

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

TRIAL COURT DEPARTMENT
JUVENILE COURT DEPARTMENT
LAWRENCE DIVISION
DOCKET NO. [REDACTED]

)
)
Care and Protection of
[REDACTED]
)
)
_____)

MOTHER’S MOTION FOR RELIEF FROM JUDGMENT AND TO RE-OPEN THE EVIDENCE TO ALLOW HER TO PROVIDE TESTIMONY

Now comes [REDACTED] (“Mother”), mother of the above-captioned children, [REDACTED] [REDACTED], and respectfully requests that this Honorable Court exercise its equitable powers pursuant to G.L. c. 218, § 59 as well as any authority pursuant to the Rules of Civil Procedure Rule 60(b)(6)¹ to vacate its June 8, 2023, adjudication finding the children in need of care and protection and decree terminating Mother’s parental rights, and reopen the evidence to allow Mother to testify on her behalf. As reason therefore and as stated in more detail in her accompanying affidavit, Mother asserts that extraordinary circumstances warrant reopening the evidence so she can testify on her own behalf and in her own defense. See, e.g., Yvonne, 99 Mass. App. Ct. at 584 (moving party may establish extraordinary circumstances warranting relief by a preponderance of the evidence). Mother asserts that her brother assured her the night before trial (June 7, 2023) and again on the morning of trial (June 8, 2023) that he would drive her to

¹ Although the Massachusetts Rules of Civil Procedure do not apply to care and protection or termination of parental rights cases, they may be applied by analogy. Adoption of Franklin, 99 Mass. App. Ct. 787, 802 (2021); Adoption of Yvonne, 99 Mass. App. Ct. 574, 582 (2021).

court in time for her trial; however, he never arrived. She managed to get to court after a neighbor allowed her to borrow her car, but by the time she arrived, the trial had concluded. If allowed to testify, she would testify, among other things, that she has a job and has been living in the same apartment for several years, is seeing a doctor and psychiatrist, is taking her prescribed medication, is doing AA meetings online, has completed parenting classes and other programs the Department asked her to complete.

“Parents have a fundamental liberty interest in maintaining custody of their children, which is protected by the due process clause of the Fourteenth Amendment to the United States Constitution.” Care and Protection of Erin, 443 Mass. 567, 570 (2005). “State action terminating a parent-child relationship must comport with due process, including notice, and an opportunity to be heard at a meaningful time and in a meaningful manner.” Adoption of Zev, 73 Mass. App. Ct. 905 (2009). “[D]ue process requires that ‘a parent have the opportunity effectively to rebut adverse allegations concerning child rearing capabilities.’” Adoption of Edmund, 50 Mass. App. Ct. 526, 539 (2000).

Mother was denied the opportunity to rebut the Department’s allegation of her current unfitness and that termination of her parental rights served her children’s best interest purely because her brother failed to get her to her trial on time despite his repeated assurances to her that he would. The termination trial itself was brief, with the entire hearing only lasting about thirty minutes²; no one testified and DCF’s case is built entirely on documentary evidence seemingly only through the end of 2022 according to the marked exhibits; and the court drew a negative inference from Mother’s failure to testify at trial although her absence was not deliberate and is largely through no fault of her own. Moreover, the substantial rights of the

² According to the trial transcript and transcriber, the trial commenced on June 8, 2023, at 11:46 a.m. and adjourned at approximately 12:15 p.m.

parties will not be affected by affording Mother her due process right and re-opening the evidence so she can testify on her own behalf, which should not require more than a half-day to a day of testimony.

Wherefore, for the reasons stated herein, Mother respectfully requests that this court:

- (i) Vacate the decree finding her currently unfit and terminating her parental rights to [REDACTED]; and
- (ii) Re-open the evidence to permit Mother to testify on her behalf.

Respectfully Submitted:
[REDACTED], Mother
By her attorney,

[REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

I, [REDACTED], hereby certify that on July ___, 2023, I served a copy of Mother's Motion and Memorandum For Relief From Judgment And To Re-Open The Evidence To Allow Mother To Provide Testimony by electronic mail or by regular mail to the following:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]