



# In the Missouri Court of Appeals Eastern District

## DIVISION FOUR

|                                           |                                    |
|-------------------------------------------|------------------------------------|
| IN THE INTEREST OF: T.M.L., K.A.L., and ) | No. ED108807                       |
| K.M.L. )                                  |                                    |
| )                                         | Appeal from the Circuit Court      |
| )                                         | of St. Louis County                |
| )                                         |                                    |
| )                                         | Honorable Sandra Farragut-Hemphill |
| )                                         |                                    |
| )                                         |                                    |
| )                                         | FILED: December 22, 2020           |

M.L.R. (“Father”) appeals the judgments terminating his parental rights to his minor children, T.M.L., K.A.L. and K.M.L. Because we conclude the trial court<sup>1</sup> abused its discretion with regard to Father’s motion to reopen the evidence, we reverse and remand for further proceedings.

### **Factual and Procedural Background**

The Juvenile Officer of St. Louis County filed petitions to terminate Father’s parental rights. The cases were heard at a single trial, but Father did not appear. His court-appointed attorney orally requested a continuance, explaining that he had spoken with Father by telephone the previous day and that they had agreed to meet the morning of the trial. Father’s attorney added that he did not know if there had “been some emergency or another situation” that prevented Father

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<sup>1</sup> The cases were tried before a family court commissioner, who issued findings and recommendations on February 4, 2020. The following day, those findings were adopted in judgments entered by a circuit judge. We refer to these judicial officers collectively as “the trial court.”

from appearing at the trial. He also told the trial court he would “have a difficult time representing [Father’s] interests without him present.” Opposing counsel objected to a continuance. The trial court denied the request for a continuance, and the juvenile officer presented evidence. At the conclusion of the trial, Father’s attorney again requested a continuance. The trial court denied the request and took the cases under submission.

Father’s attorney later filed a Motion to Reopen Trial Evidence in which he stated:

1. Immediately following the conclusion of the trial, Counsel received a message from his client, Father, indicating that he was sick with the stomach flu and could not attend the hearing;
2. Due process requires that Father be allowed to present evidence in this matter and he wishes to do so.
3. An additional setting is necessary for Father to present his case.

The trial court did not conduct a hearing or rule on the motion. Approximately seven weeks after Father filed his motion, the trial court entered separate judgments terminating Father’s parental rights as to the children. The individual cases for each child were consolidated for this appeal.

### **Discussion**

In his first point on appeal, Father argues the trial court “erred in failing to grant [Father’s] motion for a continuance of trial and Motion to Reopen Trial Evidence, abusing its discretion in so doing in violation of [Father’s] right to due process of law.”

“The termination of parental rights is an exercise of awesome power that we do not review lightly.” *In re J.R.*, 347 S.W.3d 641, 645 (Mo. App. E.D. 2011). “We balance our respect for the magnitude of this type of proceeding with the standard of review of a motion for continuance, which is for abuse of discretion.” *Id.* A trial court abuses its discretion “when the ruling is clearly against the logic of the circumstances before it and is so unreasonable and arbitrary as to shock the

sense of justice and indicates a lack of judicial consideration.” *Whitworth v. Jones*, 41 S.W.3d 625, 627 (Mo. App. E.D. 2001).

Rule 65.03<sup>2</sup> requires a motion for continuance to be made in writing “accompanied by the affidavit of the applicant or some other credible person setting forth the facts upon which the application is based, unless the adverse party consents that the application for continuance may be made orally.” If a party fails to follow the requirements of Rule 65.03, “there can be no abuse of discretion in denying a continuance.” *In Interest of C.L.L.*, 776 S.W.2d 476, 477 (Mo. App. E.D. 1989). Here, Father’s attorney did not file a written motion for continuance accompanied by an affidavit as required by Rule 65.03. Therefore, the trial court did not abuse its discretion in denying the oral requests for a continuance on the day of the trial. *Id.*

Father’s Motion to Reopen Trial Evidence, however, is another matter. “A trial court’s decision on whether to allow a party to present further evidence after the evidence is closed is a matter of discretion, and a trial court will be reversed only upon a showing of abuse of that discretion.” *In Interest of S--- G.*, 779 S.W.2d 45, 54 (Mo. App. S.D. 1989). “Ordinarily when there is no inconvenience to the court nor unfair advantage to one of the parties it would be an abuse of discretion to refuse to permit the introduction of material evidence which might substantially affect the merits of the case.” *Id.*

In the Motion to Reopen Trial Evidence, Father’s attorney represented that “[i]mmmediately following the conclusion of the trial, [he] received a message from his client, Father, indicating that he was sick with the stomach flu and could not attend the hearing.” There is no indication the trial court reviewed or considered the merits of the motion; it did not conduct a hearing or rule on the motion and instead entered its judgments terminating Father’s parental

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<sup>2</sup> All rule references are to the Missouri Supreme Court Rules (2019).

rights approximately seven weeks after Father had filed the motion. We note that Father had never previously sought a continuance although the juvenile officer obtained three continuances during the pendency of the cases. If the trial court had considered Father's motion to reopen the evidence and determined he was free of dereliction in failing to appear at the trial, there is nothing to suggest that reopening the evidence would have created an inconvenience to the trial court or given Father an unfair advantage. *See id.* Under the unique circumstances of this termination of parental rights appeal, we conclude the trial court abused its discretion in not considering the merits of Father's Motion to Reopen Trial Evidence, which on its face purports to show that Father had a legitimate reason for failing to appear at the trial.

It bears repeating that "[t]he termination of parental rights is an exercise of awesome power that we do not review lightly." *J.R.*, 347 S.W.3d at 645. We reverse and remand for the trial court to conduct a hearing on the merits of Father's Motion to Reopen Trial Evidence so the trial court can make a credibility determination as to the stated reason for Father's nonappearance at trial. In light of this disposition, it is not necessary for us to consider Father's remaining points on appeal.

### **Conclusion**

For the foregoing reasons, the judgments are reversed, and the cases are remanded for further proceedings consistent with this opinion.

A handwritten signature in blue ink, appearing to read "M. Gardner", is written over a horizontal line.

MICHAEL E. GARDNER, Judge

Gary M. Gaertner, Jr., P.J., concurs.  
Philip M. Hess, J., concurs.