se affidavit indicating that she did not agree with the case plan. Mother stated that her attorney had not notified her about the hearing, although it appears from mother's filing that she was aware of the family court's decision. Mother expressed concerns about the effectiveness of her attorney, indicated that she wanted her "right to fair representation," and requested a hearing. On the same day, mother's attorney moved to withdraw from the case, indicating that mother had left her a threatening and abusive message and that she could not longer communicate effectively with mother.

On May 9, 2008, the court issued several entry orders. It granted mother's attorney's motion to withdraw and granted mother's request for new counsel. The court denied mother's objections to the case plan, however, finding her motion untimely. The court explained that M.C. needed certainty and that the matter could not be continually left unsettled due to mother's actions. On May 30, mother filed a "motion to appeal," which was treated as a notice of appeal to this Court. Mother also filed a motion to recuse the family court judge, which was denied.

On appeal, mother argues that the court abused its discretion in denying her request for a hearing. Citing Vermont Rule of Civil Procedure 60(b), she argues that her late filing constituted "excusable neglect." She also maintains that because the permanency plan did not contemplate any action until August 2008, the court had "plenty of time" in which to hold an evidentiary hearing.

We find no error in the court's denial of mother's untimely filing. Assuming that Rule 60(b) applies to this juvenile proceeding, and assuming further that mother actually sought relief under this rule below, the family court acted within its discretion in denying mother's request. See John A. Russell Corp. v. Bohlig, 170 Vt. 12, 24 (1999) (Supreme Court will uphold trial court's denial of a Rule 60(b) motion unless moving party shows that the trial court abused its discretion). As we have stated, Rule 60(b) "should be applied only in extraordinary circumstances," id., and there are no extraordinary circumstances here.

As recounted above, the record shows that mother's attorney-of-record was notified of the March 2008 permanency hearing and that mother's then-attorney attended the hearing. The attorney requested ten days in which to consult with mother about the permanency plan, and she agreed that any objections would be filed within that period. It appears that, as in 2007, mother then became unable to communicate with her attorney, which led to the attorney filing a motion to withdraw. Mother's pro se motion, filed on the same day as her attorney's motion to withdraw, reflects mother's awareness of the permanency plan, as well as the family court's decision.

More importantly, however, the objections raised by mother in her pro se motion appear to be simply "more of the same." In her motion, mother complained about her attorney. She claimed the right to "prove and change" what DCF had "written about her character in the case plan," repeating a claim that appears to have been raised and rejected by the family court in 2007. Mother also averred that she would not agree to a legal guardianship for M.C. until DCF could prove that she was an unfit mother and took her rights away. The court did not abuse its discretion in concluding that no hearing was required to address these claims. DCF plainly did not need to prove that mother was unfit before it could transfer guardianship to M.C.'s foster parents. See 33 V.S.A. § 5528(3) (indicating that when a child has been adjudicated child in need of care and supervision, family court may transfer legal custody or guardianship to DCF or to any individual found by court to be qualified to receive and care for the child). Moreover, it is difficult to see, given the history of this case, how addressing mother's objections about the description of "her character" in the case plan would advance M.C.'s best interests, particularly in light of M.C.'s testimony cited above. See 33 V.S.A. § 5501(a)(4) (safety and permanency of children is the paramount concern in the administration and conduct of juvenile proceedings). Mother's behavior fits squarely within her established and ongoing pattern of delaying the permanency review proceedings. The court acted well within its discretion in denying mother's untimely motion and finding that M.C.'s need for certainty and finality was paramount. We find no error.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice