

[Cite as *In re R.A.*, 2011-Ohio-742.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95589

IN RE: R.A., M.R.A., AND E.A.

[APPEALED BY MOTHER,
DEFENDANT-APPELLANT]

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Juvenile Court Division of
Cuyahoga County Court of Common Pleas
Case Nos. AD 08900628-29 and AD 08941750

BEFORE: Blackmon, P.J., Boyle, J., and Cooney, J.

RELEASED AND JOURNALIZED: February 17, 2011

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PATRICIA ANN BLACKMON, P.J.:

{¶ 1} In this consolidated appeal, appellant (“mother”) appeals a juvenile court order granting permanent custody of her children R.A., M.R.A., and E.A.¹ to the Cuyahoga County Department of Children and Family Services (“CCDCFS”). The mother assigns the following error for our review:

¹The parties are referred to by their initials in accordance with this court’s policy regarding non-disclosure of identities in juvenile cases.

“I. The trial court failed to comply with Juvenile Rule 29 when it accepted the Appellant’s stipulation to permanent custody.”

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court’s decision. The apposite facts follow.

{¶ 3} On January 25, 2008, CCDCFS filed a complaint, alleging the mother’s three children were abused, neglected, and/or dependent. On March 20, 2008, the trial court adjudicated R.A. and M.R.A. abused, neglected, and dependent. On March 29, 2008, the juvenile court adjudicated E.A. a dependent child. Thereafter, the trial court committed all three children to the temporary custody of CCDCFS.

{¶ 4} CCDCFS filed a case plan, identifying various problems the mother needed to address, including completing drug and alcohol assessment, completing psychological evaluation, participating in parenting education, and maintaining stable employment and housing. The goal of the case plan was to effect reunification of the mother with her three children.

{¶ 5} On December 11, 2009, CCDCFS filed a motion to modify the temporary custody of the three minors to permanent custody. After several pretrial hearings, the matter was set for trial regarding disposition. On July 13, 2010, the magistrate convened a hearing.

{¶ 6} At the hearing, counsel for both the mother and CCDCFS informed the magistrate that the mother was prepared to admit the allegations in the amended complaint and would stipulate that all three children should be placed in the permanent custody of CCDCFS. The magistrate questioned the mother and her attorney extensively regarding

the mother's understanding of the rights that she was waiving and the consequences of her decision.

{¶ 7} The mother admitted the allegations in the amended complaint and stipulated that all three children should be placed in the permanent custody of CCDCFS. The magistrate ultimately accepted the mother's consent to the agency's motion for permanent custody and recommended that CCDCFS's motion for permanent custody be granted. Thereafter, the trial court adopted the magistrate's recommendation, granted the motion, and ordered the mother's three minor children to be placed in the permanent custody of CCDCFS.

Permanent Custody

{¶ 8} In the sole assigned error, the mother argues the trial court failed to comply with Juv.R. 29 when it accepted her stipulation to permanent custody of her three children.

{¶ 9} Preliminarily, we recognize that the termination of parental rights is "the family law equivalent of the death penalty." *In re Phillips*, 11th Dist. No. 2005-A-0020, 2005-Ohio-3774, at ¶22, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, at ¶14. A parent is entitled to "fundamentally fair procedures in accordance with due process provisions under the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution." *In re Sheffey*, 167 Ohio App.3d 141, 2006-Ohio-619, 854 N.E.2d 508, at ¶21.

{¶ 10} The mother contends that the trial court's alleged failure to comply with Juv.R. 29 constitutes reversible error. The mother's reliance on Juv.R. 29 as the

controlling statute is misplaced. Juv.R. 29 applies to adjudicatory hearings and sets forth the procedures to be followed by a trial court upon the filing of a complaint and its resolution by admission. *In re L.D.*, Cuyahoga App. No. 81397, 2003-Ohio-2471. These procedures include those set forth in Juv.R. 29(D), which provides that the trial court shall not accept an admission without addressing the party and determining that 1) the party is making the admission voluntarily with understanding of the nature of the allegations and consequences of the admission; and 2) the party understands the rights he or she is waiving by making the admission. *Id.*

{¶ 11} The adjudicatory hearing in this case was held in March 2008, when the trial court determined that the mother's three children were abused, neglected, and dependent and placed them in the temporary custody of CCDCFS. The subsequent motion filed by CCDCFS was a motion to modify temporary custody to permanent custody, filed pursuant to R.C. 2151.413 and 2151.414. Such proceedings are governed by Juv.R. 34. *In re B.M.*, 181 Ohio App.3d 606, 2009-Ohio-1718, 910 N.E.2d 46. Juv.R. 34(I) specifically provides that:

“Hearings to determine whether temporary orders regarding custody should be modified to orders for permanent custody shall be considered dispositional hearings and need not be bifurcated.”

{¶ 12} The hearing the magistrate convened on July 13, 2010 was a dispositional hearing to determine whether permanent custody of the three minors, who had already been adjudicated abused, neglected, and dependent, and placed in the temporary custody of CCDCFS, should vest permanently with the agency. Because the hearing regarding the

motion to modify temporary custody was a dispositional hearing, rather than an adjudicatory hearing, Juv.R. 29 did not apply. See *In re Lakes*, 149 Ohio App.3d 128, 2002-Ohio-3917, 776 N.E.2d 510, at ¶34 (holding the trial court was not required “to engage in a colloquy with a parent in an R.C. 2151.414 proceeding, * * * such as that required by Juv.R. 29 at adjudicatory hearings”).

{¶ 13} Here, in addition to admitting the allegations contained in the amended complaint, the mother stipulated that permanent custody of the three minor children would vest with the agency. A stipulation is a voluntary agreement between opposing parties concerning the disposition of some relevant point so as to obviate the necessity for proof or to narrow the range of litigable issues. *DeStephen v. Allstate Ins. Co.*, 10th No. 01AP-1071, 2002-Ohio-2091; *State v. Dowd*, Cuyahoga App. No. 80990, 2002-Ohio-7061.

{¶ 14} Nonetheless, even though Juv.R. 29 was not applicable to the July 13, 2010 hearing and despite that the trial court was not required to engage in a colloquy with a parent in an R.C. 2151.414 proceeding, the record shows that the magistrate personally addressed the mother, who was present at the hearing with counsel, before the mother admitted the allegations contained in the amended complaint and stipulated that permanent custody of her three children should vest with CCDCFS. The following exchange took place at the hearing:

“The Court: Ms. A., are you making these admissions of your own free will?

“Ms. A.: Yes.

“The Court: Did anyone threaten or promise you anything or force you to get you to make these admissions today?”

“Ms. A.: No.

“The Court: Are you under the influence of alcohol or drugs today?”

“Ms. A.: No.

“The Court: Do you understand that by making — that you are waiving your right to have a trial where you can subpoena witnesses on your behalf, present evidence, or cross-examine any witness that was presented by the state?”

“Ms. A.: Yes.

“The Court: And do you understand that you’re waiving your right to remain silent by making these admissions?”

“Ms. A.: Yes.

“The Court: And do you understand that based upon your admissions and any evidence that’s presented by the State this Court can then grant permanent custody of these children to the Department of Children and Family Services?”

“Ms. A.: Yes.

“The Court: And on all these things you wish to make these admissions today and agree that permanent custody will vest with the Department of Children and Family Services?”

“Ms. A.: Yes.

“The Court: Okay. And Mr. Evans, you believe she understands what she’s doing here today?”

“Mr. Evans: I do, your Honor. I’ve gone over this with her today several times and I do believe she has that understanding.” Tr. 10-12, July 13, 2010 Hearing.

{¶ 15} Following the above discussion, the magistrate heard testimony regarding the children's fathers' inability or unwillingness to provide or care for the children. Further, the guardian ad litem testified all three children were living with a relative; the relative wanted to adopt them; and they were well adjusted. She also stated the mother wanted them to remain with that relative.

{¶ 16} After hearing the testimony, the magistrate stated in pertinent part as follows:

“Based upon the admissions and the agreement by the mother, as well as having listened to the testimony as it relates to the alleged father and the fathers of these children, I’m going to find that it is in the best interest of R.A., M.R.A., and E.A. that permanent custody be granted to the Department of Children and Family Services * * *.” Tr. 23-24.

{¶ 17} Based on the foregoing, there is nothing in the record to indicate that the mother was deprived of her due process rights. Although Juv.R. 29 was not applicable to the instant matter, the record reveals that her rights were safeguarded. Accordingly, we overrule the sole assigned error.

Judgment affirmed.

It is ordered that appellee recover from appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

MARY J. BOYLE, J., and
COLLEEN CONWAY COONEY, J., CONCUR