

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

IN THE MATTER OF:

L.K.

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CASE NO. CA2014-06-145

OPINION
3/23/2015

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JN2013-0331

Sarah A. Owens, 10 Journal Square, Suite 300, Hamilton, Ohio 45011, Guardian Ad Litem

John Treleven, 810 Sycamore Street, 2nd Floor, Cincinnati, Ohio 45202, for appellant

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamhawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for appellee

S. POWELL, J.

{¶ 1} Appellant, H.L. (Mother), appeals from a decision of the Butler County Court of Common Pleas, Juvenile Division, granting legal custody of her daughter, L.K., to the child's paternal relatives, L.F. and J.F. For the reasons outlined below, we affirm.

{¶ 2} Mother, who has a history of substance abuse and diagnosed mental illness, gave birth to L.K. on September 27, 2008. Thereafter, on March 4, 2013, when L.K. was just

four years old, Mother entered a guilty plea in the Butler County Court of Common Pleas to single counts of possession of heroin and possessing drug abuse instruments. The common pleas court then sentenced Mother to five years of community control. As part of her community control sanctions, Mother, who was living with L.K. in Butler County at the time, was ordered to attend and complete the Rural Women's Recovery Program, an addiction and mental health treatment facility located in Athens County, Ohio.

{¶ 3} On June 4, 2014, the Butler County Department of Job and Family Services, Children Services Division (BCCS), filed a complaint with the juvenile court alleging L.K. was a dependent child pursuant to R.C. 2151.04(C) and (D). Specifically, BCCS alleged as part of its complaint:

On 6/4/2013, BCCS received a referral alleging the dependency of [L.K.]. The referral reported that [Mother] was kicked out of the Rural Women's Recovery Program in Athens, Ohio due to her aggressive and intimidating behaviors. [Mother] was to be in the program for 90-120 days as this was court ordered through Butler County Probation. After [Mother] was released from the program, Butler County Probation was notified and violated [Mother] on a violation of probation for not completing treatment. [Mother] was picked up by Athens County Sheriff and transported to their jail where she will remain until Butler County generates her extradition order, which will most likely occur on 6/5/2013 or 6/6/2013, at which point she will be placed at the Butler County Jail.

{¶ 4} After receiving BCCS's complaint of dependency, a juvenile court magistrate placed L.K. in the temporary custody of BCCS and ordered an expedited home study of L.K.'s paternal relatives. The magistrate then adjudicated L.K. a dependent child. It is undisputed that although the child's father appeared at the hearing, Mother did not. BCCS then filed an amended complaint, which stated, in pertinent part, that both the child's mother and father "felt it is in [L.K.'s] best interest to be placed with [L.F. and J.F.]," and that the child's paternal relatives "are willing and able to care for [L.K.]" After their home study was approved, and once they became licensed foster parents, the magistrate held a dispositional

hearing, wherein L.F. and J.F. were awarded legal custody of L.K.

{¶ 5} Just as the prior adjudication hearing, Mother did not attend the dispositional hearing, nor any of the juvenile court's numerous review hearings. Nevertheless, Mother filed an objection to the magistrate's decision alleging "[m]y case workers for BCCS set up transportation for myself to be brought to the hearing and they failed to show." As a result, Mother requested the juvenile court to "set another court date and allow me opportunity to show my progress." Finding no merit to Mother's claim, the juvenile court overruled Mother's objection, affirming and adopting the magistrate's decision in its entirety.

{¶ 6} Mother now appeals from the juvenile court's decision awarding legal custody of L.K. to the child's paternal relatives, raising two assignments of error for review.

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT ERRED IN ADJUDICATING L.K. DEPENDENT, AS BUTLER COUNTY WAS NOT THE PROPER VENUE TO DETERMINE WHETHER L.K. WAS A DEPENDENT CHILD.

{¶ 9} In her first assignment of error, Mother argues Butler County was not the proper venue to adjudicate L.K. a dependent child. We disagree.

{¶ 10} Pursuant to R.C. 2151.27(A)(1):

[A]ny person having knowledge of a child who appears to * * * be a juvenile traffic offender or to be an unruly, abused, neglected, or dependent child may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the violation, unruliness, abuse, neglect, or dependency allegedly occurred.

Similarly, Juv.R. 10(A) provides:

Any person having knowledge of a child who appears to be a juvenile traffic offender, delinquent, unruly, neglected, dependent, or abused may file a complaint with respect to the child in the juvenile court of the county in which the child has a residence or legal settlement, or in which the traffic offense, delinquency, unruliness, neglect, dependency, or abuse

occurred.

{¶ 11} Therefore, under both R.C. 2151.27(A)(1) and Juv.R. 10(A), "[t]he proper venue for an abuse, neglect or dependency complaint is the county in which the child has a legal residence or the county in which the abuse, neglect or dependency occurred." *In re S.D.*, 12th Dist. Butler No. CA2013-08-138, 2014-Ohio-156, ¶ 22; *Matter of Lacey M.*, 6th Dist. Sandusky No. S-97-044, 1998 WL 603572, *1 (Sept. 11, 1998). "[A] child has the same residence or legal settlement as his parents, legal guardian of his person, or his custodian who stands in the relation of loco parentis." R.C. 2151.06.

{¶ 12} Mother argues Butler County was not the proper venue to adjudicate L.K. a dependent child because she "lived in Athens County at the time of commencement of this action" and "[a]ll the allegations similarly occurred in Athens County." However, it is undisputed that the only reason Mother was in Athens County was to comply with community control sanctions requiring her to attend and complete the Rural Women's Recovery Program. We find this falls well short of a "residence or legal settlement" as those terms are used in R.C. 2151.27(A)(1) and Juv.R. 10(A). Simply stated, because Mother never established a residence or legal settlement in Athens County other than her brief stint at the Rural Women's Recovery Program, which, we note, she failed to complete due to her alleged aggressive and intimidating behaviors, Butler County was a proper venue to adjudicate L.K. a dependent child. Mother's first assignment of error is therefore without merit and overruled.

{¶ 13} Assignment of Error No. 2:

{¶ 14} THE TRIAL COURT ERRED TO APPELLANT'S PREJUDICE BY FAILING TO COMPLY WITH R.C. 2151.353 WHEN GRANTING LEGAL CUSTODY TO A NON-PARENT.

{¶ 15} In her second assignment of error, Mother argues the juvenile court erred by failing to comply with the requirements of R.C. 2151.353 prior to granting legal custody to L.K.'s paternal relatives, L.F. and J.F. Mother, however, never raised this issue as part of her

objection to the magistrate's decision. Rather, Mother merely alleged "[m]y case workers for BCCS set up transportation for myself to be brought to the hearing and they failed to show." Mother then requested the juvenile court to "set another court date and allow me opportunity to show my progress."

{¶ 16} Juv.R. 40(D)(3)(b)(ii) requires an objection to a magistrate's decision be "specific" and "state with particularity all grounds for objection." The failure to file specific objections is treated the same as the failure to file any objections. *In re D.R.*, 12th Dist. Butler No. CA2009-01-018, 2009-Ohio-2805, ¶ 29. If a party has not objected to a factual finding or legal conclusion in accordance with Juv.R. 40(D)(3)(b), "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's addition of any factual finding or legal conclusion[.]" Juv.R. 40(D)(3)(b)(iv). However, even then, "unless the appellant argues a 'claim of plain error,' the appellant has waived the claimed errors not objected to below." *In re K.R.P.*, 197 Ohio App.3d 1993, 2011-Ohio-6114, ¶ 10 (12th Dist.).

{¶ 17} Here, although Mother did file an objection to the magistrate's decision, she did not raise any issue in regards to the magistrate's alleged failure to comply with the requirements of R.C. 2151.353. In addition, while making a single reference to plain error in the final paragraph of her appellate brief under the heading "CONCLUSION," Mother never argued a claim of plain error within any of the seven paragraphs making up her second assignment of error.¹ Again, "unless the appellant argues a 'claim of plain error,' the appellant has waived the claimed errors not objected to below." *Id.*; see, e.g., *In re C.P.*, 12th Dist. Brown No. CA2010-12-025, 2011-Ohio-4563, ¶ 35 (finding a mother was precluded from raising new issues on appeal regarding a magistrate's legal custody determination where she failed to raise specific objections to the magistrate's decision and did not argue a

1. Mother's single reference to plain error states, in its entirety: "These three [sic] assignments of error, when viewed as a whole, amount to plain error by the Trial Court."

claim of plain error in her appellate brief). Therefore, because Mother did not argue a claim of plain error as part of her appellate brief, we find Mother is precluded from raising this issue on appeal. Accordingly, Mother's second assignment of error is overruled.

{¶ 18} Judgment affirmed.

M. POWELL, P.J., and HENDRICKSON, J., concur.