

[Cite as *In re I.F.*, 2010-Ohio-3885.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94932

IN RE: I.F.

A MINOR CHILD

[APPEAL BY MOTHER, R.D.]

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 09920349

BEFORE: Kilbane, P.J., Stewart, J., and Boyle, J.

RELEASED AND JOURNALIZED: August 19, 2010

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MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, R.D.,¹ appeals the judgment of the juvenile court that awarded permanent custody of her daughter, I.F., to appellee, the Cuyahoga County Department of Children and Family Services (“CCDCFS”). Appellant argues that the trial court erred in failing to comply with Juv.R. 29 when it accepted her admissions to the amended complaint. CCDCFS

¹The parties are referred to herein by their initials in accordance with this court’s established policy regarding nondisclosure of identities in juvenile cases.

concedes that the trial court failed to substantially comply with Juv.R. 29. We agree and reverse and remand.

{¶ 2} The following facts give rise to the instant appeal.

{¶ 3} On November 2, 2009, CCDCFs filed a complaint for dependency and neglect, seeking permanent custody of I.F. (d.o.b. 1/25/08). The complaint alleged that R.D. and P.F., the alleged father of I.F., had two other children together, both of whom were removed from their care. The complaint also alleged that R.D. was not taking any type of medication for her anxiety or depressive disorders and that she had a cocaine addiction. Further, neither parent had suitable housing or a source of income, and the couple had a history of domestic violence.

{¶ 4} The same day, CCDCFs also filed a motion for an order of predispositional temporary custody. CCDCFs alleged that I.F. was in immediate danger and sought temporary custody of the child pending a resolution of the complaint.

{¶ 5} On November 3, 2009, the magistrate held a hearing on the issue of temporary custody. R.D. was present and represented by counsel, however, the alleged father did not attend. Nicole Madison (“Madison”), a social worker employed by CCDCFs, testified that the mother did not have stable housing or income and left I.F. in the care of an inappropriate caregiver.

{¶ 6} On November 5, 2009, the magistrate issued findings of fact and ordered that CCDCFS be awarded emergency temporary custody of I.F.

{¶ 7} On January 25, 2010, the trial court held a dispositional hearing. The State indicated it was prepared to amend the complaint. R.D. appeared with counsel, who indicated that R.D. was prepared to admit to the allegations in the proposed amended complaint. The original complaint alleged both neglect and dependency; however, the complaint as orally amended at the hearing removed the term “neglect.” R.D. admitted to dependency, but was not in agreement with CCDCFS being awarded permanent custody. The amended complaint still sought permanent custody of I.F. R.D. admitted to the allegations outlined in the amended complaint, and the hearing was continued for a final disposition.

{¶ 8} On March 5, 2010, the trial court held a brief hearing without R.D. being present and awarded CCDCFS permanent custody of I.F.

{¶ 9} R.D. raises one assignment of error for our review.

ASSIGNMENT OF ERROR NUMBER ONE

“THE TRIAL COURT ERRED DURING THE ADJUDICATORY HEARING BY FAILING TO FOLLOW THE MANDATES OF JUV.R. 29.”

{¶ 10} R.D. argues that the trial court failed to comply with Juv.R. 29 at the January 25, 2009 dispositional hearing. CCDCFS concedes that the trial

court failed to substantially comply with Juv.R. 29, and that its failure to do so requires reversal.

{¶ 11} At the adjudicatory hearing, R.D.'s counsel stated that R.D. wanted to admit to allegations set forth in an amended complaint. Juv.R. 29(D) provides the specific guidelines for the trial court when accepting admissions. The Rule states:

“The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

(1) the party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

(2) the party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.”

{¶ 12} Strict compliance with the provisions of Juv.R. 29 is not constitutionally required; however, the trial court must substantially comply with the rule. A trial court's failure “to substantially comply with Juv.R. 29(D) constitutes prejudicial error, requiring reversal of the adjudication order.” *In re A.G. & D.A.*, 8th Dist. Nos. 94117 and 94118, 2010-Ohio-2230, citing *In re Beechler* (1996), 115 Ohio App.3d 567, 685 N.E.2d 1257. The trial court is required to do more than simply repeat the language outlined in Juv.R. 29 in the party's presence, but must specifically determine that the

party understands the allegations listed in the complaint and the consequences of their admission. *In the Matter of Glenn* (Mar. 8, 2001), 8th Dist. No. 78162, citing *In re Clark* (Jan. 18, 2001), 8th Dist. No. 76852.

{¶ 13} While the trial court did personally ask R.D. if she was making the admissions voluntarily, it directed all further communication directly to R.D.'s counsel and failed to address her personally with respect to whether she understood the allegations in the complaint. Juv.R. 29(C) specifically requires that the trial court personally address the individual, not counsel. *In re West* (1998), 128 Ohio App.3d 356, 359, 714 N.E.2d 988. In the instant case, the trial court summarily asked R.D.'s counsel, "Do you feel she understands all of the possible ramifications and consequences of making an admission to the Court to the amended complaint?" (Hearing of 1/25/10 at 11.) Counsel responded in the affirmative.

{¶ 14} The trial court also failed to address the rights enumerated in Juv.R. 29(C)(2). The trial court did not advise R.D. of her right to challenge and confront witnesses, the right to introduce her own evidence, and the right to remain silent.

{¶ 15} This court has previously stated that the termination of parental rights, is "the family law equivalent of the death penalty." *In re Smith* (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45. Therefore, it is crucial that trial courts substantially comply with Juv.R. 29(C) by personally addressing the

parent to ensure that the parent understands the allegations in the complaint, the potential consequences of their admissions, and the constitutional rights they are waiving prior to making any admissions.

{¶ 16} We find that the trial court did not substantially comply with Juv.R. 29(C). Therefore, the permanent custody award of I.F. to CCDCFS must be vacated, temporary custody of I.F. to CCDCFS is reinstated, and this matter is remanded to the trial court for further proceedings consistent with this opinion.

Judgment reversed and remanded.

It is ordered that appellant recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the juvenile division of the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR