

[Cite as *In re E.Z.*, 2016-Ohio-5412.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 103728 and 103966

IN RE: E.Z., ET AL.
Minor Children

[Appeal By B.B., Mother]

JUDGMENT:
REVERSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD15908713, AD15908714, and AD15908715

BEFORE: E.T. Gallagher, J., E.A. Gallagher, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: August 18, 2016

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EILEEN T. GALLAGHER, J.:

{¶1} Appellant, B.B. (“Mother”), appeals the juvenile court’s decision granting temporary custody of her minor children to the Cuyahoga County Department of Children and Family Services (“CCDCFS”). She raises the following assigned errors:

1. The trial court erred when it overruled appellant’s objections to the magistrate’s decision adjudicating the children dependent.
2. The trial court erred in accepting the magistrate’s decision committing the child to the temporary custody of CCDCFS as it was against the manifest weight of the evidence.
3. The trial court abused its discretion by erroneously admitting prejudicial hearsay testimony.

{¶2} We find merit to the appeal, reverse the trial court’s judgment, and remand the case to the juvenile court for further proceedings.

I. Facts and Procedural History

{¶3} In June 2015, CCDCFS filed a complaint for dependency and protective supervision. The court held an adjudicatory hearing on September 4, 2015, but continued the hearing to a later date because Mother failed to appear. Mother was not present at the time of the rescheduled hearing, and the court proceeded in her absence.

{¶4} Latrice Miller (“Miller”), a social service worker in the START department of CCDCFS, testified that CCDCFS first became involved with this family in 2013, as a result of Mother’s substance abuse issues and inability to provide stable housing. Mother’s two oldest children were placed in the emergency custody of the CCDCFS at that time. Mother later obtained legal custody of the children with protective supervision, but failed to complete the substance abuse portion of the case plan before the case was closed because Mother moved out of Cuyahoga County.

{¶5} According to Miller, CCDCFS reopened the family’s case in June 2015 when the agency received notice that Mother tested positive for marijuana and amphetamine at the time of I.Z.’s birth. Miller testified that Mother lived with the children’s father, J.Z. (“Father”), who had a prior drug-related conviction. The children were placed in emergency custody, and the parents were given a new case plan to address their drug abuse.

{¶6} Based on this evidence, the magistrate found that CCDCFS had proven, by clear and convincing evidence, that E.Z., N.Z., and I.Z. were dependant. Due to time constraints, the court proceeded immediately to the disposition. Mother appeared for the dispositional hearing.

{¶7} Debra Carr (“Carr”), a social worker supervisor at the CCDCFS, testified that the permanency plan for the children was reunification with their

parents. However, according to Carr, Mother failed to complete drug testing by August 8, 2015, which was the 72-hour deadline ordered by the court. She delayed three weeks before completing a drug screen on August 29, 2015. On that date, Mother tested negative for any illegal substances.

{¶8} Father failed to complete a substance abuse assessment and failed to provide a hair follicle sample for testing. He later completed a urine screen on September 8, 2015, and tested positive for cocaine, amphetamines, oxycodone, and hydrocodone. (Sept. 11, 2015 tr. 28.) The guardian ad litem (“GAL”) recommended granting temporary custody to CCDCFS until the parents resolved their drug abuse problems.

{¶9} At the conclusion of the hearing, the magistrate granted temporary custody of the children to CCDCFS. Mother filed timely objections to the magistrate’s decision, arguing the magistrate’s determination that the children were dependent was not supported by clear and convincing evidence. At a hearing on Mother’s objections, the GAL advised the court that neither parent had completed any drug treatment services, and they failed to appear for a staffing¹ meeting held on November 13, 2015.

¹ According to the Cuyahoga County Department of Child and Family Services Policy Statement, “Staffing” is a term used to describe a team decisionmaking process that involves birth or adoptive families, service providers, community members, and agency staff to assure the best possible placement for children in temporary or permanent custody. *See*

{¶10} However, CCDCFS received the results of Mother’s hair follicle test at the time of the hearing on Mother’s objections to the magistrate’s decision, and the results were negative for illegal substances. Father also completed a hair follicle test, but his test was positive for cocaine, amphetamines, oxycodone, and hydrocodone. (Nov. 20, 2015 tr. 12-13.) Although Mother’s hair follicle test was negative, she had still not participated in drug treatment services. The GAL and Mother’s attorney both indicated that Mother was not returning their phone calls and was not present at the hearing on Mother’s objections to the magistrate’s decision.

{¶11} Based on the transcript of the adjudicatory and dispositional hearings, as well as the remarks made during the hearing, the trial court overruled Mother’s objections to the magistrate’s decision. Mother now appeals the trial court’s dependency determination and the award of temporary custody to CCDCFS.

II. Law and Analysis

{¶12} In the first assignment of error, Mother argues the trial court erred when it overruled her objections to the magistrate’s decision adjudicating the children dependent. In the third assignment of error, Mother argues the trial court abused its discretion by erroneously admitting prejudicial hearsay into evidence. We discuss these assigned errors together because they are interrelated and

dispositive of this appeal.

{¶13} Ohio law requires bifurcation of child custody proceedings into an adjudicatory hearing to determine whether a child is dependent, and a dispositional hearing to determine whether awarding temporary or permanent custody to a child services agency is in the child's best interest. *In re Baby Girl Baxter*, 17 Ohio St.3d 229, 233, 479 N.E.2d 257 (1985). Although Mother appeals issues from both hearings, her arguments with the respect to the adjudicatory hearing are dispositive.

{¶14} We review a trial court's action with respect to a magistrate's decision for an abuse of discretion. *In re N.H.*, 8th Dist. Cuyahoga No. 103574, 2016-Ohio-1547, ¶ 24. An abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Id.*

{¶15} R.C. 2151.53(A) sets forth the applicable evidentiary standard for determining whether children are abused, neglected, or dependent at an adjudicatory hearing. It provides, in relevant part:

If the court at the adjudicatory hearing finds from clear and convincing evidence that the child is an abused, neglected, or dependent child, the court shall proceed, in accordance with division (B) of this section, to hold a dispositional hearing and hear the evidence as to the proper disposition to be made under section 2151.353 of the Revised Code.

Clear and convincing evidence is that which “‘produce[s] in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.’” *In re*

Pieper Children, 85 Ohio App.3d 318, 326, 619 N.E.2d 1059 (12th Dist.1993), quoting *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985).

{¶16} The complaint alleged the children were dependent under R.C. 2151.04(D), which requires proof that

(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child[;]

[and]

(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

Thus, where the evidence establishes that the children have previously been adjudicated dependent, the test is whether circumstances exist that may cause the child to be neglected or abused by the parent. *Id.*

{¶17} Mother does not dispute the fact that her older two children had previously been in the protective custody of CCDCFS. She takes issue with the fact that Miller, the state's only witness to testify during the adjudicatory hearing, did not present certified copies of medical records to prove that Mother tested positive for amphetamines at the time of I.Z.'s birth. Mother contends Miller's

testimony that she tested positive for amphetamines was inadmissible hearsay, and that there was insufficient evidence to support the magistrate's determination that the children were dependent.

{¶18} The rules of evidence strictly apply to adjudicatory hearings. *In re O.H.*, 9th Dist. Summit No. 25761, 2011-Ohio-5632, ¶ 21, citing *In re Baby Girl Baxter*, 17 Ohio St.3d 229 at 233, 479 N.E.2d 257. Evid.R. 801(C) defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Evid.R. 802 sets forth the general rule that hearsay is not admissible, unless otherwise provided by the Ohio Constitution, by statute, the Ohio Rules of Evidence, or by other rules prescribed by the Supreme Court of Ohio. Therefore, hearsay is not admissible in an adjudicatory hearing unless the statement falls within a recognized exception to the hearsay rule. Evid.R. 802.

{¶19} Miller had no personal knowledge of Mother's drug test results at the time of I.Z.'s birth. Nor did she have any certified copies of any medical records documenting the results of those tests that might be admissible as a business records exception to the hearsay rule provided in Evid.R. 803(6). Miller's testimony regarding the drug tests was classic hearsay evidence that should not have been considered by the court.

{¶20} In the absence of admissible drug test results, there was insufficient

evidence upon which the court could find the children dependent. CCDCFS claimed that Mother had a substance abuse problem but failed to present a single drug test to indicate that Mother was continuing to use drugs. Although Mother had a prior history with the agency, the state presented almost no evidence regarding the prior proceedings, except to say that Mother did not complete her case plan before CCDCFS closed the case because she moved out of the county. Therefore, the court's dependency finding was not supported by clear and convincing evidence, and the trial court should have sustained Mother's objection to the magistrate's decision.

{¶21} We further note that the magistrate's decision failed to comply with the factual finding requirements of R.C. 2151.28(L), which states:

If the court, at an adjudicatory hearing held pursuant to division (A) of this section upon a complaint alleging that a child is an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, determines that the child is a dependent child, the court shall incorporate that determination into written findings of fact and conclusions of law and enter those findings of fact and conclusions of law in the record of the case. *The court shall include in those findings of fact and conclusions of law specific findings as to the existence of any danger to the child and any underlying family problems that are the basis for the court's determination that the child is a dependent child.* (Emphasis added.)

{¶22} The magistrate's decision is devoid of any specific findings as to either the existence of any danger to the child or any underlying family problems that are the basis for the court's determination that the children are dependent. Rather, the

magistrate's decision baldly concludes that "[t]he child is adjudicated to be a dependent child." To support this conclusion, the magistrate's decision asserts: "The Court finds that the allegations of the complaint have been proven by clear and convincing evidence." Such bare conclusory statements are akin to boilerplate and fail to comply with R.C. 2151.28(L)'s directive that findings must be specific.

{¶23} Therefore, the trial court erred in overruling Mother's objections to the magistrate's decision where (1) the record lacked sufficient evidence to support a dependency finding by clear and convincing evidence, and (2) the magistrate's decision failed to satisfy the specific finding requirements imposed by R.C. 2151.28(L).

{¶24} The first assignment of error is sustained.

{¶25} Having sustained the first and third assignments of error, the second assignment of error, which relates to the dispositional hearing, is moot. The trial court's judgment is reversed. Emergency temporary custody is reinstated pending further proceedings. *In re Kester*, 8th Dist. Cuyahoga No. 77772, 2001 Ohio App. LEXIS 1969 (May 3, 2001).

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyaga County 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.

EILEEN T. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR