

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF C.W. : On Appeal from the Richland
: County Court of Appeals,
: Fifth Appellate District
: Court of Appeals Case No.
: 2020 CA 25

MEMORANDUM IN SUPPORT OF JURISDICTION OF MOTHER-APPELLANT BOBBI
TUBBS

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TABLE OF CONTENTS

| | |
|--|----|
| EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST..... | 3 |
| STATEMENT OF THE CASE AND FACTS..... | 6 |
| ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW..... | 9 |
| Proposition of Law I: When a court has issued a dispositional order concerning an abused, neglected, or dependent child, that court retains exclusive jurisdiction over the child until the child attains the age of eighteen years..... | 9 |
| Proposition of Law II: Evidence must establish adverse impact on a child in order for a court to find that child dependent under R.C. 2151.04(C)..... | 11 |
| Proposition of Law III: A determination of neglect, abuse, or dependency must be made as of the date of the hearing on the complaint alleging abuse, neglect, or dependency..... | 12 |
| CONCLUSION..... | 14 |
| PROOF OF SERVICE..... | 14 |

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This case presents the Court with three simple questions dealing with the scope of authority of Ohio's juvenile courts and therefore greatly concerning the public welfare, namely, 1) whether Revised Code Chapter 2151 grants limited and strictly defined jurisdiction to Ohio's juvenile courts; 2) whether evidence must establish adverse impact on a child in order for a court to find the child dependent; and 3) whether a determination of neglect, abuse, or dependency must be made based on facts present on a particular date.

First, "Ohio's juvenile courts are statutory courts" of limited jurisdiction, and a juvenile court "can exercise only the authority conferred upon it by the General Assembly." *In re Z.R.*, 144 Ohio St.3d 380, 2015-Ohio-3306, 44 N.E.3d 239, § 14. The Revised Code grants "exclusive original jurisdiction" to the "juvenile court" "[c]oncerning any child who on or about the date specified in the complaint * * * is alleged * * * to be a[n] * * * unruly, abused, neglected, or dependent child." R.C. 2151.23(A)(1). R.C. 2151.011 defines "[j]uvenile court" by reference to R.C. 2101.022 or 2301.03, whichever applies, partly on a county-by-county basis but in any event referring to a specific court.

Mother raises the question whether 2151.23's grant of exclusive jurisdiction to one court conflicts with R.C. 2151.353(F)(1)'s grant of retained jurisdiction or R.C. 2151.417(B)'s grant of continuing jurisdiction to a court that has issued a dispositional order concerning a dependent child when a complainant subsequently alleges dependency in a court not having that retained or continuing jurisdiction. Mother contends that one court having "retained" or "continuing" jurisdiction does not comport with another court having exclusive jurisdiction. This Court in a

somewhat related vein has deemed it a “bedrock proposition that once a court of competent jurisdiction has begun the task of deciding the long-term fate of a child, all other courts are to refrain from exercising jurisdiction over that matter.” *In re Adoption of Asente*, 90 Ohio St.3d 91, 92, 2000-Ohio-32, 734 N.E.2d 1224.

Mother consequently questions whether, because of these conflicting grants, the Revised Code contemplates multiple findings of dependency in Ohio for any child.

Mother further questions whether a finding of dependency requires a showing of adverse impact on a child. At the time of the filing of the complaint at issue here, the child was in the custody of a paternal aunt, mother was incarcerated, and father had died some years prior. The Richland trial court did not make any finding that the child lacked proper care or support, and mother contends, as she did below, that it therefore could not have complied with R.C. 2151.28(L)’s requirement that a finding of dependency contain “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.” In fact, the appellate court recognized that “[a]t the time the dependency complaint was filed, the children were residing with Paternal Aunt, who was providing the appropriate care to the children.” *In re: C.W.*, 5th Dist. Richland No. 2020 CA 0025, ¶ 49. The Mahoning trial court had similarly found the paternal aunt’s home “very appropriate.” This Court has previously required complainants to “specifically demonstrate[]” “adverse impact” to a child by clear and convincing evidence and has not allowed a court to “infer[] in general” such impact. *In re: Burrell*, 58 Ohio St.2d 37, 39, 388 N.E.2d 738 (1979). *Accord In re Z.P.*, 5th Dist. Stark No. 2008CA00209, 2009-Ohio-378, ¶ 17.

Finally, mother questions, based on the appellate court’s reliance on long past events,

whether a juvenile court must find a child dependent as of a date certain. R.C. 2151.35 allows a court to proceed to disposition if it “finds from clear and convincing evidence that the child *is* an abused, neglected, or dependent child[.]” (Emphasis added.) This Court found in 1957 that any fault of a parent sufficient to support a finding of neglect must exist at the time of the hearing on a complaint. *In re Kronjaeger*, 166 Ohio St. 172, 177, 140 N.E.2d 773 (1957). That holding agrees with this Court’s 1997 determination that “the state has no interest in assuming guardianship [when] the obligations of care, custody, and support are being met.” *In re Riddle*, 79 Ohio St.3d 259, 263, 1997-Ohio-391, 680 N.E.2d 1227. However, the appellate court here relied in part on events in the child’s history – some going back as far as 2014 – to support a finding of dependency and satisfy R.C. 2151.28(L)’s requirement. *In re: C.W.*, 5th Dist. Richland No. 2020 CA 0025, ¶ 50.

STATEMENT OF THE CASE AND FACTS

Richland County Children Services (hereinafter “RCCS”) filed complaints in the Richland County Juvenile Court on June 11, 2013, alleging the above-captioned child and sibling dependent. By entries dated September 10, 2013, the Richland court adjudicated the child and sibling dependent. After disposing of both cases pursuant to R.C. 2151.353, the Richland court, by entries dated April 25, 2014, transferred both to Mahoning County on the motion of RCCS pursuant to R.C. 2151.271, because the children and their mother then resided in Mahoning County.

On April 11, 2019, RCCS filed complaints in the Richland court again alleging the above captioned child and sibling dependent. The Richland court, by entry dated June 26, 2019 and with mother’s agreement, found the children dependent and continued temporary custody with the caregiver who had had the children for several years prior. Mother contends that her agreement to dependency in 2019 as a legal matter had no import because the children remained dependent and subject to a new dispositional order according to the Richland court’s 2013 adjudication and R.C. 2151.417’s provision for modification of dispositional orders by the court retaining jurisdiction over the child.

Mahoning County had not transferred the case back to Richland County at that time, and in its last entry prior to the 2019 Richland cases, dated February 17, 2016, it had explicitly retained jurisdiction over the children under R.C. 2151.353(F)(1) (then (E)(1)). In 2016, the children were in paternal aunt’s custody, and that entry described her home as “very appropriate” and stated that she could “provide for all the Minor Child’s basic needs.”

On August 8, 2019, the Richland Court appointed new counsel for mother.

On August 22, 2019, the Mahoning Court issued an amended entry purporting to relinquish jurisdiction to the court of the children's county of residence.

On November 14, 2019, mother moved for dismissal of the Richland case, asserting that the court had no jurisdiction to hear the April 11, 2019 complaint because until its August entry, the Mahoning court had retained jurisdiction over the child pursuant to R.C. 2151.353(F)(1) and its own February 17, 2016 order, and therefore the Richland court had no authority to entertain the April 2019 complaints. Mother accordingly also asserted that R.C. 2151.04 did not contemplate multiple adjudications of dependency of one child in Ohio. Mother finally asserted that even if the Richland court had jurisdiction to entertain the April 11, 2019 complaint, the Richland court's entry finding the child dependent did not satisfy the requirements of R.C. 2151.28(L) because the court stated no facts supporting a finding of dependency.

The Richland court overruled mother's motion before the hearing on November 18, 2019, and following that hearing it granted legal custody to the child's paternal aunt. Mother timely objected to the magistrate's decision following that hearing. Mother moved, on January 3, 2020, to supplement the record in the 2019 cases with the pertinent entries from the 2013 Richland cases, and the court granted those motions by order dated the same day. The court overruled mother's objections by entry dated January 24, 2020, and mother-appellant timely appealed those decisions to the Fifth District Court of Appeals.

The Fifth District on November 24, 2020, affirmed, relying on this Court's opinion in *In re Z.R.* finding the venue requirements of R.C. 2151 directory rather than mandatory. *In re Z.R.*, 144 Ohio St.3d 380, 2015-Ohio-3306, 44 N.E.3d 239. It never addressed mother's contention that the Richland court lacked jurisdiction concerning the child due to the Mahoning court's

“retain[ed]” and “continuing” jurisdiction under R.C. 2151.353(F)(1) and 2151.417(B), respectively, and it never addressed whether the Revised Code contemplates multiple findings of dependency of one child. It reached deep into the case history to determine that the lower court had grounds to support a finding of dependency, finding contrary to the 2016 Mahoning and 2019 Richland findings concerning the child’s positive situation that “due to the factual and procedural history of th[e] case, * * * the children were in danger.” *In re: C.W.*, 5th Dist. Richland No. 2020 CA 0025, ¶ 50. It went on to cite such past circumstances as the murder of the children’s father in 2014, mother’s incarceration, and the dubious status of the Mahoning court’s temporary order. *Id.*

Mother now appeals to this Court, contending that 1) the jurisdiction that R.C. 2151.353(F)(1) conferred originally on the Richland court and that the Richland court transferred to the Mahoning court precluded the Richland court from entertaining a new complaint in 2019; 2) evidence must establish an adverse impact on a child in order for a juvenile court to find the child dependent under R.C. 2151.04(C); and 3) a determination of neglect, abuse, or dependency must be made as of the date of the hearing on the complaint alleging abuse, neglect, or dependency.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law I: When a court has issued a dispositional order concerning an abused, neglected, or dependent child, that court retains exclusive jurisdiction over the child until the child attains the age of eighteen years.

First, R.C. 2151.353(F)(1) states in pertinent part that “[t]he court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section * * * until the child attains the age of eighteen years * * *” RC. 2151.353. Similarly, R.C. 2151.417(B) states in pertinent part that “[i]f a court issues a dispositional order pursuant to section 2151.353, 2151.414, or 2151.415 of the Revised Code, the court has continuing jurisdiction over the child as set forth in division (F) (1) of section 2151.353 of the Revised Code.” R.C. 2151.417.

Next, R.C. 2151.23(A) grants the juvenile court “exclusive original jurisdiction concerning any child * * * alleged * * * to be * * * abused, neglected, or dependent[.]” Because this grant provided the disposing court with its initial jurisdiction, the disposing court retains the same – i.e., exclusive – jurisdiction concerning the child. Accordingly, no other court can exercise any jurisdiction over the same child unless the disposing court transfers its authority to that other court. Alternatively, even if the disposing court retains something less than exclusive jurisdiction, no other court can possibly exercise “exclusive” jurisdiction concerning a child for whom the disposing court has any level of retained or continuing jurisdiction. Thus, these grants conflict when a person alleges a child abused, neglected, or dependent in one court when a different juvenile court has already issued a dispositional order concerning an abused, neglected, or dependent child pursuant to R.C. 2151.353, R.C. 2151.414, or R.C. 2151.415.

To remedy concerns about changing circumstances after a dispositional order, R.C. 2151.417 allows a court retaining jurisdiction to “amend a dispositional order in accordance with division (F)(2) of section 2151.353 of the Revised Code at any time upon its own motion or upon the motion of any interested party[,]” and R.C. 2151.271 allows a court to transfer its jurisdiction to another county as appropriate. R.C. 2151.417; R.C. 2151.271. None of these provisions allows a court to “relinquish” its retained jurisdiction.

Additionally, R.C. 2151.23(A) grants jurisdiction concerning a child alleged to be abused, neglected, or dependent. It does not grant jurisdiction concerning a child previously adjudicated abused, neglected, or dependent.

Nevertheless, the trial court here found that “nothing would prevent another juvenile court from entertaining a new complaint[.]” January 24, 2020 Judgment Entry page 3. However, that finding ignores the above statutory analysis and “the bedrock proposition that once a court of competent jurisdiction has begun the task of deciding the long-term fate of a child, all other courts are to refrain from exercising jurisdiction over that matter.” *In re Adoption of Asente*, 90 Ohio St.3d 91, 92, 2000-Ohio-32, 734 N.E.2d 1224. Moreover, it considers R.C. 2151.23 in a vacuum rather than coexistent with R.C. 2151.353(F)(1) and R.C. 2151.417(B), as Ohio law requires. *Johnson's Mkts., Inc. v. New Carlisle Dept. of Health*, 58 Ohio St.3d 28, 35, 567 N.E.2d 1018 (1991) (“[A]ll statutes which relate to the same general subject matter must be read in pari materia.”).

Accordingly, mother contends that a correct reading must take into account 1) R.C. 2151.417(B)’s grant of authority to the retaining court to “amend a dispositional order” “upon its own motion or the motion of any interested party” and 2) R.C. 2151.23’s grant of exclusive

jurisdiction concerning a child “alleged” abused, neglected, or dependent. The first eliminates the necessity of any non-retaining court exercising any jurisdiction over a child, because the retaining court has authority to amend its dispositional order as necessary to meet the child’s needs. The second, R.C. 2151.23’s grant, provides exclusive jurisdiction only concerning a child “alleged * * * to be * * * abused, neglected, or dependent[.]” R.C. 2151.23. It does not grant jurisdiction over a child already so adjudicated, and its “exclusive” grant is incompatible with the powers 2151.417(B) confers.

Again, “Ohio’s juvenile courts are statutory courts” of limited jurisdiction, and a juvenile court “can exercise only the authority conferred upon it by the General Assembly.” *In re Z.R.*, 144 Ohio St.3d 380, 2015-Ohio-3306, 44 N.E.3d 239, § 14. Consequently, a juvenile court other than that retaining jurisdiction under R.C. 2151.353(F)(1) or R.C. 2151.417(B) cannot exercise exclusive jurisdiction concerning a child already under the authority of a different court, and accordingly, R.C. 2151 does not contemplate multiple adjudications of abuse, neglect, or dependency in Ohio.

Proposition of Law II: Evidence must establish adverse impact on a child in order for a court to find that child dependent under R.C. 2151.04(C).

This Court’s precedent directly supports this proposition. Thus in 1979: “[a part of the child’s environment] is only significant if it can be demonstrated to have an adverse impact upon the child sufficiently to warrant state intervention. That impact cannot be simply inferred in general, but must be specifically demonstrated in a clear and convincing manner.” *In re: Burrell*, 58 Ohio St.2d 37, 39, 388 N.E.2d 738 (1979). At least one Ohio appellate court has adopted the same rule. *See In re Z.P.*, 5th Dist. Stark No. 2008CA00209, 2009-Ohio-378, ¶ 17.

Here, mother concedes that she was incarcerated when RCCS filed its 2019 complaints in Richland County. However, at the time, the children were with the same paternal aunt with whom they had been since at least 2016. At no time did any person question that aunt's ability to provide adequate parental care, and in fact, RCCS sought – and the trial court granted – legal custody to her.

Thus, mother contends, the Richland court here could not have found a new basis for dependency in 2019, and it accordingly did not and could not have complied with R.C. 2151.28(L)'s requirement that it "include in [its] 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[]" in the 2019 cases.

Proposition of Law III: A determination of neglect, abuse, or dependency must be made as of the date of the hearing on the complaint alleging abuse, neglect, or dependency.

Finally, although R.C. 2151.23(A)(1) grants a juvenile court jurisdiction "[c]oncerning any child who on or about the date specified in the complaint *** [is alleged to be an] abused, neglected, or dependent child[,]]" R.C. 2151.35(A)(1) requires the court to find that "the child *is* an abused, neglected, or dependent child" before proceeding to disposition. (Emphasis added.) R.C. 2151.23, R.C. 2151.35. Thus, mother contends, a finding of neglect, abuse, or dependency "must be made as of the time of the hearing on the complaint." *In re Anderson*, 5th Dist. Muskingum No. CT06-0047, 2007-Ohio-1233, ¶ 88. *Accord In re Kronjaeger*, 166 Ohio St. 172, 177, 140 N.E.2d 773 (1957); *William Parker*, 3d Dist. Van Wert No. 15-79-16, 1981 Ohio App. LEXIS 12684, *8 (Jan. 26, 1981).

Ohio appellate courts have wrestled with this issue since the amendment of 2151.23 in

1969, but this Court has never explicitly overruled *Kronjaeger*. To the contrary, this Court's 1997 reliance on the principle that "the state has no interest in assuming guardianship [when] the obligations of care, custody, and support are being met" would seem to preclude as much, because evidence that a child lacked support at a past date would not imply that the child presently lacks adequate care – i.e., that he or she lacks care at the only time a court can remedy the situation by assuming the child's guardianship. *In re Riddle*, 79 Ohio St.3d 259, 263, 1997-Ohio-391, 680 N.E.2d 1227. On the other hand, the twelfth district in *In re S.H.* surveyed the field of district positions on this point and concluded that the text of R.C. 2151.23 gives rise to a requirement that "the date on which dependency existed must be alleged in the complaint, and the trial court must determine that the circumstances which support a finding of dependency existed as of the date or dates alleged in the complaint." *In re S.H.*, 12th Dist. Butler No. CA2005-01-007, 2005-Ohio-5047, ¶ 9.

Mother contends that, as the *William Parker* court found, R.C. 2151.23(A)(1) grants broad jurisdiction for a court to hear a complaint alleging abuse, neglect, or dependency, but R.C. 2151.35(A)(1) nonetheless mandates that a court find a child "is" dependent, neglected, or abused on the date of the hearing. *William Parker*, 3d Dist. NO. 15-79-16, 1981 Ohio App. LEXIS 12684, at *8 (Jan. 26, 1981). Absent such a requirement, mother contends, a complainant could establish present dependency by reference to malignant circumstances in the distant past even though they may have long since ceased and the child enjoyed a happy situation.

That is, mother contends, even if the Richland court could entertain the 2019 complaint, the aunt was continually providing the child with proper care, and therefore "the state ha[d] no interest in assuming guardianship" of the child on the hearing date in 2019. *In re Riddle*, 79 Ohio

St.3d 259, 263, 680 N.E.2d 1227 (1997). The Richland court could thus not make a new finding of dependency.

CONCLUSION

For the foregoing reasons, the case is one of public or great general interest, and the Court should grant leave to appeal in this case. The appellant therefore requests that this Court accept jurisdiction so that it can review the issues presented.

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing was served upon the Richland County Children Services Legal Department, the Richland Juvenile Court CASA department, and David Watson, attorney for caregiver, by hand delivery or email on January 7, 2020.

/s Darin Avery