[Cite as *In re I.J.*, 2013-Ohio-1083.]

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

In re I.J.

Court of Appeals No. L-12-1306

Trial Court No. JC 10208823

DECISION AND JUDGMENT

Decided: March 22, 2013

* * * * *

Dan M. Weiss, for appellant.

Jill E. Wolff, for appellee.

* * * * *

JENSEN, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, adopting the decision of a magistrate to terminate the parental rights of I.J., Sr. ("father") and appellant J.C. ("mother"), and awarding permanent custody of I.J., Jr., to Lucas County Children Services Board ("LCCS"). For the reasons that follow, we affirm the decision of the trial court.

{¶ 2} I.J., Jr. was born October 13, 2010. Two days later, LCCS filed a complaint claiming it was in the best interest of I.J., Jr., to be placed in the temporary custody of LCCS or an approved relative. The juvenile court appointed separate counsel for both parents. In November 2010, the court found I.J., Jr., to be a dependent child and granted temporary custody of him to LCCS. Diagnostic assessments were performed on both parents. Neither parent completed any of the case plan services offered to reunite them with the child.

{¶ 3} On January 12, 2012, LCCS filed a Motion for Permanent Custody of I.J., Jr. The motion cited LCCS's concerns: "substance abuse for both parents, housing for both parents, parenting for both parents, anger management for father, criminal concerns for father, and mental health concerns for mother." A hearing was scheduled. Mother was served with a copy of the summons and motion. There is no evidence in the record that father was served with a copy of the motion or notified of the date and time of the hearing.

{¶ 4} The permanent custody hearing was held before a magistrate on April 6, 2012. Counsel for both parents were present when the case was called. Father did not appear. Mother appeared 20 minutes late. Father's counsel stated that despite making several attempts, he had not had any contact with father since November 2010. The court granted father's counsel's motion to withdraw. Counsel for mother did not object. Three witnesses were presented on behalf of LCCS: the case worker, the social worker, and the guardian ad litem. Mother testified on her own behalf. At the conclusion of the hearing

the magistrate issued an oral decision holding, by clear and convincing evidence, that I.J., Jr., "cannot and should not be placed with his parents within a reasonable time." In support, the magistrate cited pending criminal charges, possible active warrants, chronic mental health and/or substance abuse issues, and the parents' lack of commitment evidenced by their failure to visit child and failure to complete case plan services.

{¶ 5} The magistrate's written decision was filed and journalized June 1, 2012. Mother filed objections timely. She supplemented her objections with leave of court. LCCS filed a brief in opposition to mother's objections. After reviewing the objections, records, transcript and brief, the court denied mother's objections and affirmed and adopted the decision of the magistrate.

{¶ 6} Mother appealed. She advances one assignment of error for our review.

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY TERMINATING [MOTHER]'S PARENTAL RIGHTS WHEN SERVICE HAD NOT BEEN PROPERLY MADE ON [FATHER] IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTUION AND ARTICLE 1 SECTION 10 OF THE OHIO STATE CONSTITUTION, INHERENTLY PREJUDICING APPELLANT AND MAKING THE PERMANENT CUSTODY DECISION VOID.

{¶ 7} Before addressing the merits of mother's argument, we recognize that "parents have a constitutionally protected fundamental interest in the care, custody, and

management of their children." *In re R.H.*, 10th Dist. No. 09AP-127, 2009-Ohio-5583, ¶ 11, citing *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). The termination of parental rights has been described as the "family law equivalent of the death penalty in a criminal case." *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997). Therefore, parents "must be afforded every procedural and substantive protection the law allows." *Id.*

{¶ 8} "When a permanent custody motion is filed and a permanent custody hearing is scheduled, notice is to be given as set forth in R.C. 2151.414(A)(1)." *In re Keith Lee P.*, 6th Dist. No. L-03-1266, 2004-Ohio-1976, ¶ 7. R.C. 2151.414(A)(1) provides in pertinent part:

> Upon filing of a motion * * * for permanent custody of a child, the court shall schedule a hearing and give notice of the filing of the motion and of the hearing, in accordance with section 2151.29 of the Revised Code, to all parties to the action and to the child's guardian ad litem.

In turn, R.C. 2151.29 provides that notice of a permanent custody motion and hearing may be made personally or by certified mail. In the event a person cannot be located through reasonable efforts, service may be effected by publication. *Id.* *See also* Juv.R. 16.

{¶ 9} In the present case, the record is void of any indication that the clerk served or attempted service of the motion and hearing upon father. "Generally, appeals are

permitted only to correct errors injuriously affecting the appellant." *In re Ciara B.*, 6th Dist. No. L-97-1264, 1998 WL 355869 *2 (July 2, 1998). (Citations omitted.) Nonetheless, this court has held that "an appellant can complain of error committed against a nonappealing party when the alleged error is prejudicial to the rights of that appellant." *Id.*, citing *In re Smith*, 77 Ohio App.3d 1, 13, 601 N.E.2d 45 (6th Dist.1991); *In re Johnson*, 6th Dist. No. L-90-011, 1990 WL 187260 (Nov. 30, 1990).

{¶ 10} Here, appellant cites *In re Call*, 8th Dist. No. 78376, 2001 WL 370526 (Apr. 12, 2001), for the proposition that the court's failure to serve father is *inherently prejudicial* to her interests. Appellant further argues that the lack of service renders the lower court's ruling void for lack of jurisdiction. We do not agree.

{¶ 11} Previously, we issued a decision directly on point. *In re Ciara B.*, 6th Dist. No. L-97-1264, 1998 WL 355869 (July 2, 1998), we held that a judgment entered by a juvenile court against the appellant mother was not rendered void due to the alleged lack of service on the non-party father. *Id.* We further held that in the absence of a showing of prejudice to her case, the appellant mother could not raise the claimed lack of service on the putative father as error on appeal. *Id.* The Third, Fourth and Ninth District Courts of Appeal agree. *See In re* Cook, 3d Dist. No. 5-98-16, 1998 WL 719524 (Oct. 8, 1998) (mother does not have standing to raise issue of father's service on appeal); *In re Kincaid*, 4th Dist. No. 00CA3, 2000 WL 1683456 (Oct. 27, 2000) (appellant mother had no standing to raise the issue of the trial court's personal jurisdiction over the father when there is no evidence that her defense was prejudiced by the absence of the father from the

proceedings); *In re Jordan*, 9th Dist. Nos. 20773, 20786, 2002 WL 121211 (Jan. 30, 2002) (appellant mother lacks standing to raise service issue unless she demonstrates she was "actually prejudiced" by the error).

{¶ 12} Here, appellant must demonstrate the trial court's failure to perfect timely service upon father resulted in actual prejudice to her. *In re A.M.*, 9th Dist. No. 26141, 2012-Ohio-1024, ¶ 18. Appellant has offered no evidence that the trial court would have awarded custody to father had he appeared and defended against the motion for permanent custody. Accordingly, we conclude that mother lacks standing to assert error in regard to service upon father. Appellant's sole assignment of error is found not well-taken.

{¶ 13} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Pursuant to App.R. 24, appellant mother is ordered to pay the costs of this appeal.

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.

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

James D. Jensen, J.
CONCUR.

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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.