

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

IN THE MATTER OF G.R.S. : Case No. 18CA17
DEPENDENT CHILD : DECISION AND
 : JUDGMENT ENTRY
 :

RELEASED: 01/18/2019

APPEARANCES:

Lynn Turner, Hillsboro, Ohio, for appellant.

Anneka P. Collins, Highland County Prosecuting Attorney, and James Roeder, Highland County Assistant Prosecuting Attorney, Hillsboro, Ohio, for appellee.

Harsha, J.

{¶1} After the Highland County Juvenile Court granted permanent custody of G.R.S. to the county Children’s Services Division (“agency”), the mother appealed. The mother contends that the trial court erred in accepting her waiver of her right to a permanent custody hearing without determining if any promises regarding adoption had been made to her in exchange for the waiver. However, the record reflects that the trial court determined that her admissions and waiver were voluntarily, intelligently, and knowingly made. Addressing the issue about the promise of adoption, the trial court informed her that there was no guarantee G.R.S. would be adopted and that, if an adoption proceeding occurred, the mother would have no right to attend or have any say in the matter. The mother acknowledged this and stated that she wanted to waive her right to an adjudicatory hearing. We overrule the mother’s assignment of error and affirm the trial court’s judgment.

I. FACTS

{¶2} In August 2016 the agency filed a complaint alleging that G.R.S. was an abused, neglected and/or dependent child. A few months later the trial court awarded the agency temporary custody. The agency filed several motions for permanent custody, which were extended to allow the mother additional time to work on the case plan. In July 2018, the agency filed its third and final motion for permanent custody. On the date scheduled for the adjudicatory hearing, the mother appeared and waived her right to a formal hearing.

{¶3} The mother's attorney informed the trial court of the mother's desire to consent to the agency's request for permanent custody. The attorney also explained to the mother that discussions concerning adoption would not be part of the record or court order and that the mother would be divested of all of her rights in G.R.S. without any guarantee that an adoption would occur. The mother stated that she understood this and that she agreed to the agency's permanent custody request nonetheless. Then the trial court addressed the mother directly:

COURT: Well, to the mother I need to go over your rights and your options. I'm confident Mr. Armintrout has done that. I need to do that on the record here as well. If you have questions, please ask. And if you need additional time to speak with your Attorney, let me know, we'll stop what we're doing and make sure you have time to consult with Mr. Armintrout.

MOTHER: Okay.

COURT: What's before the Court today is the issue of whether or not your parental rights should be permanently terminated in this child, [G.R.S.]. We can do it one of a couple of ways: primarily, initially what we were going to do here today is for me to receive evidence, conduct a trial, a hearing.

Mr. Roeder represents the Agency, Children's Services, and they have the burden. They have to prove to me certain things by what we call clear and convincing evidence. They have to prove the way their paperwork has been filed, uh, that [G.R.S.] has been in their temporary

care and custody at least twelve (12) out of the last twenty-two (22) months. It appears that that would be pretty easy to establish that that's a fact. But, they also have to prove to me that it would be in the best interest of [G.R.S.] to have your rights permanently terminated, and for her to be placed in the custody of Children's Services. And they have to do again by presenting clear and convincing evidence to me.

So, they present their case, their evidence. Mr. Armintrout is here to help you question and contest all the evidence that is presented on behalf of the Agency. Mr. Kirk is [G.R.S.'s] guardian ad litem and Attorney. He's filed a report on what his recommendation is, but he also participates in the hearing. And anything he would present, Mr. Armintrout again is here to help you contest and question that evidence.

And then you have an opportunity to present your case, your information, your evidence, with the help of Mr. Armintrout.

After I hear it all, I have to decide whether Children's Services, the Agency, has proven by clear and convincing evidence that it would be in the best interest of your child to have your rights permanently terminated. And if they're not able to prove that to me, then I'd dismiss their motion.

What's being proposed here this afternoon is that you would not require that hearing to take place. You're not requiring Children's Service[s] to present their evidence; and, you would be agreeing that it is in the best interest of your child to have your rights permanently terminate and be placed in the custody of Children's Services.

If that happens, either by way of a hearing or if you give that right up and just agree that its [sic] best for your child for your rights to be permanently terminated, what typically happens is they try, the Agency tries to find an appropriate placement for your child, a home to be adopted in.

I know from what I've heard in my office in chambers, uh, a foster family at this point has an interest in doing that. And that may happen; it may not happen. You need to know that it's completely 100% out of your control in the event of your rights are permanently terminated.

So, I'm pretty confident in saying that the agency will try to get your child adopted. But, where that is and to adopt a child you have no say, no interest in. You're not even notified of the adoption hearing by the Court through any hearing through here.

And a permanent termination of your rights means just that. You have no legal right to have any say in where this child lives; any terms and

conditions; you have no legal right to visit or have any contact with your child. So, that is what a permanent termination of your parental rights means.

Do you have any questions from me so far?

MOTHER: No.

COURT: Are you sure [t]hat you understand what permanent termination means?

MOTHER: Yeah, I do.

COURT: And you understand we can have a hearing and I'll decide whether the Agency has proven that that should happen by clear and convincing evidence? And, if not, I dismissed the case.

Or, you can waive that right, give that right up, and just agree that it's in the best interests of your child to have your rights permanently terminated. Do you understand those are your two options?

MOTHER: Yes.

COURT: And do you need additional time to speak with your attorney on which way you would like to proceed?

MOTHER: No.

COURT: Any questions at all on what a permanent termination means? This child would be a stranger to you in the eyes of the law.

MOTHER: Right.

COURT: Do you understand all that?

MOTHER: Yes.

COURT: All right. Well, would you like for me to conduct the hearing? Or, do you want to waive that right and agree without any evidence being presented that it's in the best interests of your child to have your rights permanently terminated?

MOTHER: Yes.

COURT: Yes?

MOTHER: I'm going to waive the right.

COURT: Do you agree it's best for your child to have your rights permanently terminated?

MOTHER: Yeah.

COURT: Do you also agree that your child has been in the Agency's temporary care and custody for at least twelve (12) months out of the last twenty-two (22) months?

MOTHER: Yes.

COURT: Do you agree with that as well?

MOTHER: Yes.

COURT: Any questions for the Court at all?

MOTHER: No.

COURT: Are you sure?

MOTHER: Yes.

* * *

COURT: Well, ma'am, I'll write all this up, I'm going to do an order. You'll receive a copy of it. It's basically going to say what we've said here today; you've agreed to this and your rights are permanently terminated. And then the next step is typically an adoption petition is filed, typically here in Highland County. – It doesn't have to be, it kind of depends on whose [sic] adopting, but it's usually done here – and then I have to decide whether the family wanting to adopt the child, whether that should happen or not. Again, you're not a party to that, and you won't be notified by the court of that process and procedure.

So one last opportunity: Any questions at all for the Court?

MOTHER: No.

{¶4} The trial court accepted the mother's admissions and waiver, terminated her parental rights and granted the agency permanent custody of G.R.S.

II. ASSIGNMENT OF ERROR

{¶15} Mother assigns the following error for our review:

1. THE TRIAL COURT ERRED IN ALLOWING AN EMOTIONAL MOTHER TO WAIVE HER RIGHT TO A FORMAL PERMANENT CUSTODY HEARING DESPITE REFERENCES MADE TO DISCUSSIONS AMONG PARTIES AND A POTENTIAL ADOPTION, FAILING TO ASCERTAIN IF ANY PROMISES HAD BEEN MADE TO THE MOTHER IN RETURN FOR HER WAIVER. THIS RESULTED IN A VIOLATION OF HER DUE PROCESS RIGHTS.

III. LAW AND ANALYSIS

{¶16} At the adjudicatory hearing the mother did not object to the trial court's compliance with Juv.R. 29(D). Generally, we will not consider issues that an appellant failed to first raise in the trial court. However, if the error is clearly apparent on the face of the record and it is prejudicial to the appellant, the plain-error doctrine will permit correction of judicial proceedings. See *In re Elliott*, 4th Dist. Washington No. 03CA65, 2004-Ohio-2770, ¶ 15. The plain-error doctrine is applicable in civil cases only in the extremely rare case where the error "seriously affects the basic fairness, integrity, or public reputation of the judicial process." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122–123, 1997–Ohio–401, 679 N.E.2d 1099. Because the termination of parental rights is "the family law equivalent of the death penalty," a trial court's failure to comply with Juv.R. 29(D) demands application of the plain-error doctrine. *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997); *In re Aldridge*, Ross App. No. 02CA2661, 2002–Ohio–5988, ¶ 16.

{¶17} Juv.R. 29(D) provides: "The court * * * shall not accept an admission without addressing the party personally and determining both of the following: (1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission; (2) The party understands that by

entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.” Rule 29(D) places an affirmative duty upon the juvenile court. “Prior to accepting a parent's admission, the juvenile court must personally address the parent appearing before the court and determine that the parent, and not merely the attorney, understands the nature of the allegations and the consequences of entering the admission.” *In re Elliot*, at ¶ 16.

{¶8} The court must make careful inquiries to ensure that the party's admission is voluntary, intelligent and knowing. *Id.* at ¶ 17, citing *In re Beechler*, 115 Ohio App.3d 567, 571–572, 685 N.E.2d 1257 (4th Dist. 1996). Strict adherence to the procedures imposed is not constitutionally mandated; substantial compliance will suffice. *Id.* However, a court's failure to substantially comply with Juv.R. 29(D)'s requirements constitutes prejudicial error that requires a reversal of the adjudication in order to permit the party to plead anew. *Id.* Determining whether a court has substantially complied with Juv.R. 29(D) is a legal issue, which we review *de novo*. *Id.*, citing *In re Jones*, Gallia App. No. 99CA4, (Apr. 13, 2000).

{¶9} The mother contends that she believed there was a potential adoption by the foster parents, which persuaded her to waive her rights, but “no attempt is made at the defining moment to clarify the specific nature of those discussions or to ascertain if any promises have or have not been made to the Mother.” However, the trial court explained directly to the mother that there were no promises or guarantees that G.R.S. would be adopted – that her waiver was unrelated to any potential adoption by the foster parents: “that may happen, that may not happen. You need to know that it's

complete 100% out of your control in the event your rights are permanently terminated *

* * The Agency will try to get your child adopted. But where that is, and who adopts the child, you have no say, no interest in. You're not even notified of the adoption hearing *

* * This child would be a stranger to you in the eyes of the law."

{¶10} The trial court explained the mother's rights and legal options. It asked her multiple times whether she had any questions and if she understood what "permanent termination" meant; it asked her if she would like to waive the right to a hearing, if she agreed that the child had been in the agency's custody for at least 12 months out of the last 22 months, and if she agreed that it would be in the child's best interest to have her parental rights permanently terminated. The mother clearly and unequivocally stated that she understood the court's statements and that she did not have any questions. Both the mother's trial counsel and the trial court each separately explained that although there had been discussions about an adoption, it would not be part of any court order in the case; there was no guarantee that an adoption would occur; and the mother would have no say in the adoption and would not be notified of the adoption process. The mother stated she understood this and had no questions. We find no indication of any promises in exchange for her waiver.

{¶11} The trial court substantially complied with Juv.R. 29(D) when it personally addressed the mother, explained her rights to challenge evidence and present her defense, and ensured that her admissions and waiver were made voluntarily, intelligently and knowingly.

{¶12} We overrule the mother's assignment of error and affirm the judgment of the trial court.

V. CONCLUSION

{¶13} The trial court correctly determined that the mother voluntarily, intelligently and knowingly made admissions and waived a permanent custody hearing. The trial court substantially complied with Juv.R. 29(D). We overrule her assignment of error and affirm the judgment of the trial court awarding permanent custody of the child to the agency.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Court of Common Pleas, Juvenile Division to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J. & Hoover, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.