

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

IN RE: R. J. and N. K.

C. A. Nos.     24569 and 24570

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE Nos.     DN 08-4-290 and  
                      DN 08-4-292

DECISION AND JOURNAL ENTRY

Dated: July 15, 2009

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CARR, Presiding Judge.

{¶1} Appellant, Sonja Proctor (“Mother”), appeals from two judgments of the Summit County Court of Common Pleas, Juvenile Division. Following an adjudication that two of Mother’s children were dependent, the juvenile court placed one of her children in the temporary custody of Summit County Children Services Board (“CSB”) and the other child in the legal custody of his father (“Father”). This Court affirms.

I.

{¶2} Mother is the natural mother of R.J., born November 25, 1994, and N.K., born July 22, 2000. On April 22, 2008, CSB filed complaints alleging that R.J. was an abused, dependent, and endangered child and that N.K. was an abused, neglected, dependent, and endangered child. The children had been removed from the home by the Summit County Sheriff’s Department pursuant to Juv.R. 6 because Mother had allegedly assaulted each child.

CSB later dismissed its allegations of abuse and neglect and the children were adjudicated dependent children based on a stipulation by the parents.

{¶3} On July 17, 2008, a dispositional hearing commenced before a magistrate. CSB was seeking temporary custody of both children and Mother and Father separately sought legal custody. Following a hearing that included the testimony of the caseworker, Father, Mother, and the guardian ad litem, the magistrate recommended that N.K. be placed in Mother's custody under an order of protective supervision and that R.J. be placed in the legal custody of Father. Following objections by Mother, CSB, and N.K.'s father, the trial court issued separate orders in which it sustained the objection to the magistrate's recommendation that N.K. be returned to Mother's home and ordered that N.K. be placed in the temporary custody of CSB. The trial court overruled Mother's objection concerning R.J. and placed the child in the legal custody of Father.

{¶4} Mother separately appealed from each order. Upon the motion of Mother, this Court consolidated the two appeals. Mother raises one assignment of error, which pertains only to the trial court's dispositional order that R.J. be placed in the legal custody of Father.

## II.

### **ASSIGNMENT OF ERROR**

“THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT APPLIED THE BEST INTEREST OF THE CHILD TEST RATHER THAN THE CHANGE OF CIRCUMSTANCE TEST IN DENYING MOTHER'S MOTION FOR LEGAL CUSTODY AND GRANTING FATHER'S MOTION FOR LEGAL CUSTODY OF THE CHILD.”

{¶5} Mother contends that the trial court applied an incorrect legal standard when it ruled on the competing motions for legal custody of Mother and Father. Mother maintains that the trial court erred in applying a “best interest of the child” test and that it should have instead

applied a “change of circumstance” test. Mother mistakenly relies on R.C. Chapter 3109 and case law pertaining to general custody disputes between unmarried parents. This case was not filed as a custody dispute between unmarried parents, but was a case commenced by CSB filing a complaint pursuant to R.C. 2151.27. This matter was governed by R.C. Chapter 2151, not R.C. Chapter 3109.

{¶6} Moreover, the trial court’s legal custody decision followed an adjudication that R.J. was a dependent child. Case law is clear that, following an adjudication of dependency, the juvenile court’s determination of whether to place a child in the legal custody of a relative is based solely on the best interest of the child. See *In re D.R.*, 153 Ohio App.3d 156, 2003-Ohio-2852, at ¶17. “Although there is no specific test or set of criteria set forth in the statutory scheme, courts agree that the trial court must base its decision on the best interest of the child.” *In re N.P.*, 9th Dist. No. 21707, 2004-Ohio-110, at ¶23, citing *In re Fulton*, 12th Dist. No. CA2002-09-236, 2003-Ohio-5984, at ¶11.

{¶7} The evidence presented at the hearing demonstrated that it was in the best interest of R.J. to be placed in the legal custody of Father. This case began with sheriff’s deputies removing R.J. and his half-sister from the home due to Mother’s physical abuse of them. CSB had been involved with the family earlier that year due to a separate allegation that Mother had physically abused another one of her children. R.J. also had been removed from Mother’s care many years earlier, at the age of two, due to Mother’s physical abuse of one of his older half-siblings.

{¶8} Both times that R.J. was removed from Mother’s care, he was placed with Father. Although he had been a non-custodial parent for the majority of R.J.’s life, Father had maintained a relationship with R.J. for most of his 13-year life. Father had steady employment

and had been paying child support and providing R.J. with medical insurance coverage for many years. Father had no criminal history, nor did he have a history of problems with drugs, alcohol, mental health, or anger management. CSB indicated that it had no concerns about R.J.'s safety in Father's home or Father's ability to care for R.J. The caseworker testified that R.J. appeared to be well cared for in Father's home, where he had his own bedroom, ample food, was always clean and dressed appropriately, and was supervised by the paternal grandmother when Father was at work. The evidence further demonstrated that Father was supportive of R.J.'s need to attend counseling and to maintain a relationship with his family and that he had consistently followed through with his responsibilities to R.J. Both the caseworker and guardian ad litem testified that Father also had been very cooperative with them.

{¶9} The guardian ad litem further explained that R.J. had told her "in no uncertain terms" that he was happy at Father's house and wanted to stay there. R.J. told her that he missed Mother and wanted to continue to see her, but that he wanted to continue living with Father. The guardian also expressed her opinion that it would be in the best interest of R.J. to remain with Father. She explained that R.J. was doing well in Father's home and seemed to be comfortable there, and that he was finally able to enjoy being a child.

{¶10} On the other hand, the caseworker and the guardian ad litem both expressed concerns about returning R.J. to Mother's home. Both testified that they had no doubt that Mother loved R.J. and he loved her, but that R.J. did not feel safe with Mother and was afraid to make her angry. CSB had become involved with this family due to Mother's physical abuse of her children on three separate occasions, and the evidence tended to suggest that Mother had used inappropriate physical discipline on her children more often than those three isolated incidents.

{¶11} The caseworker expressed concern that Mother had not complied with many of the requirements of the case plan. She explained that the agency could not support returning R.J. to Mother's care until she demonstrated an understanding that physical abuse is an unacceptable means of disciplining her children.

{¶12} There was further evidence that Mother was uncooperative with CSB and encouraged R.J. either not to talk to the caseworker and others or to tell them that he was unhappy at Father's house and wanted to return to Mother's home. The guardian ad litem testified that Mother did not want to hear that R.J. was doing well while living outside her care and would put a negative slant on any positive comment that he made. Mother continually "drilled" R.J. to tell people that he wanted to return to her home. The caseworker and Father repeatedly attempted to stop or redirect the inappropriate comments by Mother to R.J., but had little success. Both testified that Mother's comments of this nature upset R.J. and would cause him to become very guarded about what he said to her. Phone calls between Mother and R.J. were limited for this reason. The caseworker explained that visitation would have to remain supervised until R.J. had undergone more counseling and Mother learned to stop having inappropriate conversations with him.

{¶13} The evidence was clear that Father was able to provide a suitable home for R.J. and that Mother was not currently able to do so. There was ample evidence before the trial court to support its conclusion that it was in the best interest of R.J. to be placed in the legal custody of Father. The assignment of error is overruled.

### III.

{¶14} The assignment of error is overruled. The judgment of the Summit County Court

of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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DONNA J. CARR  
FOR THE COURT

WHITMORE, J.  
SLABY, J.  
CONCUR

(Slaby, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to, §6(C), Article IV, Constitution.)

APPEARANCES:

EDDIE SIPPLEN, Attorney at Law, for Appellant.

SONJA L. PROCTOR, pro se, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.