[Cite as *In re Y.H.*, 2023-Ohio-2272.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: Y.H. AND B.H.	:	APPEAL NO. C-230132 TRIAL NO. F10-231Z
	:	*O P I N I O N.*

Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Reversed and Cause Remanded.

Date of Judgment Entry on Appeal: July 5, 2023

Christopher P. Kapsal, for Appellant Father,

Melissa A. Powers, Hamilton County Prosecuting Attorney, and *Patsy Bradbury,* Assistant Prosecuting Attorney, for Appellee Hamilton County Department of Job and Family Services,

Megan E. Busam, Guardian ad Litem for the Minor Children.

KINSLEY, Judge.

{¶1} The Hamilton County Juvenile Court granted permanent custody of Y.H. and B.H. to the Hamilton County Department of Job and Family Services ("HCJFS" or "the agency") without independently reviewing the transcripts of the dispositional hearings conducted by the magistrate, even though one transcript was properly filed before the juvenile court issued its decision and the other transcript was in progress. Because this was an abuse of the juvenile court's discretion, we reverse the order of permanent custody as to appellant B.H., Sr., ("Father") and remand the cause to the juvenile court for consideration of the dispositional transcripts in ruling on Father's objections.

I. Factual and Procedural Background

{¶2} Father appeals the juvenile court's decision granting HCJFS permanent custody of two of his children, Y.H. and B.H. Both children have been in the agency's custody and living with foster caregivers since they were respectively released from the hospital.

A. Y.H.'s Adjudication

{¶3} Y.H., the older child, was placed in agency custody because mother tested positive for cocaine two days before Y.H.'s birth. Y.H. was born prematurely and spent the first three months of her life in the neonatal intensive care unit. Father would visit Y.H. in the hospital. HCJFS initially considered Father as a placement option but ultimately decided he was not suitable because he had a pending warrant for an aggravated menacing charge and hospital staff reported he smelled of marijuana when he visited.

{¶4} The agency sought permanent custody of Y.H. with an interim order for temporary custody. Its complaint listed the following concerns regarding Father:

> Hospital staff noticed a heavy smell of marijuana on [Father] when he visited Y.H. in the hospital. The HCJFS has not had consistent contact with [Father] since the birth of the child. He has a warrant for a pending Aggravated Menacing charge * * *. An altercation with [mother] in 2019 led to an Assault charge * * * that was eventually dismissed for want of prosecution.

{¶5} On September 1, 2020, a magistrate granted interim custody of Y.H. to HCJFS. In doing so, the magistrate noted:

> HCJFS does not believe that father is appropriate to care for this child, at this time. Father has not made himself available to HCJFS for the purpose of assessment, despite multiple attempts by the agency. Father has two open criminal warrants. HCJFS suspects that father uses marijuana. In 2019, father was charged with an offense of violence against mother.

{¶6} Y.H. was placed with a foster caregiver the same day as the interim custody order.

{¶7} On January 6, 2021, Y.H. was adjudicated dependent and abused. The magistrate did not articulate the statute under which he made the abuse and dependency determinations, but we assume it is under R.C. 2151.031 and 2151.04, respectively, based on HCJFS's complaint for permanent custody. This finding was as to both mother and Father.

B. B.H.'s Adjudication

{¶8} B.H. was born in 2021 while mother was incarcerated on domestic violence charges against Father. Father rejected a restraining order or stay-away order against mother after her arrest. Because the agency continued to have concerns about

domestic violence between the parents and could not assess Father's drug use, it filed an interim order for temporary custody and a complaint for permanent custody of B.H.

{¶9} The agency stated in its request for permanent custody of B.H. that Father:

> has an extensive criminal history. The agency has ongoing concerns about father's substance use. Father tested positive for cocaine on a drug screen in March 2021. Father has failed to appear for nine drug screens. * * * Father admitted to regular use of marijuana. The agency has been unable to assess father's mental health or substance use because he has not participated in a diagnostic assessment despite multiple referrals. Father was previously charged with aggravated menacing against a previous paramour. Father does not have stable housing or income.

{¶10} The court granted the interim custody order for B.H. on October 1, 2021. B.H. was adjudicated dependent on January 18, 2022. We assume this finding was under R.C. 2151.04 based on HCJFS's complaint for permanent custody, as the magistrate did not specify the statutory basis for the dependency determination. B.H. was placed with the same foster caregivers as Y.H. shortly after interim custody was granted.

{¶11} No case plan was journalized for Father with respect to B.H. until June of 2022.

C. Y.H.'s and B.H.'s Dispositions

{¶12} The magistrate held combined dispositional hearings for permanent custody for both children on April 19, 2022, and July 19, 2022.

{¶13} After the hearings, the magistrate found that the children "[could not] be placed with either parent within a reasonable period of time and should not be placed with either parent" under R.C. 2151.414(B)(a)(1).

{¶14} With regard to Father, the magistrate based the finding that the children could not and should not be placed in Father's care on four separate statutory findings. First, under R.C. 2151.414(E)(1), the magistrate found that Father had continually and repeatedly failed to remedy the conditions that caused the children to be placed outside the home.

{¶15} Second, the magistrate found under R.C. 2151.414(E)(2) that Father suffered from severe chemical dependency that prevented him from providing an adequate home for the children within a reasonable time.

{¶16} Third, the magistrate found that Father demonstrated a lack of commitment toward the children by failing to regularly communicate with the children by going substantial periods without visiting them and by failing to financially support the children when they were in agency custody. This finding was made under R.C. 2151.414(E)(4).

{¶17} Fourth, the magistrate found that Father had abandoned the children under R.C. 2151.414(E)(10). This finding was based on gaps in visitation of more than 90 days.

{¶18} Additionally, the magistrate found Y.H. had been in the agency's care for at least 12 months of a consecutive 22-month period under R.C. 2151.414(B)(1)(d).

{¶19} The magistrate further found that permanent custody would be in the best interest of the children under R.C. 2151.414(D)(1) and awarded permanent custody of both Y.H. and B.H. to the agency.

D. The Parents' Objections

{¶20} Father timely filed an objection to the magistrate's decision, and mother filed a late objection. The juvenile court considered both objections. On March 9, 2023, the juvenile court entered an order denying both mother's and Father's objections and awarding permanent custody to HCJFS.

{¶21} In its decision, the juvenile court generally held that the magistrate properly determined the factual issues and appropriately applied the law.

{¶22} But with respect to Father, the juvenile court affirmed only two of the four legal bases for determining that the children could not and should not be placed with Father under R.C. 2151.414(E). The juvenile court agreed that Father continuously and repeatedly failed to remedy the conditions that led to the children's removal under R.C. 2151.414(E)(1). Additionally, it agreed that Father had a severe chemical dependency that prevented him from adequately parenting the children under R.C. 2151.414(E)(2).

{¶23} Without analysis, the juvenile court did not discuss the magistrate's findings that Father failed to communicate or provide support under R.C. 2151.414(E)(4) and that Father abandoned the children under R.C. 2151.414(E)(10).

{¶24} After analyzing the eligibility factors under R.C. 2151.414(E), the juvenile court determined that permanent custody was in the best interest of the children under R.C. 2151.414(D)(1).

{¶25} The juvenile court indicated that it had conducted an independent review of the record and that no transcripts were submitted in support of either mother's or Father's objections. But this was inaccurate.

{¶26} The July 19, 2022 transcript was filed with the juvenile court before it considered and ruled upon Father's objection. Nevertheless, the juvenile court

entered its judgment on March 9, 2023, without considering this transcript, mistakenly noting that no transcripts had been filed.

{¶27} The April 19, 2022 transcript was filed with the juvenile court on March 16, 2023, one week after it denied mother's and Father's objections.

{¶28} Father timely appealed the juvenile court's judgment. Father is the only parent to appeal in this matter. We only discuss the juvenile court's judgment as it pertains to Father and will not disturb or discuss its judgment related to mother.

II. Analysis

{¶29} Father raises two issues on appeal: (1) that the juvenile court abused its discretion by not independently reviewing the dispositional transcripts to address Father's factual challenges, and (2) that the juvenile court erred in determining that permanent custody was in the best interest of the children. We first discuss Father's challenge that the juvenile court did not independently review the record when considering Father's objection.

A. Independent Review

{¶30} In his first assignment of error, Father argues the juvenile court abused its discretion by not independently reviewing the transcripts from the dispositional hearing before adopting portions of the magistrate's decision. An abuse of discretion exists when a juvenile court's decision is "unreasonable, arbitrary, or unconscionable," meaning that it is made " 'without consideration of or regard for facts [or] circumstances.' " *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983); *In re C.D.Y.*, 8th Dist. Cuyahoga No. 108355, 2019-Ohio-4987, ¶ 8, quoting *Black's Law Dictionary* 125 (10th Ed.2014).

{¶31} Here, the juvenile court undoubtedly awarded permanent custody of Y.H. and B.H. to HCJFS without reviewing the transcripts of the dispositional

hearings. In its order, the juvenile court noted that no transcripts were available, despite the fact that the July 19, 2022 transcript had been filed in the record months before its decision. The existence of the July 19, 2022 transcript suggested that the April 19, 2022 transcript was forthcoming.

{¶32} In considering whether this oversight constituted an abuse of discretion, we are guided by Juv.R. 40(D)(4)(d), which requires the juvenile court to conduct an independent review of the magistrate's factual findings and legal conclusions if any party objects. This independent review requires the juvenile court to conduct a de novo review of the facts and to reach its own conclusions about the issues in the case. *In re A.S.*, 1st Dist. Hamilton No. C-180056, 2019-Ohio-2359, ¶ 20, citing *Vice v. Sexton*, 4th Dist. Scioto No. 10CA3371, 2011-Ohio-1647, ¶ 16; *In re I.R.Q.*, 8th Dist. Cuyahoga No. 105924, 2018-Ohio-292, ¶ 23, quoting *Radford v. Radford*, 8th Dist. Cuyahoga Nos. 96267 and 96445, 2011-Ohio-6263, ¶ 13.

{¶33} Juv.R. 40(D)(3)(b)(iii) contemplates that transcripts of proceedings that took place before a magistrate are useful to a juvenile court in its independent review, particularly where an objecting party challenges a magistrate's factual findings. Our cases also highlight the importance of transcripts for a juvenile court's independent review, particularly when the juvenile court alters the magistrate's findings in meaningful ways. *See, e.g., In re Seldon/Boyd Children*, 1st Dist. Hamilton Nos. C-070440, C-070441 and C-070481, 2007-Ohio-5123, ¶ 11. As we have noted, "a trial court abuses its discretion in disagreeing with a magistrate's best-interest determination without reviewing the transcripts from the entire dispositional hearing." *Id.* at ¶ 11.

{¶34} Where the juvenile court is alerted to the intention of an objecting party to submit transcripts, the juvenile court abuses its discretion in ruling on the objection

without waiting for the transcript. *In re A.C.*, 8th Dist. Cuyahoga No. 108442, 2019-Ohio-5127, ¶ 24 (holding that the juvenile court abused its discretion in ruling on mother's objection absent a transcript after mother had filed a request for the transcript, placing the court on notice of her intent to support her objection with the hearing transcript). Furthermore, a juvenile court cannot "purport to conduct an independent review of the evidence when it [knows] that there [is] a transcript of the trial being prepared." *In re R.C.*, 8th Dist. Cuyahoga No. 94885, 2010-Ohio-4690, ¶ 7, fn. 1. Indigent parents, as Father was here, are entitled to transcripts as a matter of right in parental termination cases. *State ex rel. Heller v. Miller*, 61 Ohio St.2d 6, 16-17, 399 N.E.2d 66 (1980); *see Whitson v. Whitson*, 5th Dist. Richland No. 19CA32, 2019 Ohio App. LEXIS 4300, 13 (Oct. 10, 2019). This is in part because permanent termination of parental rights is the "family-law equivalent of the death penalty." *In re S.G.*, 1st Dist. Hamilton No. C-200261, 2020-Ohio-5244, ¶ 20; *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, ¶ 10.

{¶35} A transcript of the July 19, 2022 dispositional hearing was before the juvenile court when it considered Father's objections. The fact that one hearing had been transcribed suggested that the transcript of the other hearing was forthcoming and placed the juvenile court on constructive notice of Father's intention to provide a second transcript. Indeed, that second transcript was filed mere days after the juvenile court resolved Father's objections.

{¶36} The juvenile court could not have fulfilled its obligation to conduct an independent review under Juv.R. 40(D)(4)(d) because the July 19, 2022 transcript, at a minimum, was properly provided by Father for the juvenile court's consideration. The juvenile court also acted arbitrarily by not waiting for the second transcript to be

submitted once it had reason to believe the dispositional hearings were being transcribed. *See In re A.C.*, 8th Dist. Cuyahoga No. 108442, 2019-Ohio-5127, at ¶ 24.

{¶37} For these reasons, the juvenile court abused its discretion in awarding permanent custody of Y.H. and B.H. to HCJFS, thereby terminating Father's parental rights, without conducting an independent review under R.C. 2151.414(D)(4)(d). We therefore sustain the first assignment of error, and reverse the juvenile court's judgment and remand the cause for consideration of the April 19, 2022 and July 19, 2022 transcripts with regard to Father's objections.

B. Best Interest Determination

{¶38} In his second assignment of error, Father argues the juvenile court failed to support its determinations with sufficient evidence and abused its discretion by finding permanent custody was in the best interest of the children. Because we have sustained Father's first assignment of error, this challenge is moot, and we decline to address the second assignment of error.

III. Conclusion

{¶39} The juvenile court's judgment awarding permanent custody of Y.H. and B.H. to HCJFS is reversed as to Father. This cause is remanded to the juvenile court for consideration of the dispositional hearing transcripts from April 19, 2022, and July 19, 2022, regarding the termination of Father's parental rights. The juvenile court is only required to review the record, which includes the aforementioned transcripts. The juvenile court is not required to hold a hearing, though it may.[1]

Judgment reversed and cause remanded.

[1] See Juv.R. 40(D)(4)(d); Civ.R. 53 (D)(4)(d).

CROUSE, P.J., and **ZAYAS, J.,** concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.