

COURT OF APPEALS  
MORGAN COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

R.V.M., K.V.M., A.V.M.

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JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. Patricia A. Delaney, J.

Hon. Craig R. Baldwin, J.

Case Nos. 15AP0011

15AP0012

15AP0013

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common  
Pleas, Juvenile Division, Case Nos.  
15JC0095, 15JC0096, & 15JC0097

JUDGMENT:

Affirmed and Remanded

DATE OF JUDGMENT:

December 31, 2015

APPEARANCES:

For Appellants

PETER N. CULTICE  
58 North Fifth Street  
Zanesville, OH 43701

For Appellee

MARK J. HOWDYSHELL  
19 East Main Street  
McConnelsville, OH 43756

*Farmer, P.J.*

{¶1} Appellants, Sasha Villegas and Brandon Murphy, have three children together, R.V.M. born December 29, 2008, K.V.M. born March 18, 2012, and A.V.M. born February 28, 2014. On June 16, 2015, appellee, Morgan County Children's Services, removed the children from the home after receiving a report of truancy.

{¶2} On June 19, 2015, appellee filed a complaint, alleging the children to be neglected and seeking temporary custody. After a shelter care hearing held on June 22, 2015, the trial court granted appellee temporary custody of the children.

{¶3} An adjudicatory hearing was held on July 17, 2015. By journal entry filed August 10, 2015, the trial court continued the temporary custody with appellee. A dispositional hearing was held on August 13, 2015. By journal entry filed August 19, 2015, the trial court granted temporary custody of the children to appellee.

{¶4} Appellants filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE COURT SHOULD HAVE RETURNED THE CHILDREN TO THEIR PARENTS BECAUSE THEY WERE REMOVED FROM THEIR MOTHER AND FATHER WITHOUT AUTHORIZATION AND A HEARING WAS NOT HELD THE NEXT DAY OR WITHIN SEVENTY-TWO (72) HOURS AFTER THE CHILDREN WERE REMOVED FROM THE CARE AND CUSTODY OF THEIR PARENTS."

II

{¶6} "THE CHILDREN SHOULD BE IMMEDIATELY RETURNED TO THEIR PARENTS AND THE CASES DISMISSED BECAUSE THE COMPLAINTS ARE

DEFECTIVE ON THEIR FACE AND THE COURT, IN ANY EVENT, FOUND THE CHILDREN TO BE NOT NEGLECTED CHILDREN AT THE CONCLUSION OF THE ADJUDICATION HEARING."

### III

{¶7} "THE COURT ERRED WHEN IT DID NOT APPOINT A GUARDIAN AD LITEM FOR THE CHILDREN."

### I

{¶8} Appellants claim the children were removed from their care without authorization and the shelter care hearing was not held within the proscribed time period of Juv.R. 7. Appellee concedes the time period in Juv.R. 7 was not followed.

{¶9} Juv.R. 7 governs detention and shelter care. Subsection (F)(1) states in part, "[w]hen a child has been admitted to detention or shelter care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is placed in detention or shelter care or the next court day, whichever is earlier, to determine whether detention or shelter care is required."

{¶10} In this case, the children were removed on June 16, 2015, the complaint was filed on June 19, 2015, and the shelter care hearing was held on June 22, 2015. June 22, 2015 T. at 7. Appellants were not present for the hearing, nor were they represented. *Id.* at 3-4. A discussion held on the record indicates appellants had been served notice of the hearing. *Id.* The trial court heard testimony from the caseworker, Jan Snouffer, and ordered continued temporary custody of the children to appellee. T. at 5-11.

{¶11} An adjudicatory hearing was held on July 17, 2015 wherein appellants were present and represented. July 17, 2015 T. at 4-5. Again, Ms. Snouffer testified, giving the same testimony as in the shelter care hearing. T. at 7-19.

{¶12} Civ.R. 61 governs harmless error and states the following:

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

{¶13} Upon review, we fail to find any undue prejudice to appellants for the Juv.R. 7 violation.

{¶14} Pursuant to Juv.R. 6, a child may be taken into custody as follows in pertinent part:

(A) A child may be taken into custody:

(3) by a law enforcement officer or duly authorized officer of the court when any of the following conditions exist:

(a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, and the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(b) There are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child has abused or neglected another child in the household, and that the child is in danger of immediate or threatened physical or emotional harm;

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(e) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.

{¶15} The children were removed by appellee's caseworker, Ms. Snouffer, accompanied by a deputy sheriff, "a law enforcement officer." July 17, 2015 T. at 9-10, 20-21. Ms. Snouffer outlined in her summary attached to the complaint and testified during the shelter care hearing to the children's deplorable living conditions and the lethargic appearance of the youngest child. June 22, 2015 T. at 6-10.

{¶16} Upon review, we find the children were removed pursuant to authorization.

{¶17} Assignment of Error is denied.

## II

{¶18} Appellants claim the children should be returned because the complaint was defective and the trial court did not find the children to be neglected. We disagree.

{¶19} Appellants, although represented, failed to challenge any of the now claimed defects in the complaint at the adjudicatory hearing.

{¶20} In *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 1997-Ohio-401, syllabus, the Supreme Court of Ohio defined civil plain error as, "error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." The *Goldfuss* court at 121, explained the following:

The plain error doctrine originated as a criminal law concept. In applying the doctrine of plain error in a civil case, reviewing courts must proceed with the utmost caution, limiting the doctrine strictly to those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a material adverse effect on the character of, and public confidence in, judicial proceedings.

{¶21} The complaint in this case was filed by an assistant prosecuting attorney under R.C. 2151.03, neglected child. Attached to the complaint was a summary by Ms.

Snouffer. Ms. Snouffer herself took the children into custody, accompanied by a coworker, Dale Chidester, and a deputy sheriff. July 17, 2015 T. at 9-10, 20-21.

{¶22} Upon review, we do not find a jurisdictional defect in the complaint, nor proof of undue prejudice resulting in plain error.

{¶23} Appellants also argue the trial court found the children to be "not neglected" at the end of the adjudicatory hearing: "I have no question in my mind that these children are not neglected children. I am making that finding right now based on the evidence I've heard, the pictures I've seen. I'm going to order a case plan on this matter be filed with the Court." July 17, 2015 T. at 69.

{¶24} At the dispositional hearing, the trial court determined the following: "Pending anything further, I think at this time it's in the best interest of the children to remain placed with Children Services at this time, reasonable efforts having been made to see that that does not continue and be returned, but at this point Court believes it's appropriate that the children stay where they are." August 13, 2015 T. at 8.

{¶25} We conclude the trial court misspoke at the adjudicatory hearing given the entire context of the statement vis-à-vis the trial court's order of a case plan and continued temporary custody to appellee, and the holding of a dispositional hearing.

{¶26} Assignment of Error II is denied.

### III

{¶27} Appellants claim the trial court erred in not appointing a guardian ad litem for the children.

{¶28} Appellee concedes the issue, citing R.C. 2151.281(B)(1) which states the following:

(B)(1) Except as provided in division (K) of this section, the court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged abused or neglected child and in any proceeding held pursuant to section 2151.414 of the Revised Code. The guardian ad litem so appointed shall not be the attorney responsible for presenting the evidence alleging that the child is an abused or neglected child and shall not be an employee of any party in the proceeding.

{¶29} Assignment of Error III is granted.

{¶30} The judgment of the Court of Common Pleas of Morgan County, Ohio, Juvenile Division, is hereby affirmed, and the matter is remanded to said court for the appointment of a guardian ad litem for the children.

By Farmer, P.J.

Delaney, J. and

Baldwin, J. concur.

SGF/sg