

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of: D. V.

Court of Appeals No. L-08-1228

Trial Court No. JC06-159895

DECISION AND JUDGMENT

Decided: June 19, 2009

* * * * *

Salvatore C. Molaro, Jr., for appellant.

Dianne L. Keeler, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, W.V., appeals a decision of the Lucas County Court of Common Pleas, Juvenile Division, granting custody of his daughter, D.V., to his sister and her husband. For the reasons that follow, we reverse the judgment of the trial court.

{¶ 2} The record in this case reveals that the minor child, D.V., was removed from her (unmarried) parents shortly after her birth in September 2006. The removal

took place pursuant to an ex parte order, and involved concerns about the mother's mental health and a lack of information about the child's safety. On September 19, 2006, appellee, Lucas County Children Services Board ("the agency") filed a "complaint in dependency and motion for shelter care hearing". The complaint alleged that after some days of misdirection from appellant as to where the mother and child were residing, the agency had found the child alone with her mother at appellant's address.¹

{¶ 3} On December 18, 2006, the magistrate found, by clear and convincing evidence, that the child was a dependent child. The magistrate ordered protective supervision by the agency and allowed the child to return to the custody of the parents. On January 17, 2007, the trial judge adopted the decision of the magistrate and, further, specifically ordered that the mother's contact with the child was to be supervised.

{¶ 4} On July 2, 2007, the agency once again removed the child through an ex parte order, this time following a domestic violence incident involving the child's parents and paternal grandparents. On July 3, 2007, the agency filed a "motion to change disposition and for shelter care hearing." In this motion, the agency alleged that the child had been present during two incidents of domestic violence, that the police had been called in the second incident, and that observable physical injuries had been inflicted. The trial court granted the motion, awarding temporary custody of the child to the agency for placement in shelter care.

¹Specifically, the complaint alleged that both appellant and the child's mother had falsely claimed that the mother and child had moved out of the jurisdiction of the trial court, into the state of Michigan.

{¶ 5} On July 12, 2007, the agency filed an "amended motion to change disposition" requesting that legal custody be awarded to the child's paternal aunt and her husband. A hearing on the matter was held on November 19, 2007. On January 4, 2008, the magistrate issued findings of fact and granted the agency's motion. The father timely filed objections to the decision of the magistrate. The trial judge found appellant's objections to be not well-taken, and adopted the magistrate's decision. Appellant timely appealed the judgment of the trial court, raising the following assignment of error:

{¶ 6} I. "THE TRIAL COURT ERRED WHEN IT AFFIRMED THE MAGISTRATE'S RULING THAT REASONABLE EFFORTS HAD BEEN MADE TO PREVENT REMOVAL OF THE MINOR CHILD FROM THE APPELLANT/FATHER."

{¶ 7} R.C. 2151.419(A)(1) relevantly provides that "at any hearing held pursuant to * * * 2151.353 of the Revised Code [dealing with orders of disposition of a neglected child] at which the court removes a child from the child's home or continues the removal of a child from the child's home, the court shall determine whether the public children services agency * * * that filed the complaint in the case, removed the child from home, has custody of the child, or will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home. The agency shall have the burden of proving that it has made those reasonable efforts. * * *" R.C. 2151.419(A)(1); see also, *In the Matter of S.W.*, 12th Dist.

Nos. CA2006-09-211, 2008-Ohio-1194, ¶ 14. A court making a determination under this provision shall "issue written findings of fact setting forth the reasons supporting its determination." R.C. 2151.419(B)(1); see also, *In the Matter of S.W.*, supra. Further, the court "shall briefly describe in the findings of fact the relevant services provided by the agency to the family of the child and why those services did not prevent the removal of the child from the child's home or enable the child to return safely home." R.C. 2151.419(B)(1); *In the Matter of S.W.*, supra.

{¶ 8} In the instant case, the magistrate's January 4, 2008 decision contains a box that is checked, indicating that reasonable efforts were made by the agency to prevent the need for removal of the child from her home. On a line beneath this box, the magistrate wrote: "mental health services; counseling; diagnostic assessment." Nowhere is there any indication as to which parent these services applied, or is there any explanation as to why those services did not prevent the removal of the child from the child's home or enable the child to return safely home.

{¶ 9} Later entries by the trial judge provide no additional information. For instance, the trial judge, in her June 20, 2008 judgment entry, simply stated that she found that "reasonable efforts were made to prevent the need for removal." Similarly, in her June 23, 2008 judgment entry, the trial judge stated only, "Removal of the child(ren) is unavoidable under circumstances despite reasonable efforts to prevent the need for removal. Reasonable efforts included: mental health services, counseling, diagnostic assessment."

{¶ 10} We are unable to determine from the record the facts upon which the trial court based its determination in regard to appellant. Specifically, we are unable to determine which services were provided to appellant by the agency and why those services did not prevent the removal of the child from appellant's home or enable the child to return safely to appellant's home. As a result, we are remanding this case to the trial court for findings of fact clarifying its decision, in conformity with R.C. 2151.419(B)(1); see also, *In the Matter of S.W.*, supra. Accordingly, appellant's sole assignment of error is found well-taken.

{¶ 11} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is reversed and remanded for additional proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.