

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

In re M.W., T.T., D.W., M.W.

Court of Appeals No. L-11-1241

Trial Court No. JC 11214212

DECISION AND JUDGMENT

Decided: June 29, 2012

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Tim. A. Dugan, for appellant.

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SINGER, P.J.

{¶ 1} Appellant appeals the judgment of the Lucas County Court of Common Pleas, Juvenile Division, denying her motion for custody of her four grandchildren.

{¶ 2} On April 21, 2011, appellant, C.W., filed a pro se petition seeking custody of her four grandchildren. On July 6, 2011, the matter was heard before a juvenile court magistrate who denied the petition, finding that appellant's home study resulted in

appellant's home not being approved for child placement, appellant tested positive for marijuana the day of the hearing and that a caseworker reported that appellant also smelled of alcohol on that occasion.

{¶ 3} Appellant filed a pro se objection to the magistrate's decision, contesting his findings, but failed to file a transcript or affidavit of evidence of the magistrate's hearing as required by Juv.R. 40(D)(3)(b)(iii). The court found appellant's objection not well-taken and adopted the magistrate's decision. Appellant filed a pro se notice of appeal and requested appointment of counsel. Counsel was appointed.

{¶ 4} Appellant's appointed counsel has requested leave to withdraw in accordance with the procedure set forth in *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Appellee has not filed a brief. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the appeal, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. The request shall include a brief identifying anything in the record that could arguably support an appeal. *Id.* Counsel shall also furnish his client with a copy of the request to withdraw and its accompanying brief, and allow the client sufficient time to raise any matters that he chooses. *Id.* The appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 5} Here, appointed counsel has met the requirements set forth in *Anders*.

Counsel also informed appellant of her right to file her own additional assignments of error and appellate brief. Appellant has not filed an additional brief. Accordingly, this court shall proceed examining the potential assignment of error set forth by counsel and the entire record below to determine whether this appeal lacks merit deeming it wholly frivolous.

{¶ 6} In material part, Juv.R. 40(D)(3)(b)(iii) provides that an objection to a factual finding of a magistrate “shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.” When no transcript or affidavit of evidence is provided, the trial court is required to accept the magistrate's findings of fact as true, and is permitted to examine only the legal conclusions based on those facts. *Beaverson v. Beaverson*, 6th Dist. No. WD-06-080, 2007-Ohio-3560, ¶ 3. Absent compliance with the rule in the trial court, appellate review is limited to a determination of whether the trial court’s application of the law to the facts is an abuse of discretion. *Joann S. v. Khalid R.*, 6th Dist. No. L-07-1363, 2008-Ohio-5801, ¶ 14. Given the magistrate’s findings concerning disapproval of appellant’s home for child placement, coupled with a positive drug test and possible alcohol abuse the day of the hearing, the trial court acted well within its discretion in adopting the magistrate’s decision.

{¶ 7} Accordingly, appellant’s potential assignment of error that the trial court abused its discretion in rejecting objections to the magistrates order is without merit.

{¶ 8} Upon this record, we concur with appellate counsel that appellant's appeal is without merit. Moreover, upon our own independent review of the record, we find no other grounds for meritorious appeal. Accordingly, this appeal is found to be without merit, and wholly frivolous. Counsel's motion to withdraw is found well-taken and is, hereby, granted.

{¶ 9} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve all parties, including the defendant if he or she has filed a brief, with notice of this decision.

JUDGMENT AFFIRMED.

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

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>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.</p>
