

[Cite as *In re I.M.M.*, 2019-Ohio-461.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107451

IN THE MATTER OF: I.M.M.

[Appeal By Father]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 15917258

BEFORE: Kilbane, A.J., Laster Mays, J., and Keough, J.

RELEASED AND JOURNALIZED: February 7, 2019

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MARY EILEEN KILBANE, A.J.:

{¶1} Appellant-father (“Father”), appeals from the juvenile court’s decision placing his 18-year old son, I.M.M., in a planned permanent living arrangement (“PPLA”) and declining to award him legal custody of I.M.M. For the reasons set forth below, we affirm.

{¶2} I.M.M., who is now nearly 19 years old (d.o.b. Mar. 12, 2000), has special needs. He has been diagnosed with autism and mental disabilities and requires medication for obsessive compulsive disorder and mood disorder. In December 2015, when I.M.M. was 15 years old, appellee, the Cuyahoga County Division of Children and Family Services (“CCDCFS”), filed a complaint for temporary custody, alleging that I.M.M. was dependent.¹ Specifically, the complaint alleged that: (1) I.M.M.’s mother (“Mother”) suffers from mental health issues; (2) I.M.M. is combative toward Mother and refuses to attend school; (3) I.M.M. missed 21 days of school in October 2015 and 14 days in November 2015; and (4) as of the date of the complaint, I.M.M. had not attended any days in December. The complaint further alleged that I.M.M. was physically combative toward Father and Father was unable to ensure I.M.M.’s safety.

{¶3} In November 2017, CCDCFS March 2016, the juvenile court adjudicated I.M.M. dependent and placed him in temporary custody of CCDCFS filed a motion to modify temporary custody to a PPLA, which is defined as a placement that gives legal custody of a child to an agency without terminating parental rights. R.C. 2151.011(B)(38). At the time, I.M.M. was at Bellefaire’s Monarch Program, a residential program for autistic children.

{¶4} Hearings were held before a magistrate on CCDCFS’s motion in December 2017 and January 2018. Thereafter, Father filed a motion to terminate temporary custody and return legal custody to him and an opposition to the PPLA. The matter was set for a dispositional

¹The complaint was amended in March 2016.

hearing on March 12, 2018, which was I.M.M.'s 18th birthday. Marceal Smith ("Smith") of Bellefaire, CCDCFS Social Worker Selina Agee ("Social Worker Agee"), Father, and I.M.M.'s guardian ad litem ("GAL") testified at the hearing.

{¶5} CCDCFS had been involved with the family since 2002 because of I.M.M.'s behavior. Prior to coming into CCDCFS custody, I.M.M. lived with his mother. CCDCFS first placed I.M.M. in a group home and then at Bellefaire. He has been a resident at Bellefaire for approximately two to three years.

{¶6} Smith, who is the Director of the Monarch Boarding Academy North at Bellefaire, testified that her responsibilities include case managing the 12 residents in her unit, including I.M.M. I.M.M. is on the autism spectrum and requires medication for mood disorder and obsessive compulsive disorder. I.M.M. attends school on the Bellefaire campus where he receives occupational therapy and is engaged in a minor independent living program. He requires two-on-one staff support. I.M.M. needs assistance with eating, hygiene, leisure time, and keeping his room clean. Bellefaire offers support 24 hours a day. Bellefaire ensures that I.M.M. receives all needed psychiatric and medical treatment, educational services, and occupational therapy. I.M.M. can continue his education at Bellefaire up to 21 years of age. Additionally, he has a close friendship with another resident placed at Bellefaire.

{¶7} Smith further testified that, at times, I.M.M.'s behavior escalates to a point where he needs to be restrained. Smith testified that behaviors associated with the autism spectrum require a lot of structure, which is what is being provided to I.M.M., as well as providing him support to keep him safe. Smith explained that when I.M.M. gets upset, he can be violent and has attacked staff members by pulling at clothing or trying to bite or hit. If the staff cannot calm I.M.M. down, the staff would then have to restrain him. Bellefaire uses a three-person restraint

called Therapeutic Crisis Intervention, or TCI. With TCI, the person is placed in a supine hold where he or she is lying on his or her back and his or her arms are in a triangular position. The person is held in that position until he or she is able to calm him or herself down.

{¶8} Smith testified that I.M.M. needs to be restrained approximately two to three times a month. Since being placed at Bellefaire, the number of times he needs to be restrained in a month has decreased, which Smith believes is because of the structure that the facility provides. The residents at Bellefaire have structure and know what to expect throughout the day. I.M.M. knows when it is time for school, and he knows the people in his unit and the staff. The residents usually become agitated when they do not know what to expect.

{¶9} Smith testified that if I.M.M. were placed in a PPLA, he could stay at Bellefaire until he reaches 21 years of age. At that time, Bellefaire would assist in finding him appropriate long-term placement. Bellefaire's sister agency, Life Works, would be used to facilitate his future placement. If I.M.M. were not to remain at Bellefaire, Smith recommended that he would need care 24-hours a day and need to be in school. I.M.M. cannot be left alone because he cannot manage independent living activities, such as cooking and doing the dishes. He often needs help washing his face and putting his clothes on correctly. She ultimately concluded that she could not foresee I.M.M. living outside of a facility such as Bellefaire or some type of group home.

{¶10} Smith also testified to I.M.M.'s ability to communicate. I.M.M. often becomes repetitive in his speech and is unable to specifically express his desires. Smith further testified that I.M.M. does not tolerate change well. If there is a change in his diet, a room change, or a change to the unit to which he is assigned, he gets frustrated because he does not understand why there was a change. I.M.M. also becomes upset and disappointed if there is a change in the

visitation schedule between him and his parents. She testified that Father is devoted and visits at least three to four times a week.

{¶11} Mother's visits were less frequent. Overall, the reports of Father's interaction have been "fairly well." The staff is concerned with Father's ability to understand his son's full needs and his expectations with regard to I.M.M.'s abilities. The staff is concerned that Father is not able to properly handle I.M.M.'s aggression. Father's method of managing I.M.M.'s aggression is to lie on top of him, which is not equivalent to the TCI protocol Bellefaire uses. The TCI method requires training to ensure that there is no asphyxiation and to ensure the safety of the resident and the staff.

{¶12} Social Worker Agee testified about the case plan that was put into place after I.M.M. was removed from Mother's home. According to the case plan, both Mother and Father were required to engage in family therapy to help I.M.M. with his needs. Father was not comfortable with the initial program so he was referred to parenting services through Bellefaire, where he was doing well. Based on the family's history with CCDCFS since 2002, the structure and education I.M.M. was receiving at Bellefaire, as well as the progress he had made there, CCDCFS decided that it would be in I.M.M.'s best interest to be placed in a PPLA. This arrangement allows both Mother and Father as much access as they would like with I.M.M. and I.M.M.'s needs would be addressed in a more appropriate environment. While at Bellefaire, I.M.M. had not missed school. When in the care of his parents, he had missed up to 55 percent of school. Furthermore, the number of times that I.M.M. had to be restrained because of his behaviors had decreased and his aggression had been significantly minimized since residing at Bellefaire.

{¶13} Social Worker Agee further testified that while Father and I.M.M. had a strong

bond, Father's lack of participation in services was a concern of hers, along with Father's physical ability to care for I.M.M. Social Worker Agee testified that Father had hip surgery and used a crutch. He also expressed to her that it was physically challenging to take care of I.M.M.

In the past, there had also been concerns that Father had not followed through with medical providers, ensuring that I.M.M. receive his medication. At the time of the hearing, Father had only a one-bedroom apartment, which she felt was not appropriate because of his past struggles to care for I.M.M. She also testified to an isolated incident where I.M.M. ran into traffic while in Father's care.

{¶14} Father testified that I.M.M. would punch holes in the wall in his home and, on one occasion, I.M.M. ran into traffic while in his care. Father stated during his testimony that I.M.M. is not as aggressive at Bellefaire as he was when he was at home. Father had to restrain I.M.M. at least once a day when I.M.M. was in his care. Father further testified that he does not work and he planned to find a two-bedroom apartment with the county's assistance. He testified that he no longer uses a cane and is "in the best physical shape" he has been in "in a long time." He further testified that I.M.M.'s older sister is working on her doctorate, majoring in special needs children.

{¶15} The GAL, in her report, recommended a PPLA, but reserved the right to change her recommendation based on the evidence at trial. At trial, the GAL recommended that I.M.M. remain in the temporary custody of CCDCFS because he turned 18 on the date of trial and she assumed that I.M.M. would want to be in the Father's custody. She admitted, however, that I.M.M. did not expressly communicate that to her because he does not have the ability to communicate clearly.

{¶16} After the GAL's recommendation, the magistrate decided, by clear and convincing

evidence, that it is in I.M.M.'s best interest to be placed in the PPLA and that CCDCFS has made reasonable efforts to prevent removal and/or reunite I.M.M. with the parents.

{¶17} The magistrate followed up her oral findings with a written decision. In her decision, the magistrate found by clear and convincing evidence that it is in the best interest of the child to be placed in a PPLA, CCDCFS has tried or considered other possible dispositions for I.M.M., and because of his needs, he must remain in residential care under R.C. 2151.451(C)(1)(a). The magistrate further found that while I.M.M. can remain in the custody of CCDCFS until he is 21, an adult cannot be placed in the custody of a parent through juvenile court. Father objected to the magistrate's decision and sought to set aside the decision. CCDCFS opposed. The court approved the magistrate's decision granting a PPLA, and Father's objections were overruled. The court stated:

Pursuant to R.C. 2151.353(A)(5), the Court finds that there is clear and convincing evidence that a planned permanent living arrangement is in the best interest of the child, the child is sixteen years of age or older, and that (a) the child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and the foreseeable future beyond the date of the dispositional hearing[.]

{¶18} Father now appeals, raising the following two assignments of error for review.

Assignment of Error One

The evidence presented to the trial court did not support, by clear and convincing evidence, that an award of planned permanent living arrangement instead of permanent custody to the father was in the best interest of I.M.M. as required by R.C. 2151.415(c)(1)(a).

Assignment of Error Two

The trial court abused its discretion when it found that it did not have authority to place I.M.M. in the custody of his father.

PPLA Award & Permanent Custody to Father

{¶19} In the first and second assignments of error, Father challenges the juvenile court's decision placing I.M.M. in a PPLA at Bellefaire, instead of awarding him permanent custody.

{¶20} As a preliminary matter, we note that the juvenile court could not award permanent custody to Father because I.M.M. was 18 years of age at the time of the hearing. The juvenile court does not have the authority to place an adult in the legal custody of another adult. The proper remedy would have been for Father to ask that temporary custody be terminated in order to file for guardianship of I.M.M. through probate court. R.C. 2101.24(A)(1)(g) states that: “[e]xcept as otherwise provided by law, the probate court has exclusive jurisdiction * * * [t]o make inquest respecting persons who are so mentally impaired, as a result of a mental or physical illness or disability * * * that they are unable to manage their property and affairs effectively, subject to guardianship[.]”

{¶21} The juvenile court, however, has statutory authority to continue jurisdiction of I.M.M. until the age of 21 because of his diagnoses. R.C. 2151.353(F)(1) states:

The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 or 2151.415 of the Revised Code until the child attains the age of eighteen years if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one years if the child is mentally retarded, developmentally disabled, or physically impaired[.]

{¶22} Here, the modification of temporary custody to a PPLA was a change in legal status, not a change in legal custody. Therefore, the juvenile court was within its authority to place I.M.M. in a PPLA.

{¶23} With regard to a PPLA, this court has previously stated:

A [PPLA] is an alternative form of custody in which the child is placed in a foster home or institution with the intention that the child will remain in that home or institution until he is no longer in the county child services system. A PPLA does not sever the parental bonds as permanent custody does, but it also does not provide the child with a legally permanent placement. The statute permits the use of a PPLA only in cases which fit one of three criteria: first, the child must have serious needs which preclude him from a placement outside residential or institutional care; second, the parents must have serious problems which prevent the parents from caring for the [child] yet have a strong bond with them and adoption is not in the best interest of the [child]; or third, the child must be sixteen years old or over and unwilling or unable to take a permanent placement.

In re P.R., 8th Dist. Cuyahoga No. 79609, 2002-Ohio-2029, ¶ 29.

{¶24} Relevant to this appeal are R.C. 2151.415(C)(1)(a) and 2151.353(A)(5)(a), which allow the juvenile court to place I.M.M in a PPLA, if the court finds, by clear and convincing evidence, that a PPLA is in his best interests and I.M.M., because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing

{¶25} Clear and convincing evidence is defined as

“[t]hat measure or degree of proof which is more than a mere ‘preponderance of the evidence’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts to be established.”

In re Awkal, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994), fn. 2, quoting *Lansdowne v. Beacon Journal Publishing Co.*, 32 Ohio St.3d 176, 180-181, 512 N.E.2d 979 (1987), citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶26} After a thorough review of the record in the instant case, we find there was clear and convincing evidence supporting the juvenile court’s finding that a PPLA was in I.M.M.’s

best interest. In reaching its decision, the court relied on Smith's testimony that I.M.M. requires two-on-one support, he cannot be left alone, he cannot speak in complete sentences, he cannot manage independent living activities and will not be able to in the foreseeable future, and she does not foresee I.M.M. ever being able to live outside of a facility or some type of group home. Smith further testified that if I.M.M. needs to be restrained, "it's a three-person restraint" and I.M.M. needs to be restrained two to three times a month. The staff at Bellefaire received specialized training in this type of restraint. Smith further testified that once I.M.M. reaches 21 years of age, Life Works would be used to facilitate his placement into a group home setting.

{¶27} The court also noted that, prior to Bellefaire, neither Mother nor Father could get I.M.M. to go to school and that I.M.M. acted out physically. I.M.M. has made progress since being placed in Bellefaire. The incidents of physically acting out have reduced, and I.M.M. attends school on a daily basis. At Bellefaire, there are, at all times, seven staff members in the residence and four in the school.

{¶28} The court further found that returning I.M.M. to Father would put them both at risk because Father is unable to manage I.M.M.'s aggression on his own. Father has physical ailments that would make taking care of a growing I.M.M. physically challenging. In addition, no evidence was presented that I.M.M. could receive the same or similar level of services with his Father. Father testified that he thought he could get a two-bedroom apartment if he was awarded custody, and it would be only the two of them living there. Father would need to get assistance from neighbors if I.M.M. needed to be restrained, and Father was not trained in TCI. Father has a doctor in mind, but does not know what services I.M.M. would need or where to get them. The court found that Father cannot provide the level of care I.M.M. needs and has not, throughout the case, expressed a clear understanding of I.M.M.'s needs or his functioning.

{¶29} In determining the best interest of the child, the court must consider all relevant factors, including those listed in R.C. 2151.414(D), such as the child's relationship with their parents, the child's wishes, the child's need for a legally secure permanent placement, and the custodial history of the child. Based on these factors, the record contains clear and convincing evidence that a planned permanent living arrangement was in I.M.M.'s best interest.

{¶30} The record demonstrates that there is a strong bond between Father and I.M.M. Father visits I.M.M. at least three to four times a week and brings him clothes. Social Worker Agee testified that Father's interactions have been "fairly well," and he attended parenting services through Bellefaire, where he also was doing well. Father testified that he planned to find a two-bedroom apartment with the county's assistance for I.M.M.

{¶31} As to the child's wishes, it is clear that I.M.M. is unable to express his own wishes because of his verbal delays. I.M.M. was placed in temporary custody on October 31, 2016. He was first placed in a group home and then placed in the Monarch program at Bellefaire. CCDCFS was not seeking permanent custody of I.M.M. Therefore, it was unnecessary for the court to address this factor. In light of the foregoing, the juvenile court's finding that a PPLA was in I.M.M.'s best interest was supported by clear and convincing evidence.

{¶32} Thus, the first and second assignments of error are overruled.

{¶33} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the

Rules of Appellate Procedure.

MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

ANITA LASTER MAYS, J., and
KATHLEEN ANN KEOUGH, J., CONCUR