

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE: M.M.	:	
	:	
A Minor Child	:	No. 108586
	:	
[Appeal by M.E.M., Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: February 27, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-18913093

Appearances:

Olivia A. Myers, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Colleen R. Cassidy Ulrich, Assistant Prosecuting Attorney, *for appellee CCDCFS.*

PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Appellant, M.E.M. (“mother”), appeals from the juvenile court’s award of legal custody of three-year-old M.M. to appellee, L.L. (“father”). Mother assigns the following errors for our review:

- I. The trial court erred by approving the magistrate’s decision committing the child to the legal custody of the father when the

evidence established such designation is against the manifest weight of the evidence.

- II. The trial court erred when it approved the magistrate's decision without conducting an independent review as required by Juv.R. 40(D)(4).

{¶ 2} For the sake of convenience, we shall address the assigned errors out of their predesignated order. Having reviewed the record and the applicable case law, we reverse and remand for further proceedings consistent with this opinion.

{¶ 3} M.M. was born in June 2016. In October 2018, the Cuyahoga County Department of Children and Family Services ("CCDCFS") filed a complaint for temporary custody of M.M., alleging that she is a neglected child. CCDCFS was granted temporary custody of M.M. on November 6, 2018.

{¶ 4} By January 2019, father appeared in the matter. In February 2019, CCDCFS filed an amended complaint, alleging that "[m]other is currently residing in a sober living facility, needs to complete a domestic violence assessment, needs to be able to provide for the daily needs of the child, needs to consistently engage in mental health services, [and] provide appropriate care for the child." As to father, the amended complaint alleged, "[f]ather is willing and able to provide appropriate care for the child." CCDCFS also amended its dispositional prayer to request that father be awarded legal custody.

{¶ 5} At the adjudicatory hearing, the magistrate heard testimony from social worker Dora Salzer ("Salzer"). Salzer testified that CCDCFS's goal for this family is reunification, not permanent custody to CCDCFS. Mother completed inpatient sobriety treatment. By the time of the hearing, she had been sober for

three months and was living in a sober living facility. However, M.M. cannot reside at this facility. Salzer further testified that father was “willing to provide appropriate care for the child.” According to Salzer, following a background check, home assessment, drug screen, and interviews, father was approved for placement, and M.M. had been with him for four months. Guardian Ad Litem (“GAL”) Michael Weiss opined that legal custody to father is in M.M.’s best interest.

{¶ 6} On February 25, 2019, the magistrate issued a journal entry determining that the award of legal custody to the father is in M.M.’s best interest. The magistrate noted, “[m]other currently resides in a sober living home and [M.M. cannot] reside there.” On March 11, 2019, mother filed objections to the magistrate’s decision, arguing that she had made substantial progress on her case plan. Also on March 11, 2019, mother requested a transcript of the proceedings. The next day, the trial court overruled mother’s objections, approved and adopted the magistrate’s decision, and awarded legal custody of M.M. to father.

Approval of Magistrate’s Decision

{¶ 7} In her second assigned error, mother asserts that the trial court erred when it approved the magistrate’s decision because it did not conduct an independent review as required under Juv.R. 40(D)(4).

{¶ 8} We review for an abuse of discretion. *In re S.E.*, 8th Dist. Cuyahoga No. 96031, 2011-Ohio-2042, ¶ 13; *In re K.V.*, 8th Dist. Cuyahoga No. 108441, 2019-Ohio-5126, ¶ 10.

{¶ 9} Juv.R. 40 governs magistrate’s decisions and the procedure for filing and ruling on objections to a magistrate’s decision in juvenile cases. *See also* Civ.R. 53. Where a party timely objects to a magistrate’s decision, the juvenile court must conduct an “independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.” Juv.R. 40(D)(4); *see also* Civ.R. 53(D)(4)(d). This “independent review” requires the juvenile court to “conduct a de novo review of the facts and an independent analysis of the issues to reach its own conclusions about the issues in the case.” *In re I.R.Q.*, 8th Dist. Cuyahoga No. 105924, 2018-Ohio-292, ¶ 23, quoting *Radford v. Radford*, 8th Dist. Cuyahoga Nos. 96267 and 96445, 2011-Ohio-6263, ¶ 13. In *In re A.C.*, 8th Dist. Cuyahoga No. 108442, 2019-Ohio-5127, this court concluded that the juvenile court abused its discretion in adopting the magistrate’s decision and overruling mother’s objections without reviewing the transcript and conducting the independent review required by Juv.R. 40(D)(4). *Id.* at ¶ 28.

{¶ 10} In this matter, counsel for CCDCFS has conceded that “the juvenile court in the current case would not have had the opportunity to conduct an independent review of the record,” and asks this court to remand the matter. In light of this concession, and in light of the absence of review of the transcript, we conclude that the juvenile court abused its discretion in adopting the magistrate’s decision contrary to the manner required under Juv.R. 40(D)(4)(d).

{¶ 11} Mother's second assigned error is sustained. The juvenile court's judgment is reversed and this matter is remanded to the juvenile court to conduct the independent review required by Juv.R. 40(D)(4)(d).

{¶ 12} Based on our resolution of mother's second assigned error, the first assigned error, in which the mother maintains that the trial court's approval of the magistrate's decision is against the manifest weight of the evidence, is premature. *Accord In re A.C.*, 8th Dist. Cuyahoga No. 108442, 2019-Ohio-5127, at ¶ 29.

{¶ 13} Judgment is reversed and remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee 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.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
RAYMOND C. HEADEN, J., CONCUR