

[Cite as *In re K.A.D.*, 2015-Ohio-2408.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102228

IN RE: K.A.D.

Minor Child

[Appeal by Mother, R.D.]

JUDGMENT:
AFFIRMED IN PART; REVERSED IN PART AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. CU 14109625

BEFORE: Stewart, J., Celebrezze, A.J., and Blackmon, J.

RELEASED AND JOURNALIZED: June 18, 2015

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MELODY J. STEWART, J.:

{¶1} Father-appellee A.N. filed an “application for custody” in the juvenile division of the court of common pleas seeking custody of his nine-year-old daughter, K.A.D. A magistrate originally granted the application, but on reconsideration of mother-appellant R.D.’s arguments, the magistrate dismissed the application without prejudice because the father failed to comply with certain procedural prerequisites when filing his complaint. The court issued an interim order adopting the magistrate’s decision to dismiss the application, but on subsequent review of the father’s objections, the court concluded that the mother forfeited the right to object to any alleged deficiencies in the complaint because she did not raise her objections in a timely manner.

{¶2} On appeal, the mother makes two arguments: (1) that the court had no authority to vacate its own order that adopted the magistrate’s decision to dismiss the application without prejudice, and (2) that certain alleged deficiencies in the complaint meant that the application was never properly commenced, so the court lacked jurisdiction to proceed.

{¶3} We first conclude that the court did not vacate its own order of dismissal without prejudice. The record shows that the court’s initial order adopting the magistrate’s decision to dismiss without prejudice the father’s application for custody was an interim order entered subject to review of any objections to the magistrate’s decision that might be filed. We next conclude that the court did not err by finding that the mother’s objections to any deficiencies in the father’s application for custody were filed

so late that she was deemed to have forfeited the right to object. We affirm the court's judgment.

{¶4} The mother had legal custody of the child, but the child lived with the father or her paternal grandmother in the city of Maple Heights from 2009 until approximately July 2014. For school purposes, the mother listed her address as the same address where the paternal grandmother lived. During the period in which the child lived with either the father or paternal grandmother, the father paid child support to the mother.

{¶5} In July 2014, the father filed an “application to determine custody” of the child and a separate motion for temporary or emergency custody. Grounds for the application were that the mother recently “reclaimed” possession of the child to the child's detriment. The father stated that the mother intended to send the child to school in the Cleveland Metropolitan School District, whereas he had recently moved to the Mayfield Heights School District — a district that he believed could provide the child with better educational opportunities. A guardian ad litem for the child agreed that the father's place of residence offered better schooling for the child and recommended that the father be granted custody.

{¶6} A magistrate assigned to the case conducted a full hearing on the matter. The magistrate could not determine whether the child resided with the father or the paternal grandmother during the times the child attended Maple Heights schools, but conclusively found that the child did not reside with the mother during the school year

from kindergarten through the third grade. On that basis, the magistrate granted the father's motion for temporary custody and set a visitation schedule for the mother.

{¶7} The mother filed a motion to “set aside” the magistrate’s decision granting temporary custody to the father, arguing that (1) the father failed to comply with Loc.R. 28 of the of the Cuyahoga County Court of Common Pleas, Juvenile Division, by including an affidavit with the application to determine custody, and (2) there was no proper complaint pending before the court to give it jurisdiction to hear the father’s application. The magistrate found “upon reconsideration, that the Application to Determine Custody filed by counsel for the father is procedurally defective as it fails to to [sic] comply with Ohio Juvenile Rule of Procedure 10 and Local Rule of Practice 28.” The magistrate ordered that the father’s application to determine custody be dismissed without prejudice. The court then denied as moot the mother’s motion to set aside the magistrate’s initial decision finding that the case had been dismissed by magistrate.

{¶8} The father filed timely objections to the magistrate’s decision to dismiss the application for custody. He argued that the mother failed to raise a timely objection to any deficiencies in his application to determine custody, particularly when she waited until after the evidentiary hearing to raise the issue.

{¶9} In a subsequent judgment entry, the court stated that it had made an “independent review” of the magistrate’s decision and approved and adopted it. Just nine days later, however, the court issued a new journal entry in which it said that a review of the magistrate’s decision and the father’s objections to the decision caused it to

conclude that father's objections were "well-taken." The court ruled that the mother did not make timely objections to the magistrate's decision granting the father temporary custody of the child based on defects on the commencement of proceedings. For that reason, the court found that the mother forfeited the right to raise those objections after the evidentiary hearing had been held. The court thus reinstated the magistrate's decision that granted the father's application for temporary custody, ordered the matter set for hearing before the magistrate, and stated that all findings and decision by the magistrate that were not modified by the court were approved and adopted.

{¶10} The mother appeals from the order vacating the magistrate's decision to dismiss the father's application without prejudice.

{¶11} We first consider the substance of the mother's second assignment of error, in which she claims that the court abused its discretion by vacating the dismissal and reinstating the case when there was no motion for relief from judgment pending before it.

Underlying this assignment of error is the question of whether the court had any authority to exercise jurisdiction over the matter after it approved and adopted the magistrate's decision to dismiss the case without prejudice.

{¶12} It is true that "[a] dismissal without prejudice leaves the parties as if no action had been brought at all." *DeVille Photography, Inc. v. Bowers*, 169 Ohio St. 267, 272, 159 N.E.2d 443, 446 (1959). But unlike a voluntary dismissal without prejudice under Civ.R. 41(A)(1), in which the plaintiff has an absolute right to dismiss a case without prejudice, *Sturm v. Sturm*, 63 Ohio St.3d 671, 675, 590 N.E.2d 1214 (1992), the

dismissal ordered by the magistrate was a Civ.R. 41(B)(1) *involuntary* dismissal without prejudice. That dismissal was, like any decision by a magistrate, subject to further review by the court by way of objection to the magistrate's decision pursuant to Juv.R. 40(D)(3)(b).

{¶13} The mother argues that the court had no authority to consider the father's objections to the magistrate's decision after it had approved and adopted the magistrate's decision. Two orders are at issue here: the October 21, 2014 order finding the mother's motion to set aside the magistrate decision as moot, and the November 3, 2014 order approving and adopting the magistrate's decision to dismiss without prejudice the father's application for custody.

{¶14} At the time the magistrate issued her decision to dismiss without prejudice the father's application for custody, the mother had a motion pending to set aside the magistrate's initial decision to grant the father temporary custody of the child. When the court considered the mother's motion to set aside the magistrate's decision granting temporary custody, it found that motion moot given the decision to dismiss without prejudice the father's application. That finding of mootness simply recognized that any objections the mother had to the magistrate's original decision to grant the father temporary custody of the child were no longer valid in light of the magistrate's subsequent decision to dismiss the father's application. *See State ex rel. Cincinnati Enquirer v. Hunter*, 141 Ohio St.3d 419, 2014-Ohio-5457, 24 N.E.3d 1170, ¶ 4. We find no basis for what appears to be an assertion by the mother that the court somehow

approved and adopted the magistrate's decision to dismiss the father's application by finding moot the mother's motion to set aside the magistrate's decision to grant the father temporary custody of the child.

{¶15} Until the time period for filing objections ran, the November 3, 2014 judgment approving and adopting the magistrate's decision to dismiss the father's application for custody was intended to be an interim judgment pending its ruling on the father's objections to the magistrate's decision to dismiss his application. We reach this conclusion because the court pointedly cited Juv.R. 40(D)(4)(e) in its judgment, a rule that permits the court to enter an "interim order" from a magistrate's decision. The judgment entry used language identical to that used by the magistrate in her decision — language that made no mention of the father's objections. What is more, the court wholesale adopted language from the magistrate's decision that found that the father failed to file proposed findings of fact and conclusions of law. This was a telling inclusion because the magistrate had previously retracted her finding on that point in light of indisputable evidence showing that the father had filed his proposed findings of fact and conclusions of law (the father showed the magistrate a time-stamped copy of the findings of fact and conclusions of law). The court would have been aware of the magistrate's retraction (it appeared on the court's docket), so its adoption of an incorrect factual assertion by the magistrate indicates that the court was doing nothing more than reentering the magistrate's decision as an interim order pending a ruling on the father's objections to the magistrate's decision.

{¶16} To further support our conclusion that the November 3, 2014 order was interim in nature, we note that the court did not address, much less acknowledge, the father's pending objections to the magistrate's decision. It was not until the court issued the November 11, 2014 judgment entry that it specifically mentioned and addressed the father's objections to the magistrate's decision.

{¶17} Juv.R. 40(D)(4)(d) states: "If one or more objections to a magistrate's decision are timely filed, *the court shall rule on those objections.*" (Emphasis added.) The November 3, 2014 judgment entry did not rule on the father's objections, so those objections remained pending "until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." Juv.R. 40(D)(4)(e)(I).

{¶18} The court did not, with any finality, approve and adopt the magistrate's decision to dismiss without prejudice the father's application for custody. Until the court ruled on the father's objections, the dismissal remained an interim order of the court subject to later approval or rejection. We thus conclude that the court's November 11, 2014 judgment entry did not vacate the November 3, 2014 judgment entry. The November 3, 2014 judgment was nothing more than an interim order subject to later consideration of the father's objections to the magistrate's decision. The court thus had jurisdiction to enter the November 11, 2014 judgment entry.

{¶19} The mother next argues that the father failed to commence this action properly by way of a complaint. She maintains that the "application to determine custody" did not constitute a complaint that would invoke the court's jurisdiction. The

mother argues that absent jurisdiction, the court had no authority to issue any rulings and the parties should revert to the status quo ante where the child continues to reside with the mother.

{¶20} Juv.R. 10(A) states that “[a]ny person with standing may file a complaint for the determination of any other matter over which the juvenile court is given jurisdiction by the Revised Code.” The juvenile division had jurisdiction over the motion for a change in custody, *see* R.C. 2151.23(A)(2), so the father could have commenced a custody action by way of a complaint.

{¶21} The mother argues that the father’s application to determine custody did not constitute a valid complaint for purposes of Juv.R. 10(A). She notes that Juv.R. 2(F) defines a complaint as “the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction.” Juv.R. 10(B) sets forth three requirements for a complaint: (1) it must state in ordinary and concise language the facts that bring the proceeding within the jurisdiction of the court; (2) it must contain the name and address of the parent of the child; and (3) it must be made under oath. She argues that the father’s application did not indicate that it had been made under oath.

{¶22} We agree with the court that the mother failed to make a timely objection to any deficiencies in the father’s complaint. The Eleventh District Court of Appeals considered an identical argument in *In re Vanek*, 11th Dist. Ashtabula No. 95-A-0027, 1995 Ohio App. LEXIS 4473 (Sept. 29, 1995), finding that a party had waived the right to raise any objection to a complaint not being made under oath in compliance with Juv.R.

22(D)(2). That rule states that “[d]efenses or objections based on defects in the complaint (other than failure to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceeding)” must be raised before the adjudicatory hearing. The court of appeals held that the complaining party’s “failure to object at the appropriate time in the proceedings precludes her from now claiming that the complaint was defective, and obviates the conclusion that such errors should result in a reversal at this stage.” *Id.* at *7. *See also In re I.M.*, 8th Dist. Cuyahoga Nos. 82669 and 82695, 2003-Ohio-7069, ¶ 19.

{¶23} The mother did not raise any objection to the substance of the application for custody until after the magistrate granted temporary custody of the child to the father. Her objection was thus untimely and the court did not err by so finding. In reaching this conclusion, we reject the mother’s assertion that the hearing before the magistrate was “non-adjudicatory” for purposes of Juv.R. 22(D), so she was under no obligation to raise the issue at an earlier point.

{¶24} Juv.R. 22(D) states that objections or defenses to a complaint must be heard “before the adjudicatory hearing.” Juv.R. 2(B) defines the term “adjudicatory hearing” as “a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court.”

In context, anything that is “adjudicatory” is subject to further disposition. So when Juv.R. 2(B) speaks of an initial determination that a child is a juvenile traffic offender,

delinquent, unruly, abused, neglected, or dependent, it contemplates further disposition after that initial finding is made.

{¶25} For all practical purposes, the court's order that the father be granted temporary custody of the child was adjudicatory in nature because it contemplated a subsequent disposition on the father's motion for permanent custody of the child. That being the case, the mother had to make any objections to the father's complaint at the earliest opportunity to prevent delay and unnecessary waste of court resources. By the time the mother did object, the magistrate had conducted a full hearing on the father's motion for temporary custody. The time for her to object to the father's complaint was before the hearing, not after.

{¶26} We likewise reject the mother's assertion that the father intentionally styled his motion as an "emergency" motion to circumvent mandatory mediation required under Loc.R. 8 of the Court of Common Pleas, Juvenile Division. The mother did not timely raise this argument as a defense or objection to the complaint, so we cannot find that the court erred by finding that those objections were forfeited.

{¶27} In addition, we reject the mother's contention that Juv.R. 22(D)(2) does not apply because her objection was based on a failure to show jurisdiction in the court. Defects in a complaint do not affect a court's subject matter jurisdiction. *Incorporated Consultants v. Todd*, 175 Ohio St. 425, 427, 195 N.E.2d 788 (1964); *In re Forfeiture of Property No Longer Needed As Evidence*, 86 Ohio App.3d 68, 73, 619 N.E.2d 1161 (6th Dist. 1993). As we earlier noted, R.C. 2151.23(A)(2) gave the court subject matter

jurisdiction over the father's application for custody. The father's alleged failure to comply with certain procedural prerequisites of a complaint under Juv.R. 10, even if true, did not affect the court's subject matter jurisdiction.

{¶28} Despite finding no error in the manner in which the court rejected the mother's late objections to the father's complaint, we conclude that the court erred by failing to rule on the mother's substantive objections to the magistrate's decision granting the father temporary custody. Those objections included the substantive argument that the magistrate failed to properly consider the best interests of the child when granting temporary custody of the child to the father. The court did not address that objection when vacating the magistrate's decision to dismiss the father's complaint. The obligation to do so remains, *see* Juv.R. 40(D)(4)(d), assuming that any disposition of the father's motion for permanent custody has not mooted any alleged errors in granting temporary custody. We therefore sustain the assignments of error in part and remand for further proceedings.

{¶29} Judgment affirmed in part, reversed in part, and remanded.

It is ordered that the appellant and appellee share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court — juvenile division 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.

MELODY J. STEWART, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
PATRICIA ANN BLACKMON, J., CONCUR