ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-093

JUNE TERM, 2010

In re A.H., Juvenile	APPEALED FROM:	
	}	Caledonia Family Court
	DOCKET NO. 7-2-09 Cajv Trial Judge: M. Kathleen Ma	DOCKET NO. 7-2-09 Cajv
		Trial Judge: M. Kathleen Manley

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

Mother appeals from a family court order terminating her parental rights to the minor A.H. Mother contends the court erred in denying her attorney's motion to withdraw. We affirm.

A.H. was born February 1, 2009. Within several days, the child was placed in the custody of the Department for Children and Families (DCF), and mother stipulated that the child was in need of care or supervision. At the time of A.H.'s birth, mother was on probation for a number of convictions, including aggravated domestic assault and two counts of domestic assault. She also had a history of substance abuse and emotional problems and had voluntarily relinquished her parental rights to an older child in June 2009. At the urging of DCF, and confronted with the alternative of incarceration for probation violations, mother entered the Lund Family Center with A.H. in March 2009. Following an angry outburst in early September 2009, however, she was removed from the Lund Center and has been incarcerated since that time.

DCF filed a termination of parental rights (TPR) petition in late September 2009. Following a status conference in early October 2009, the court issued an order establishing discovery and pre-trial-motion deadlines of late October and early November 2009 and a trial date for early January 2010. In a letter dated October 29, 2009, mother wrote to her court-appointed attorney stating that she had not heard from her since the last court hearing on October 7 and was "frustrated with the lack of communication," and requesting that if counsel was "unable to efficiently communicate the events of the case to me due to time constraints or other factors, that you respectfully file a motion to withdraw so that I may obtain substitute counsel." Mother's attorney, in response, filed a motion to withdraw in November 2009, asserting that "irreconcilable differences" had arisen which prevented her from continuing to represent mother, while acknowledging that counsel for DCF and the minor opposed the motion.

On December 3, 2009, the court held a hearing on the motion. Mother apparently planned to appear by telephone. At the outset of the hearing, however, the court explained that mother had called earlier that morning from prison and was told to call back at 10.30 a.m., that it was almost 11:00 a.m., and that she had not called. The court thereupon proceeded with the hearing, questioning mother's attorney about the reason for the motion. Mother's attorney explained that she had recently spoken with mother, who confirmed her desire for counsel to withdraw. The court noted that mother's letter raised concerns solely about communication and

inquired of counsel whether she was keeping mother apprised of events. Counsel confirmed that she was. The court thereupon found insufficient evidence to demonstrate a disruption of the attorney-client relationship, and denied the motion.

Counsel continued to represent mother through the remainder of the proceeding. She filed several pre-trial motions, actively cross-examined the State's witnesses at the TPR hearing, and called four witnesses on mother's behalf, including three of her service providers at the Lund Home and mother herself. The trial court issued a written decision in February 2010. The court found that, during her six months at Lund, mother had made minimal progress in achieving any of her case plan goals. She had not learned to control her explosive outbursts and impulsive behaviors that had placed the child at risk, or demonstrated the necessary judgment when released in the community to ensure the child's safety. The court found that mother's earliest release date was the summer of 2011, and concluded that, when ultimately released, she would not be in a position to resume parental responsibilities within a reasonable time. The court also noted that the child had been placed in the foster care of her maternal grandparents and had adjusted well to their home. The court thus determined that termination was in the minor's best interest, and granted the State's petition. This appeal followed.*

Mother challenges none of the findings and conclusions underlying the court's decision to grant the TPR petition. Rather she focuses solely on the denial of the motion to withdraw, claiming in summary fashion that she was denied a fair hearing, due process, and effective assistance of counsel by the court's decision to proceed in her absence. Notably, however, mother does not claim or make any showing that she was prejudiced by the procedure or by counsel's representation throughout the remainder of the proceeding. See In re S.W., 2008 VT 38, ¶ 9, 183 Vt. 610 (rejecting a parent's claim that the trial court erred in denying counsel's motion to withdraw where she failed to show either that her counsel was ineffective or that any ineffectiveness on his part was prejudicial to her case). Even assuming, without deciding, that a party may claim ineffective assistance of counsel in a termination proceeding, mother here does not even argue that her attorney, who vigorously contested the State's case at the evidentiary hearing, was ineffective or that it affected the outcome. Cf. In re A.D.T., 174 Vt. 369, 374-75 (2002) (declining to decide whether a parent may raise ineffective assistance in a termination proceeding); In re M.B., 162 Vt. 229, 236 (1994) (rejecting a claim of ineffective assistance of counsel at a termination hearing based on counsel's unsuccessful motion to withdraw where father "fail[ed] to specify how trial counsel's presumed incompetence prejudiced his case sufficiently to create the reasonable probability of a different outcome"). Accordingly, we find no basis to disturb the judgment.

<u>rmmoo</u> .	BY THE COURT:
	John A. Dooley, Associate Justice
	Marilyn S. Skoglund, Associate Justice
	Brian L. Burgess, Associate Justice

Affirmed

^{*} The court also terminated father's parental rights, but he has not appealed.