

[Cite as *In re K.R.*, 2016-Ohio-1228.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 103438, 103439, 103745, and 103746

**IN RE: K.R. AND A.R.
Minor Children**

[Appeal by B.P., Paternal Grandmother]

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD-15-904081 and AD-15-904082

BEFORE: Kilbane, P.J., S. Gallagher, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: March 24, 2016

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MARY EILEEN KILBANE, P.J.:

{¶1} B.P. (referred to herein as “appellant”), the paternal grandmother of the minor children, A.R. and K.R., appeals from the juvenile court order awarding permanent custody of A.R. and K.R. to the Cuyahoga County Department of Children and Family Services (“CCDCFS”) and denying her motion for custody of the children.¹ For the reasons set forth below, we affirm.

{¶2} The mother, S.G.-W. (“mother”), and the father, D.R. (“father”), were married and had two children, A.R. and K.R. A.R. was born on March 6, 2008, and K.R. was born on June 17, 2010. When K.R. was two months old, father caused nonaccidental head trauma to K.R., and father was convicted of child endangering. K.R. suffers from shaken baby syndrome. He is developmentally delayed, does not walk or talk, and has cerebral palsy. He also experiences seizures and has a gastric tube for feeding.

{¶3} After mother and father were divorced in December 2012, the mother and the children began to live with mother’s boyfriend, R.F. (“boyfriend”), a sex offender who has been subject to the registration requirements of R.C. 2950.05 since 2009. In August 2014, when A.R. was six years old, she was sexually abused by mother’s

¹The mother’s appeal of that order is being considered in a separate appeal, under 8th Dist. Cuyahoga No. 103450.

boyfriend. Mother's boyfriend was subsequently convicted of attempted rape, gross sexual imposition, and abduction. He was also convicted of endangering children for fracturing K.R.'s jaw. Mother pled guilty to obstruction of justice in connection with that matter.

{¶4} On August 19, 2014, CCDCFS filed a complaint, alleging K.R. to be abused and A.R. dependent. CCDCFS requested predispositional and temporary custody of the children. The children were placed in the emergency custody of CCDCFS. On December 11, 2014, CCDCFS moved to dismiss the August 19, 2014 complaint and filed a new complaint for permanent custody, alleging that both children were abused and dependent. On September 12, 2014, K.R. was placed in foster care with M.B., who is certified to care for medically fragile children. A.R. was placed in kinship care, but was transferred to M.B.'s care on January 12, 2015. On March 26, 2015, the trial court dismissed CCDCFS's second complaint for permanent custody of K.R. and A.R. because the case could not be resolved within 90 days of its filing. The same day, CCDCFS filed its third complaint for permanent custody of the children. On March 31, 2015, a guardian ad litem ("GAL") was appointed for the children.

{¶5} On April 24, 2015, appellant filed a motion for temporary custody and legal custody of the children. In support of her motion, she averred that she wanted custody of the children because their parents could not provide proper care for them, no protection order prevented her from having contact with the children, she could be a proper care

giver, and she completed a Uniform Child Custody Jurisdiction and Enforcement Act Affidavit.

{¶6} The matter came on for an adjudicatory hearing on May 15, 2015, with mother, father, counsel for the parents, appellant and her counsel, and the GAL present. The parents admitted all of the key allegations of the complaint. The children were adjudicated to be abused and dependent. The court found that there are “relatives [who] are willing to provide substitute care.” During a May 12, 2015 pretrial, however, CCDCFS advised the trial court that a no-contact order, that was not offered into evidence, prohibited father from having contact with the children. According to CCDCFS, appellant admitted that on at least two occasions, she acted in concert with father to violate this order by going to mother’s house to visit with the children and calling father, permitting the children to speak with him on her phone. She stopped doing so after being warned against it by CCDCFS. In addition, appellant also stated to CCDCFS officials that she does not believe that father caused K.R.’s injuries.

{¶7} On June 18, 2015, the GAL submitted a report in the matter. The GAL noted that appellant has a nicely furnished home with rooms for each child. It is on a ground floor and accessible for K.R., who will need a ramp. The GAL observed that appellant is a kind and loving person. The GAL expressed concern, however, that because appellant believes in forgiveness and second chances, that she minimizes the damages and suffering the children have experienced. The GAL also expressed concern

over the possibility of either parent having unrestricted access to the children in the future and recommended that CCDCFS be granted permanent custody of the children.

{¶8} The dispositional hearing was held on June 25, 2015. Appellant and her counsel appeared at this hearing. CCDCFS maintained that permanent custody should be awarded to CCDCFS, and that appellant's motion for legal custody of the children should be denied.

{¶9} CCDCFS presented testimony from Social Worker Donea Roddy ("Roddy") and the children's foster mother. With regard to appellant's motion for legal custody, Roddy testified that appellant is a special education teacher. CCDCFS completed a background check of appellant, including fingerprinting and an FBI background check, which appellant passed. Roddy acknowledged that appellant visits with the children every two weeks. In August 2014, she cared for the children continuously for one week.

Her home does not have a wheelchair ramp, and it was unclear if the doorways in her home are wheelchair accessible.

{¶10} Roddy further testified that appellant previously expressed the view that she did not believe father caused K.R.'s injuries. She also violated a no-contact order by calling the father while she visited with the children. The mother also reported to Roddy that her relationship with appellant is strained and that appellant is upset that A.R. refers to mother's boyfriend as "daddy."

{¶11} M.B. testified that she has been a foster mother for 20 years, and she has cared for approximately 35 children. Her home is certified as both a "medically fragile"

home and “therapeutic home.” M.B. has three children, in addition to the two foster children. M.B. testified that K.R. is completely dependent upon his care providers. She feeds K.R. through his gastric tube, provides medication that he needs to digest his meal, and suctions out his airways so that he does not aspirate. K.R. attends various treatment programs. M.B. helps him with the at-home exercises for these programs, administers medication to him through a “flush” system, and takes him to his many medical appointments. According to M.B., meeting all of these responsibilities would be difficult for a primary caretaker, such as appellant, who also has a full time job. M.B. also noted that K.R. has mobility issues and needs to be lifted, which also might present difficulty for appellant. M.B. further testified that A.R. has been diagnosed with posttraumatic stress disorder. While at kinship placement, A.R. acted out sexually with other children who were present in the home, but A.R. does not act out at M.B.’s home. M.B. also stated that appellant admitted to her that “she knew something was wrong [while the children resided with the mother] but she had concerns that the mother would not let her see the children if she voiced them.” In addition, according to M.B., during the week that appellant had K.R., she did not like looking at the site of the gastric tube, so she simply covered it when not feeding K.R. and did not routinely check or care for it. After K.R. had adenoid surgery and was bleeding, appellant became squeamish and had to leave his hospital room.

{¶12} Appellant presented evidence in support of her motion for legal custody. She testified that she has been a special education teacher for 16 years, and currently has

ten students. Some of her students have limited mobility and she has to lift them. Others have emotional issues or cerebral palsy. Appellant stated that when she has K.R. and A.R., she takes them to the park, interacts with them, and administers their medications. She has prepared her home in order to accommodate the children, but the home does not yet have a ramp, and appellant has not yet addressed the issue of making her bathroom ADA compliant. Appellant testified that she has observed foster care classes but did not attend them for certification. With regard to the breach of the no-contact order, she stated that she did not know at that time that what she had done was wrong. She stated that she is a very law-abiding person and will honor the order in the future. Appellant stated that her employment would not interfere because the children are in school during that time period. Finally, she acknowledged that she does accept the fact that father was the person who injured K.R. She denied failing to speak up while knowing that the children were injured.

{¶13} Appellant's sister, testified that she believes that appellant is able to care for the children. She further stated that she is familiar with the care and use of gastric tubes and available to help appellant with the children.

{¶14} C.S. testified that her son has autism, and appellant is her son's special education teacher. She described appellant as a warm, kindhearted, loving, and organized individual who is capable of caring for a number of children at once.

{¶15} On July 30, 2015, the trial court committed the children to the permanent custody of the CCDCFS. With regard to appellant's motion, the court found that

[K.R.] has extraordinary special needs that require wheel-chair accessibility and other medical equipment, G-tube feeding, in home nursing care/assistance and significant medical appointments. Paternal grandmother is employed as a special education teacher and has had the training for working with children who have special needs. The grandmother will continue to work and will attempt to have the [children] enrolled in her school. The grandmother testified that she could engage the help and support of other family members in meeting the needs of the child.

The Court finds [appellant] failed to file or offer a Statement of Understanding for Legal Custody or otherwise present her evidence in accordance with the statement as required pursuant to R.C. 2151.353(A)(3) and 2151.42.

{¶16} The court concluded that the children “should not be * * * placed with the paternal grandmother to avoid any future contact with or retraumatization caused by either parent.”

{¶17} On October 5, 2015, appellant filed her Statement of Understanding in further support of her motion for legal custody. On October 14, 2015, she filed a motion to supplement the record to include this document, but the trial court denied her motion.

{¶18} Appellant now appeals and assigns the following errors for our review:

Assignment of Error One

The trial court erred in finding that [appellant] failed to offer a Statement of Understanding, since the Statement of Understanding was delivered to the Court during the hearing and a copy was filed on October 5, 2015.

Assignment of Error Two

The finding by the Court that Shaker Heights City School District shall bear the cost of education of said children is contrary to the facts of the residence of the parents.

Assignment of Error Three

The Court erred in failing to find that the Appellant should not be granted custody of her grandchildren pursuant to R.C. 2151.414.

Assignment of Error Four

Permanent Custody of the Minor Children to CCDCFS is not in the children's best interest.

Statement of Understanding

{¶19} In her first assignment of error appellant argues that the trial court erred in concluding that she failed to file the Statement of Understanding, required pursuant to R.C. 2151.353(A)(3), because the court had this document on the date of the dispositional hearing. She also contends that the statement is not mandatory, and in any event, ultimately was filed with the court on October 5, 2015.

{¶20} Pursuant to R.C. 2151.353(A)(3), a nonparent seeking legal custody of a child must sign a statement of understanding acknowledging: (1) the assumption of legal responsibility, (2) the permanent nature of legal custody, and that they will be responsible as the custodian for the child until the child reaches the age of majority, (3) that parents have residual rights, and (4) the duty to be present for the dispositional hearing in order to affirm their intention to become the legal custodian.

{¶21} In this matter, appellant filed her motion for temporary custody and legal custody on April 24, 2015, but she failed to include the Statement of Understanding required by R.C. 2151.353(A)(3). In addition, appellant's testimony and evidence offered in support of her motion did not address all of the requirements of R.C. 2151.353.

Significantly, appellant's evidence failed to address the troubling area of the parents' residual rights that would have remained if her motion for legal custody had been granted.

In addition, the Statement of Understanding was not presented as an exhibit during the June 25, 2015 hearing on the disposition of the children. The document was not filed with the court until October 5, 2015, or three months after the trial court made its ruling.

{¶22} Therefore, we conclude that the trial court did not err insofar as it concluded on July 30, 2015, that appellant failed to present her Statement of Understanding. However, even if the court erred in concluding that the requirement was not met, it would not have changed the outcome in this matter. The trial court clearly and unequivocally held that the parents are not proper caretakers and a no-contact order remains in place, and the trial court clearly intended to terminate their parental rights. Therefore, an award of legal custody to appellant would be contrary to the court's objective since a grant of legal custody to appellant would have given the parents residual rights to seek a change of custody. *See* R.C. 2151.353(E)(2); *In re Awkal*, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994).

{¶23} For the foregoing reasons, the first assignment of error is without merit.

Costs of Education

{¶24} In her second assignment of error, appellant complains that the trial court erred in concluding that the Shaker Heights City School District must bear the cost of education of the children because the parents do not reside in that city.

{¶25} R.C. 3313.64 provides that if a child is placed in permanent custody and receives special education, the school district of residence, as defined in R.C. 3323.01, shall pay the tuition for the child.

{¶26} Pursuant to R.C. 3323.01(M), “School district of residence,” means

(1) The school district in which the child’s natural or adoptive parents reside;

* * *

(4) Notwithstanding divisions (M)(1) to (3) of this section, if a school district is required by section 3313.65 of the Revised Code to pay tuition for a child, that district shall be the child’s school district of residence.

{¶27} Pursuant to R.C. 3313.65, “If the child’s parent is in a correctional facility, [tuition must be paid] by the district in which the child’s parent resided at the time the sentence was imposed[.]”

{¶28} In this matter, even assuming that appellant has standing to challenge this aspect of the trial court’s order, we note that the record does not establish where the parents resided at the time that the sentence was imposed following the convictions. In any event, the trial court specifically held that the children may later be enrolled at the Cleveland school where appellant works, so the reference to the Shaker Heights School District appears to be temporary. Finally, we note that if the Shaker Heights School District determines that this portion of the order is erroneous, it may bring proceedings to challenge it.

{¶29} The second assignment of error is without merit.

Denial of Appellant's Motion for Legal Custody

{¶30} In her third and fourth assignments of error, appellant argues that the trial court erred in granting permanent custody to CCDCFS and in denying her motion for legal custody of the children.

{¶31} The trial court has broad discretion in custody matters, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned. *In re A.D.*, 8th Dist. Cuyahoga No. 85648, 2005-Ohio-5441, ¶ 6. The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record. *Id.*

{¶32} Before a juvenile court may terminate parental rights and award permanent custody of a child to a proper moving agency, the court must find clear and convincing evidence that (1) the child is abandoned, orphaned, had been in the temporary custody of the agency for at least 12 months of the prior 22 months, or that the child could not be placed with either parent within a reasonable time or should not be placed with either parent, based on an analysis under R.C. 2151.414(E); and (2) the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under R.C. 2151.414(D).

{¶33} With regard to the consideration of the best interest of the children, in this matter, there is no dispute that the children cannot be placed with their parents; therefore, we proceed to the second portion of the R.C. 2151.414 analysis. When determining whether a grant of permanent custody is in the child's best interest, the juvenile court must consider the following factors:

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster care givers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period * * *;
- (d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency[.]

R.C. 2151.414(D)(1).

{¶34} In considering a permanent custody motion, the trial court has discretion to award legal custody to either parent or to any other person who files a motion requesting legal custody pursuant to R.C. 2151.353(A)(3). However, the statute does not require a juvenile court to consider relative placement before granting the motion for permanent custody. A juvenile court need not determine by clear and convincing evidence that “termination of appellant’s parental rights was not only a necessary option, but also the only option.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 64. Rather, the statute “requires the court to find the best option for the children.” *Id.*

{¶35} Moreover, the trial court considered whether other relatives were available for legal custody. Regarding appellant, the court concluded:

[K.R.] has extraordinary special needs that require wheel-chair accessibility and other medical equipment, G-tube feeding, in home nursing care/assistance and significant medical appointments. Paternal grandmother is employed as a special education teacher and has had the

training for working with children who have special needs. The grandmother will continue to work and will attempt to have the [children] enrolled in her school. The grandmother testified that she could engage the help and support of other family members in meeting the needs of the child.

{¶36} It is evident that appellant loves the children. However, the trial court concluded that the children “should not be * * * placed with the paternal grandmother to avoid any future contact with or retraumatization caused by either parent.” Further, pursuant to R.C. 2151.412(H)(2), the health and safety of the children is of paramount concern. We find no abuse of discretion.

{¶37} The evidence at trial demonstrated that, although the paternal grandmother is a special education teacher and has a genuine desire to have legal custody of her grandchildren, her strong belief in forgiveness and the importance of family unity may result in inadequate protection of the children from their parents. As explained by the GAL, “in the long term, [appellant] believes that both parents may be capable of parenting again. She believes that any problems the children have (excepting K.R.’s physical injuries) can be healed by the presence of a loving family. She greatly minimizes the damages and suffering these children have endured.” Our review of the evidence supports the trial court’s rejection of paternal grandmother’s claim for legal custody of the children and award of permanent custody to CCDCFS. The evidence fully supports the trial court’s conclusion that paternal grandmother is not a suitable custodian for the children and that permanent custody should be awarded to CCDCFS.

{¶38} The third and fourth assignments of error are overruled.

{¶39} Judgment is affirmed.

It is ordered that appellee recover of appellant 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 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR