

[Cite as *In re A.O.*, 2015-Ohio-1156.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 101910 and 102099

**IN RE: A.O.
A Minor Child**

[Appeal by Mother, J.H., and
Maternal Grandfather, K.H.]

JUDGMENT:
VACATED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. CU 13111613

BEFORE: Blackmon, J., Keough, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: March 20, 2015

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellants K.H. (“grandfather”) and J.H. (“mother”) appeal the trial court’s decision granting custody of A.O, who is K.H.’s granddaughter and J.H.’s daughter, to A.O.’s father, R.O. (“father”). They assign seven errors for our review.¹

{¶2} After reviewing the record and relevant law, we vacate the trial court’s decision and remand for the Juvenile Court Administrative Judge to issue an order awarding legal custody to the grandfather. The apposite facts follow.

{¶3} On August 13, 2013, K.H., the child’s maternal grandfather, filed an application in juvenile court to obtain legal custody of A.O. At the time, the child’s parents agreed to the grandfather receiving legal custody.

{¶4} The juvenile court sua sponte scheduled the matter for an emergency hearing. At the hearing, a social worker from Cuyahoga County Division of Children and Family Services (“CCDCFS”) informed the court that the agency had been involved with the mother for two years due to the mother’s substance abuse problem. During that time, the child had resided with her grandfather. The social worker informed the court that she had visited the grandfather’s home and found the child’s needs were being met. The house was clean, and the child had her own room. While the grandfather was at work, the child attended day care. Because the parents agreed with the legal custody and the grandfather was found to be a suitable custodian, the social worker concluded that there was no need for an emergency custody placement and that the grandfather’s private custody application should be granted. The assigned guardian ad litem (“GAL”) concurred with the social worker.

¹See appendix.

{¶5} In spite of the above testimony, the magistrate placed the child in the emergency care of CCDCFS but allowed the child to continue to reside with the grandfather while the matter was pending. The court further ordered CCDCFS to file a complaint within 14 days alleging that the child was abused, neglected, or dependent, along with a case plan for the parents. A review of the transcript shows that the magistrate was concerned that the agency was advocating that the grandfather receive legal custody without attempting to first reunify the child with her parents. This was despite the fact the parents agreed that the grandfather should have legal custody of the child.

{¶6} In response, CCDCFS filed an objection to the magistrate's report, arguing that there was no legal basis for the order to file a complaint because the child was not abused, neglected, or dependent as defined by the statute because the grandfather was providing proper care for the child. The trial court overruled the objection and adopted the magistrate's report. CCDCFS filed an appeal.

{¶7} This court in *In re A.O.*, 8th Dist. Cuyahoga No. 100619, 2014-Ohio-2277, reversed the trial court and remanded for further proceedings. We held as follows:

We note that if a child is receiving proper care from relatives to whom the parent entrusted the child's care, the child is not a dependent child. *Johnson v. Johnson*, 10th Dist. Franklin No. 00AP-691, 2001 Ohio App. LEXIS 1294, *14 (Mar. 22, 2001), citing *In re Crisp*, 10th Dist. Franklin No. 80AP-678 (Feb. 5, 1981). Moreover, in situations where the parents voluntarily place the child with a responsible relative, "the state has no interest in assuming guardianship since the obligations of care, custody, and support are being met." *Johnson* at *16, quoting *In re Reese*, 4 Ohio App.3d 59, 446 N.E.2d 482 (10th Dist. 1982).

In the instant case, K.H. filed an application to determine custody under R.C. 2151.23(A)(2), because CCDCFS advised him to do so. The Cuyahoga County Prosecutor's Office, on behalf of CCDCFS, represented to the trial court and to

this court that after investigating and working with the family for approximately two years, A.O.'s needs were being met by K.H. The social worker and the guardian ad litem had no concerns with A.O. being in K.H.'s home, and testified that an emergency situation did not exist, K.H. was providing for A.O., K.H. had stable housing, J.H. moved out of the house, and A.O. was in daycare while K.H. worked. Furthermore, A.O.'s parents wanted K.H. to have legal custody of A.O. As a result, CCDCFS determined, within its discretion, that there was no legal basis for filing a complaint alleging the child is abused, neglected, or dependent, and advised K.H. to pursue a private custody action. The magistrate's motivation, while thoughtful, is outside of her authority. Therefore, based on the facts of this case, we reverse the court's decision ordering A.O. to the predispositional emergency care and custody of CCDCFS and ordering CCDCFS to file a complaint and a case plan is reversed.

Id. at ¶ 8 and 9. We also “remanded for further proceedings consistent with this opinion.”

{¶8} On remand, instead of granting legal custody to the grandfather, the trial court conducted another hearing. At this hearing, for the first time the father orally requested custody of the child. The father had provided no notice to the parties that he was planning on seeking custody at the hearing. After hearing from the grandfather, mother, GAL, and father, the magistrate granted legal custody to the father. The grandfather and mother both filed objections. The trial court overruled the objections and adopted the magistrate's report. This court granted a stay pending appeal.

Court of Appeals' Mandate

{¶9} In his first assigned error, the grandfather and mother argue that the trial court failed to follow this court's mandate on remand by awarding the father custody of the child. We agree.

{¶10} “When a case is remanded to a trial court from an appellate court, the mandate of that appellate court must be followed.” *Kaechele v. Kaechele*, 61 Ohio App.3d 159, 162, 572 N.E.2d 218 (10th Dist.1989). “Absent extraordinary circumstances, such as an intervening decision by the Supreme Court, an inferior court has no discretion to disregard the mandate of a

superior court in a prior appeal in the same case.” *Nolan v. Nolan*, 11 Ohio St.3d 1, 462 N.E.2d 410, syllabus (1984). “Moreover, the trial court is without authority to extend or vary the mandate given.” *Id.* at 4, citing *Briggs v. Pennsylvania RR. Co.*, 334 U.S. 304, 306, 68 S.Ct. 1039, 92 L.Ed. 1403 (1948).

{¶11} In the prior appeal, CCDCFS appealed the trial court’s adoption of the magistrate’s decision, which required CCDCFS to attempt reunification with the parents even though both parents agreed to the grandfather receiving legal custody. We concluded the juvenile court did not have authority to order a reunification plan when the child was not dependent, neglected, or abused and was being provided appropriate care by a relative to whom the parents entrusted the child. We then remanded the matter for “proceedings consistent with this opinion.”

{¶12} The only obvious consistent thing to do on remand was to award the grandfather legal custody. Instead, the magistrate, without authority to do so, conducted another hearing, where the father for the first time requested custody of the child without filing a motion. The magistrate did not have authority to entertain the father’s oral request for custody in light of our mandate and should have, instead issued an order consistent with our mandate by awarding legal custody to the grandfather.²

²It defies comprehension how the trial court could have granted legal custody to the father without a fully developed record. The grandfather, mother, and the GAL did not have notice of the father’s intent to request custody and were unprepared to address his request. The father also indicated that he would need the help of his mother in caring for the child, yet his mother was not available at the hearing.

{¶13} Thus, the trial court erred in veering from this court's mandate by conducting a hearing and awarding the father custody instead of the grandfather. Accordingly, the grandfather's and mother's first assigned error is sustained.

{¶14} Based on the trial court's prior refusal to follow this court's mandate, we order that this case be assigned to the Juvenile Court Administrative Judge to immediately issue an order awarding the grandfather legal custody of the child.

{¶15} Judgment is vacated and the matter remanded to comply with the above mandate of this court.

Costs waived.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Juvenile 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, JUDGE~~——

KATHLEEN ANN KEOUGH, P.J., and
ANITA LASTER MAYS, J., CONCUR

APPENDIX

Assignments of Error:

I. The trial court abused its discretion by not following the directive of the Eighth District Court of Appeals' Decision.

II. The trial court's decision violates the due process rights of both the maternal grandfather and the mother and the child as father never filed a motion to be considered for custody of the child.

III. The trial court's decision violates the equal protection rights of both the maternal grandfather and the mother and the child by granting custody to the father without the father ever filing a motion.

IV. The trial court's [finding] the father to be suitable [is] against the manifest weight of the evidence.

V. The trial court erred in granting custody to the father without any investigation of father or his home and is contrary to the child's best interest.

VI. The trial court abused its discretion by its overzealous and biased participation in the examination of witnesses.

VII. The trial court erred by merely rubber-stamping the magistrate's decision without conducting an independent review of the case and the objections.