

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

IN RE: M. P.

C.A. No.       25222

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     DN 08-12-958

DECISION AND JOURNAL ENTRY

Dated: August 11, 2010

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WHITMORE, Judge.

{¶1} Appellant, Dana P. (“Mother”), appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that placed her minor child in the legal custody of the child’s father, Mark P. (“Father”). This Court affirms.

I

{¶2} Mother and Father are the natural parents of M.P., born October 2, 1998. Mother and Father lived together with the child until their divorce in Portage County in 2004. The domestic relations court placed M.P. in Mother’s custody following the divorce. Sometime later, Mother and M.P. moved to Summit County.

{¶3} On December 4, 2008, Summit County Children Services Board (“CSB”) filed a complaint, alleging that M.P. was an abused, dependent, and endangered child due Mother’s mental health problems. Several days earlier, police had gone to Mother’s home to check on the well-being of M.P. at the request of Portage County Job and Family Services. Mother had made

repeated phone calls to a grievance reviewer at Portage County Job and Family Services. The grievance reviewer was concerned that Mother had spoken irrationally and had suggested she might either kill M.P. or put him out of her home. When police arrived at the home, they determined that M.P. was safe because he was at school. They were concerned about his safety after school, however, because Mother made odd and paranoid comments to them, refused to answer any of their questions, and had earlier threatened to kill her child. Consequently, the officers transported her to St. Thomas hospital, where she was admitted for a psychiatric evaluation. The police contacted the paternal grandparents to care for M.P. because Father was out of the country. Because CSB discovered that Father had a past history of substance abuse and had been limited to supervised visitation by the domestic relations court, M.P. continued to reside with the paternal grandparents throughout this case. On May 11, 2009, M.P. was adjudicated a dependent child.

{¶4} Each parent eventually filed a motion for legal custody of M.P. Following a hearing, the magistrate decided that it was in M.P.'s best interest to be placed in the legal custody of Father. The trial court overruled Mother's objections to the magistrate's decision and ordered that M.P. be placed in the legal custody of Father. Mother appeals and raises one assignment of error.

## II

### Assignment of Error

“THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING FATHER’S MOTION FOR LEGAL CUSTODY OF THE MINOR CHILD AND DENYING MOTHER’S MOTION FOR LEGAL CUSTODY OF THE MINOR CHILD BECAUSE THE MANIFEST WEIGHT OF THE EVIDENCE SUPPORTED THAT IT WAS IN THE CHILD’S BEST INTEREST TO BE PLACED IN MOTHER’S CUSTODY.”

{¶5} In her sole assignment of error, Mother argues that the trial court abused its discretion by placing M.P. in the legal custody of Father rather than placing him in her legal custody. We disagree.

{¶6} Following an adjudication of neglect, dependency, or abuse, the juvenile court's determination of whether to place a child in the legal custody of a parent or a relative is based solely on the best interest of the child. See *In re D.R.*, 9th Dist. No. 21218, 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. The juvenile court's disposition of legal custody to a relative is a less drastic disposition than permanent custody to a children services agency because it does not terminate parental rights but instead "leaves intact 'residual parental rights, privileges, and responsibilities.'" *In re Shepherd* (Mar. 26, 2001), 4th Dist. No. 00CA12, at \*7, quoting R.C. 2151.011(B)(19). It is the burden of the party moving for legal custody to demonstrate that such a disposition is in the child's best interest. See *In re N.P.*, at ¶23; *In re Sitra/Steiner Children* (July 19, 1999), 5th Dist. No. 1998CA00341. The trial court's decision to grant or deny a motion for legal custody is within its sound discretion and will not be reversed absent an abuse of discretion. *In re M.S.*, 9th Dist. No. 22158, 2005-Ohio-10, at ¶11.

{¶7} Although Mother argues that the trial court abused its discretion by placing M.P. with Father rather than with her, she presented no evidence to demonstrate that she had the ability to provide a more suitable home for M.P. At the hearing, Mother presented only herself as a witness and she did not testify about her current ability to care for M.P. Instead, she focused on the positive relationship that she had with M.P. before this case began. She likewise

attempted to shift the court's focus to facts about Father that had occurred years before this case began.

{¶8} The magistrate repeatedly emphasized to Mother during the hearing that he was not interested in rehashing the history between Mother and Father that had occurred years before this case began. This was not a custody hearing between presumptively-fit parents in domestic relations court. This was a juvenile custody case in which the court had removed the child from the custody of both of his parents and adjudicated him a dependent child. The role of the trial court in this case was to determine whether either parent had the present ability to provide a suitable home for M.P. and, if so, whether that placement would be in M.P.'s best interest.

{¶9} There was no evidence before the court to demonstrate that Mother had the ability to provide M.P. with a suitable home because she had not remedied the problems that had caused his removal from her home. In fact, the evidence demonstrated that Mother had refused to cooperate with CSB, the guardian ad litem, or her attorneys. Instead, throughout the pendency of this case, she continued to insist that M.P. had been wrongly removed from her home, apparently based on her misunderstanding of involuntary commitment proceedings in the probate court.

{¶10} Because Mother had been involuntarily admitted to the hospital psychiatric ward, proceedings were necessarily commenced in the probate court. Although information from the probate proceedings was not made part of this record, the parties did not dispute Mother's representation that the probate court had refused to issue an order of involuntary hospitalization and Mother was released from the hospital after thirteen days. The probate court apparently determined that Mother was not a "[m]entally ill person subject to hospitalization by court order" because she did not have a mental illness that was so severe that she posed a substantial risk of physical harm to herself or others, nor did she demonstrate behavior that created a "grave and

imminent risk to substantial rights” of herself or others. See R.C. 5122.01(B). Mother seemed to interpret the probate court’s action as a judicial determination that she had no mental health problems and that this dependency case had no basis, despite the trial court’s repeated attempts to clarify to her that the probate proceedings had no bearing on the juvenile court’s adjudication of dependency or her need to comply with the reunification goals of the case plan.

{¶11} Although she was represented by several different attorneys during this case, Mother filed repeated pro se motions, insisting that the court was required to return M.P. to her custody. Throughout these proceedings, Mother refused to work on any of the reunification goals of the case plan. She did not obtain a mental health assessment because she did not believe it was necessary. Thus, the trial court had no information before it to assess the extent to which, if at all, mental health issues impact Mother’s ability to provide a suitable home for M.P.

{¶12} Mother also refused to participate in supervised visitation with M.P. because she did not believe that the supervision was appropriate. The caseworker repeatedly attempted to contact her about visitation, but Mother would not schedule visitation until shortly before the hearing. Consequently, although M.P. had expressed to the caseworker that he wanted to visit with Mother, she declined the opportunity to have any face-to-face visits with him during the entire seven-month pendency of this case. The grandparents allowed Mother to talk to M.P. on the telephone, but M.P. often became upset because Mother would talk about inappropriate topics, such as disparaging Father and his family, rather than confining the discussion to M.P. and what he was doing.

{¶13} Father, on the other hand, fully cooperated with CSB and the guardian ad litem and was able to complete the reunification goals of the case plan. CSB and the trial court did have initial concerns that Father had a past history of substance abuse. Consequently, he was

required to submit to random drug screening, obtain a substance abuse assessment, and follow any recommendations of the chemical dependency counselor. Father completed a substance abuse assessment and the counselor did not believe that treatment was needed. Father submitted to random drug testing and all tests were negative. At the time of the hearing, CSB believed that Father had completed the goals of the case plan and had no concerns about his ability to care for M.P.

{¶14} During the pendency of this case, M.P. was placed with the paternal grandparents who live less than two miles from Father. Father visited M.P. there almost every day and, over time, CSB permitted him to have extended visits and recommended that the trial court allow him to take M.P. on vacation. CSB was pleased that Father had taken an active role in M.P.'s day-to-day care and that they interacted well. Father coached two of M.P.'s sports teams and also assisted with his school work. The CSB caseworker observed that M.P. was attached to Father and was comfortable around him.

{¶15} Father testified that he is employed fulltime and lives with his wife and his seventeen-year-old step-son in a four-bedroom house that the couple built three years earlier. Father explained that, because they just recently built their own home, which is near much of Father's family, they plan to stay there for many years. Because Father's home is near the homes of his parents and several siblings, Father would have their assistance nearby. M.P. liked to play with many of his cousins and had also become friends with some of Father's neighbors who are close to his age.

{¶16} The caseworker testified that Father's house is clean and appropriate and that M.P. has his own bedroom, which is decorated in Pittsburgh Steeler's motif that M.P. chose. Because M.P. was living close to Father's home already, he would not need to change schools if

he relocated to Father's house. Father explained that M.P. is doing well in most subjects but that he needs some help in reading. Father had arranged for M.P. to have a reading tutor the following school year.

{¶17} M.P. told the caseworker and the guardian ad litem that he would like to live with Father but still be able to visit Mother. CSB and the guardian ad litem recommended that M.P. be placed in the legal custody of Father. The guardian testified that Mother had never even spoken to her and that she was most concerned that Mother had not visited M.P. throughout the pendency of this case. Father testified that he was also concerned that Mother had not visited M.P. and that he would make an effort to facilitate an ongoing relationship between M.P. and Mother because he knew that was best for M.P.

{¶18} The evidence presented at the hearing demonstrated that Father was willing and able to provide a suitable home for M.P. The trial court had no evidence before it that Mother could do so. Consequently, Mother has failed to demonstrate that the trial court abused its discretion by concluding that legal custody to Father was in M.P.'s best interest. The assignment of error is overruled.

### III

{¶19} 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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BETH WHITMORE  
FOR THE COURT

MOORE, J.  
DICKINSON, P. J.  
CONCUR

APPEARANCES:

RONALD T. GATTS, Attorney at Law, for Appellant.

BENJAMIN JOLTIN, Attorney at Law, for Appellee.

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