

[Cite as *In re D.C.*, 2015-Ohio-3038.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 102614 and 102631

IN RE: D.C., B.S., and M.F.
Minor Children

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 14911192, AD 14911193, and AD 14911194

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

RELEASED AND JOURNALIZED: July 30, 2015

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} On August 29, 2014, the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “Agency”) filed a complaint for neglect and protective supervision regarding Mother’s children, D.C., B.S., and M.F. The complaint raised issues regarding the children’s educational and mental health services needs. Mother’s substance abuse issues were ancillary.

{¶2} On November 19, 2014, an adjudicatory hearing was held and the children were found to be neglected. The trial court continued the matter for a dispositional hearing and further ordered that CCDCFS have Mother drug tested by hair follicle that day.

{¶3} The magistrate held a dispositional hearing on December 3, 2014. Disposition was continued for further hearing, and the children remained in Mother’s custody, although the trial court noted in its December 3, 2014 order that “Mother’s hair follicle drug test was positive for marijuana and opiates.”

{¶4} On January 14, 2015, the final dispositional hearing was held. At the hearing, evidence was presented that Mother had made significant progress toward addressing the Agency’s concerns. The Agency social worker assigned to the case

testified that Mother had found employment, bought a car, obtained housing, and was ensuring that her children were attending school and their special needs were being addressed. Regarding Mother's substance abuse issues, the evidence demonstrated that Mother had complied with the court's previous order to submit to a hair follicle test, and the results were positive for opiates and marijuana.

{¶5} The court ordered the children into the protective supervision of the Agency, and ordered that Mother submit to another hair follicle test that day and a drug assessment within seven days. Mother's attorney informed the court that the hair follicle test would be positive for drug use because hair follicle tests show historical use. The magistrate acknowledged that fact, and then discussed with counsel her understanding that the levels of drugs found in the second hair follicle test would be elevated if Mother had used recently but decreased if she had not.

{¶6} During the hearing, the magistrate recommended that the Agency file a motion to show cause if there was a violation of the court's orders. Specifically, the magistrate advised the parties:

[I]f there's a positive drug screen, if there's a missed doctor's appointment, if there's an unexcused absence or a tardy at the school or mom has failed to do anything that the drug assessment reveals and the court orders, the children will be removed. Make no mistake about it. They will be out of that home. The Agency is advised that there's a mechanism called a motion to show cause, that the law recognizes and allows to deal with people not being compliant with court orders. I would recommend they use that if there's any noncompliance with any of these orders.

{¶7} Nevertheless, in its dispositional order of January 14, 2015, the trial court

ordered the Agency to immediately remove the children from Mother's custody upon the occurrence of certain future events:

If Mother has ANY positive drug test and/or if the child has any missed mental health, medical or therapy appointments and/or the child has even one unexcused tardy or absence from school and/or Mother tests positive for ANY illegal substance or fails to comply with any recommended treatment then the Court finds that any one of these occurrences places the child at immediate risk of harm and CCDCFS is to remove the child from Mother's custody IMMEDIATELY and place the child in their emergency custody pending the filing of and the hearing on the appropriate legal motion.

{¶8} On January 27, 2015, CCDCFS filed objections to the magistrate's decision, arguing that an order mandating the immediate, emergency removal of children based upon the occurrence of future events is outside the framework established by R.C. Chapter 2151 and violates a parent's right to due process.

{¶9} Meanwhile, the Agency had received the results of Mother's second hair follicle test and two urine screens (one administered before the January 14 hearing and one after). The hair follicle test came back positive for marijuana and opiates as expected. Both urinalysis tests were negative for any drug use. However, because the trial court had ordered the Agency to remove the children upon "any" positive drug test, the Agency filed a motion for an immediate hearing in order to obtain clarity regarding the trial court's intention. The hearing was set for February 11, 2015.

{¶10} On February 5, 2015, Mother filed objections to the magistrate's January 14, 2015 dispositional decision that granted protective custody to the Agency but ordered

removal of the children and placement in emergency custody if certain future events occurred.¹ On February 9, 2015, the trial court journalized its entry overruling the Agency's objections to the magistrate's decision; the court never ruled on Mother's objections.

{¶11} At the February 11, 2015 hearing on the Agency's motion for immediate hearing, the magistrate inexplicably stated that she had never been advised that opiates were an issue and the second hair follicle test would come back positive. And, despite the fact that Mother's unrulied-upon objections to the January 14, 2015 decision operated as an automatic stay of the magistrate's decision,² the magistrate also challenged why the Agency had not removed the children from Mother's custody without a hearing pursuant to the January 14, 2015 decision. Then, without taking any evidence regarding whether the children were at immediate risk of harm and whether removal was in their best interest, the magistrate ordered the children into the emergency temporary custody of the Agency effective immediately. The magistrate also set the matter for a hearing regarding the Agency social worker's alleged contempt of court for her failure to comply with the court's January 14, 2015 order.

{¶12} That same day, Mother filed objections to the magistrate's February 11,

¹ Under Juv.R. 40(D)(3)(b)(i), if one party timely files objections to a magistrate's decision, any other party may also file objections not later than ten days after the first objections are filed.

²See Juv.R. 40(D)(4)(e)(i); *In re D.N., II, A Minor*, 8th Dist. Cuyahoga No. 82708, 2004-Ohio-1106, ¶ 9.

2015 decision ordering the children immediately into the emergency custody of CCDCFS.

On February 12, 2015, CCDCFS also filed objections to the magistrate's February 11, 2015 decision. On February 12, 2015, without ruling on the Agency's or Mother's objections, the trial court adopted the magistrate's February 11, 2015 decision.

{¶13} In these consolidated appeals, the Agency and Mother appeal from the trial court's decision of February 9, 2015, that overruled the Agency's objections and adopted the magistrate's January 14, 2015 decision ordering the Agency to immediately remove the children from Mother's custody if certain future events occurred; and the trial court's decision of February 12, 2015, that affirmed the magistrate's decision ordering the children into the immediate temporary custody of CCDCFS. We must dismiss, however, for lack of a final, appealable order.³

{¶14} This court has jurisdiction to review final orders or judgments of lower courts within our district. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2501.02. If the order is not a final, appealable order, we lack jurisdiction and must dismiss the appeal. *Madfan, Inc. v. Makris*, 8th Dist. Cuyahoga No. 102179, 2015-Ohio-1316, ¶ 11. Accordingly, this court has the duty to sua sponte examine any deficiencies in jurisdiction. *Saikus v. Ford Motor Co.*, 8th Dist. Cuyahoga No. 77802, 2001 Ohio App. LEXIS 1696, *6 (Apr. 12, 2001).

³The Agency and Mother's objections operated as an automatic stay of the magistrate's decision. In addition, on February 17, 2015, this court granted a stay of the trial court's order.

{¶15} Pursuant to Juv.R. 40(D)(3)(b)(i), a party may file written objections to a magistrate’s decision with 14 days of the filing of the decision, whether or not the court has adopted the decision during the 14-day period. Under Juv.R. 40(D)(4)(d), a trial court “shall rule” on any timely filed objections to a magistrate’s decision. Where a trial court fails to rule on timely objections, there is no final, appealable order. *In re B.W.*, 8th Dist. Cuyahoga Nos. 96550 and 96551, 2011-Ohio-4513, ¶ 8, citing *Peric v. Buccilli*, 8th Dist. Cuyahoga No. 80805, 2002-Ohio-6234, ¶ 8. As stated by one court, “[w]hen a trial court enters judgment on a magistrate’s decision, but fails to explicitly rule on a party’s objections, that judgment does not constitute a final, appealable order because it does not fully determine the action.” *In re Strickler*, 9th Dist. Lorain No. 09CA009692, 2010-Ohio-2277, ¶ 5.

{¶16} Here, the trial court never ruled on Mother’s objections to the magistrate’s January 14, 2015 decision ordering the immediate removal of the children from her custody upon the occurrence of certain future events. In addition, the trial court did not rule on the Agency’s and Mother’s timely filed objections to the magistrate’s February 11, 2015 decision ordering the children into the immediate temporary custody of the Agency. Because the trial court did not rule on these objections, we do not have a final, appealable order and must dismiss for lack of jurisdiction.

{¶17} Dismissed.

Accordingly, the appeal is dismissed and the matter is remanded for further

proceedings consistent with this opinion.

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

The Court finds there were reasonable grounds for this appeal.

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

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

MARY J. BOYLE, J., and
PATRICIA ANN BLACKMON, J., CONCUR