

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

IN RE: :

ANGELA STEPHENS, : CASE NOS. CA2001-01-018
et al. : CA2001-01-021

:
: O P I N I O N
: 10/1/2001
:

Diana Songer, 29 N. "D" Street, Hamilton, OH 45011, guardian ad litem

Robin N. Piper, Butler County Prosecuting Attorney, Gregory S. Stephens, Brad A. Burress, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011, for appellee

Warren H. Wolter, 9854 Tall Timber Drive, Cincinnati, OH 45241, for appellant/mother

Chris Travis, 118 S. Second Street, Hamilton, OH 45011, for appellant/father

POWELL, J. Appellant, Jeanette Stephens, appeals the decision of the Butler County Court of Common Pleas, Juvenile Division, granting permanent custody of her minor children to the Butler County Children Services Board ("BCCSB"). We affirm the decision of the trial court.

Jonathon, Angel and Joseph are appellant's minor children. On

September 12, 1998, Jonathon (DOB 9/26/93) was removed from appellant's custody due to allegations that he had been physically abused by his stepfather, Joseph Stephens ("Stephens"). The family was homeless at that time. Angel and Joseph are twins who were born on November 30, 1998. They were removed from appellant shortly after their birth because Stephens was present in the family's residence in violation of a court order. The trial court adjudicated Jonathon to be an abused and dependent child. Joseph and Angel were adjudicated to be dependent children.

BCCSB filed a motion for permanent custody of the children on February 29, 2000. At that time, the children had been in foster care for over two years. After conducting hearings on the matter, the trial court granted permanent custody of the children to BCCSB. Appellant appeals the decision of the trial court and raises one assignment of error for review.¹

In her assignment of error, appellant contends that the trial court's decision to grant permanent custody of her children to BCCSB is not supported by clear and convincing evidence. Specifically, appellant argues that it is not in the best interest of the children to grant permanent custody to BCCSB.

Initially, we note that appellant did not object to any aspect of the magistrate's decision granting permanent custody of her children to BCCSB. Juv.R. 40(E)(3)(b) provides that "[a] party shall not assign as error on appeal the court's adoption of any

1. Stephens filed a notice of appeal in this case but failed to file a brief or assign any error to the trial court's decision. Jonathon's biological father, Danny Palmer, has never appeared in court regarding this case and his whereabouts are unknown.

finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule." The waiver provision of Juv.R. 40(E)(3)(b) "embodies the long-recognized principle that the failure to draw the trial court's attention to possible error, by objection or otherwise, when the error could have been corrected, results in a waiver of the issue for purposes of appeal." In re Morris (Oct. 16, 2000), Butler App. No. CA2000-01-001, unreported, at 3, citing In re Etter (1998), 134 Ohio App.3d 492.

By failing to object to the magistrate's decision in a case involving termination of parental rights, an appellant waives the right to assign as error on appeal the trial court's adoption of any finding of fact or conclusion of law. In re Morris (Oct. 16, 2000), Butler App. No. CA2000-01-001, unreported; In re Dakota Hollin (Mar. 26, 2001), Butler App. No. CA2000-05-088, unreported. However, a narrow exception to this waiver exists in extremely rare cases where there is plain error. Id. In a civil proceeding, plain error involves the "exceptional circumstances where the error, left unobjected to at the trial court, rises to the level of challenging the legitimacy of the underlying judicial process itself." Goldfuss v. Davidson (1997), 79 Ohio St.3d 116, 122.

Since appellant failed to object to the magistrate's decision, appellant has waived her right to assign as error on appeal the trial court's decision that there was clear and convincing evidence that it is in the best interest of the children to terminate appellant's parental rights. However, we will consider whether the

trial court's decision constitutes plain error.

A trial court may not award permanent custody of a child to a state agency unless the agency satisfies two statutory requirements by clear and convincing evidence. The agency must first demonstrate that an award of permanent custody is in the best interest of the child. R.C. 2151.414(B)(2). Second, the agency must show that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent. Id.

When determining whether it would be in the best interest of the child to grant permanent custody of the child to an agency, a juvenile court should consider all relevant factors, including but not limited to the factors enumerated in R.C. 2151.414(D). With respect to the determination of whether a child cannot be placed with either parent within a reasonable time, or should not be placed with his parents, the court is to consider the factors contained in R.C. 2151.414(E).

In concluding that it was in the best interest of the children to grant permanent custody to BCCSB, the trial court made specific findings that are supported by the record. Jonathon has been in foster care since September 14, 1998 due to allegations of physical abuse by his stepfather. Jonathon's siblings, Joseph and Angel, have been in foster care since December 28, 1998 after it was discovered that appellant's husband was living in her home in violation of the trial court's "no contact" order. Jonathon has indicated that he does not wish to see his mother. At the mere sugges-

tion that he may have contact with her, Jonathon engages in unusual behavior such as cutting his clothes and spitting on himself. Appellant's visitation with the other children has been sporadic. During a supervised visit with the children, the guardian ad litem and the trial court observed that the children exhibit no clear bond to appellant.

Appellant has been diagnosed with multiple personality disorder. She failed to obtain a court-ordered psychiatric evaluation. Appellant has not been able to obtain steady employment and maintain a stable residence. Based on the evidence presented, the trial court concluded that the children cannot and should not be placed with appellant.

Our review of the record indicates that the trial court considered the relevant statutory criteria and made the appropriate findings pursuant to R.C. 2151.414(B)(2) prior to granting permanent custody of the children to BCCSB. We find no error in the proceedings below that challenges the legitimacy of the judicial process. The assignment of error is overruled.

Judgment affirmed.

YOUNG, P.J., and VALEN, J., concur.

[Cite as *In re Stephens*, 2001-Ohio-8711.]