

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

IN THE MATTER OF:

E.J.

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CASE NO. CA2014-07-098

OPINION

3/2/2015

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 12-D000712

Jeffrey Stueve, 12 West South Street, Lebanon, Ohio 45036, CASA

Michael K. Allen & Associates, Mary K. Martin, 5181 Natorp Boulevard, Suite 210, Mason, Ohio 45040, for appellant, T.S.

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for appellee, Warren County Children's Services

S. POWELL, P.J.

{¶ 1} Appellant, T.S. (Mother), the biological mother of E.J., a minor child, appeals from the decision of the Warren County Court of Common Pleas, Juvenile Division, granting legal custody of E.J. to J.B. (Grandmother), the child's paternal grandmother. For the reasons outlined below, we affirm.

{¶ 2} A portion of the underlying facts giving rise to this matter were previously stated

in *In re E.J.*, 12th Dist. Warren Nos. CA2013-04-037 and CA2013-04-038, 2013-Ohio-4332.

As this court stated in that case:

In June 2012, Mother was traveling from her home in Michigan to visit a friend in Columbus. However, Mother became lost when traveling on Interstate 75, and was pulled over by an Ohio State Highway Patrolman when other motorists reported that Mother was throwing objects from her car at passing vehicles. When the trooper approached the car, Mother drove off and led the trooper on a ten-minute police chase. Once Mother was finally apprehended in Franklin, the trooper found E.J. in the car wearing a urine-soaked diaper. Mother was highly incoherent, and as a result, was hospitalized in the psychiatric unit on a "72-hour hold." E.J. was taken into emergency shelter care by the [Warren County Children's Services (WCCS)] and placed in a foster home because E.J.'s biological father [V.J. (Father)] was in drug rehabilitation center and remained unable to provide care for the child.

A magistrate held a hearing on [WCCS's] emergency custody motion, and granted temporary custody of E.J., who was approximately 20 months old at the time of the hearing, to [WCCS]. The magistrate appointed separate attorneys to represent Mother and Father, and also ordered a Court Appointed Special Advocate (CASA) for the child. Mother, who was later released from the hospital, was arrested and charged with fleeing and eluding, as well as child endangering as a result of her fleeing from the trooper. Mother was incarcerated for a short time, and later pled not guilty by reason of insanity to the charges. Upon her release from jail, Mother returned to Michigan where she was staying at a domestic violence shelter. When Mother appeared for criminal hearings, or other court dates in Ohio related to the fleeing incident, she visited with E.J.

Mother, through her appointed counsel, moved to transfer the case to Michigan, arguing that it was too difficult for her to visit with E.J. in Ohio and that Michigan was the proper jurisdiction to promote reunification between herself and E.J. [WCCS] argued against transferring the case, and asserted that Ohio held proper jurisdiction over the matter. [WCCS] also began the process of placing E.J. with [Grandmother] in New Jersey, and was waiting on a final approved home study before transferring E.J. to Grandmother's care.

E.J. had been placed with Grandmother on a prior occasion in 2011 after Mother had been pulled over by an officer and fled. Mother was charged with fleeing and endangering children after she abandoned one of her older daughters at a rest area, and

fled police when they pulled Mother over. At the time Mother fled, E.J. and Mother's son were in the car. Mother's other children are now in the custody of their biological father. E.J. and Mother were reunified after E.J. was in Grandmother's care for approximately three to four months.

The magistrate held a hearing and adjudicated E.J. dependent, and set the matter for a dispositional hearing. The magistrate heard arguments regarding Mother's motion to transfer, as well as [WCCS's] request to maintain temporary custody of the child. The trial court denied Mother's motion to transfer the case and further ordered that [WCCS] would maintain temporary custody of E.J. Mother then filed objections to the magistrate's decision, which the juvenile court overruled. After filing her objections, Mother was incarcerated in a Virginia jail for approximately 22 days for failing to appear for court hearings related to her 2011 fleeing and endangering charges. Once released from the Virginia jail, Mother returned to Michigan, where she has lived in three different residences since July 2012. During this time, Grandmother's home study received final approval, and [WCCS] relocated E.J. to New Jersey to live with Grandmother.

Id., 2013-Ohio-4332 at ¶ 2-6.

{¶ 3} Mother subsequently appealed from the juvenile court's decision denying her motion to transfer the case to Michigan. Mother also appealed the juvenile court's decision to maintain temporary custody of E.J. with WCCS. This court overruled Mother's two assignments of error in their entirety. *Id.* at ¶ 21 and 29.

{¶ 4} On December 4, 2013, WCCS moved the juvenile court to grant Grandmother legal custody of E.J. pursuant to R.C. 2151.415(A)(3). A juvenile court magistrate then held a two-day dispositional hearing on the matter. Grandmother was not present for the hearing. Once the hearing concluded, on May 8, 2014, the magistrate issued a decision granting legal custody of E.J. to Grandmother. In reaching this decision, the magistrate found, in pertinent part, the following:

While Mother has made significant progress since June 19, 2012, she has not completed case plan services. Even if all case plan services were met, Mother's history of significant mental health breaks requires a showing of stability. This is absolutely necessary for the safety and well-being of the minor

child, as twice Mother has been driving unsafely with the minor child in the car, resulting in criminal charges. Mother has been hospitalized at least twice during the pendency of this action. She has extended episodes of non-compliance with her medications and it has been less than a year since her last hospitalization. Mother has lived at least five (5) different places since the inception of this case. She only achieved "stable housing" the day before the trial herein was completed. It remains unseen as to whether Mother will be able to sustain this residence.

[E.J.] is now three (3) years old. Since her removal on June 19, 2012, she has seen her Mother only nine (9) times. Distance and finances have limited Mother's ability to visit child. There is no question that she loves [E.J.] and would have spent more time with her if possible. However, the minor child has resided in the home of [Grandmother] nearly half of her life. It is the only home she knows. It is the only safe home she has known.

(Emphasis sic.)

{¶ 5} After the magistrate issued its decision, Mother filed objections, as well as a motion requesting a transcript of the dispositional hearing to be paid at the state's expense. Thereafter, on June 18, 2014, the juvenile court issued its decision overruling Mother's objections to the magistrate's decision. The juvenile court also denied Mother's request for a transcript at the state's expense. In so holding, the juvenile court found Mother was not entitled to transcript at the state's expense because "the nature of the proceedings Mother is objecting to do not involve the termination of her parental rights." The juvenile court further determined that it was in E.J.'s "best interest to remain in the stable family environment provided by [Grandmother]."

{¶ 6} Mother now appeals from the juvenile court's decision granting legal custody of E.J. to Grandmother, as well as its decision denying her request for a transcript of the dispositional hearing at the state's expense, raising two assignments of error for review.

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT COMMITTED PLAIN ERROR IN GRANTING LEGAL

CUSTODY TO [GRANDMOTHER].

{¶ 9} In her first assignment of error, Mother argues the juvenile court erred and violated her due process rights by granting legal custody of E.J. to Grandmother because Grandmother did not file a signed statement of understanding with the juvenile court as required by R.C. 2151.353(A)(3). However, as the record firmly establishes, WCCS's motion requesting Grandmother be awarded legal custody of E.J. was not brought pursuant to R.C. 2151.353, but rather, under the confines of R.C. 2151.415(A)(3). Unlike R.C. 2151.353, we find nothing within the provisions of R.C. 2151.415 that requires Grandmother to file a signed statement of understanding with the juvenile court before she could be awarded legal custody of E.J.¹ Mother's bare assertion to the contrary, which, we note, was relegated to a footnote without any supporting legal authority, is without merit.

{¶ 10} Nevertheless, even if we were to find R.C. 2151.353(A)(3) applied to the case at bar, it is undisputed that Mother never objected to the fact that Grandmother had not filed a signed statement of understanding prior to the juvenile court issuing its decision granting her legal custody, thereby forfeiting all but plain error. *In re K.M.A.T.*, 10th Dist. Franklin No. 13AP-832, 2014-Ohio-2420, ¶ 29. The Ohio Supreme Court has defined plain error in the civil context as an error that "seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *In re B.J.*, 12th Dist. Butler No. CA2011-10-192, 2012-Ohio-3127, ¶ 9, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus. Plain error will be recognized only in the extremely rare case involving exceptional circumstances. *In re Stephens*, 12th Dist. Butler Nos. CA2001-01-018 and CA2001-01-021, 2001 WL 1155848, *1

1. This same issue was raised before the Ninth District Court of Appeals in *In re A.V.O.*, 9th Dist. Lorain Nos. 11CA010115 thru 11CA010118, 2012-Ohio-4092; and *In re M.B.*, 9th Dist. Lorain Nos. 11CA010060 and 11CA010062, 2012-Ohio-5428. The Ninth District, however, did not expressly rule on this issue in deciding either case.

(Oct. 1, 2001).

{¶ 11} "[T]he legislative purpose of the signed statement of understanding under R.C. 2151.353(A) is to help insure that prospective legal custodians are apprised of the significant responsibilities they will undertake." *In re W.A.*, 5th Dist. Muskingum No. CT2013-0002, 2013-Ohio-3444, ¶ 16. Mother has not directed this court to anything in the record to suggest Grandmother, a certified foster parent in New Jersey, was unaware of such responsibilities. *Id.* In fact, after a thorough review of the record, we find quite the opposite to be true.

{¶ 12} For instance, although Grandmother was not present during the dispositional hearing, as part of her approved home study, Grandmother specifically stated she "plans to care for [E.J.] until [E.J.] is reunited [with Mother] and if that is not possible, she will adopt or provide Kinship Legal Guardianship." The home study also noted Grandmother was "provided with information concerning the different roles, responsibilities, legal and financial rights and benefits of relative caregivers, foster parents and adoptive parents." Grandmother signed the home study and acknowledged this statement was true and accurate. The CASA appointed to this matter also recommended Grandmother be awarded legal custody.

{¶ 13} In light of the foregoing, even if we were to find R.C. 2141.353(A)(3) applied to the case at bar, under the facts and circumstances of this case, we find this is not one of the extremely rare cases involving exceptional circumstances that requires a finding of plain error. This is particularly true here given the record properly before this court supports the juvenile court's decision finding it was within E.J.'s best interest to grant legal custody to Grandmother. Again, as the magistrate found, and which the trial court implicitly agreed in affirming and adopting the magistrate's decision, because E.J. had lived with Grandmother for nearly half her young life, "[i]t is the only home she knows. It is the only safe home she has known." (Emphasis sic.) We see no reason why E.J.'s current placement with Grandmother should not continue. Accordingly, Mother's first assignment of error is

overruled.

{¶ 14} Assignment of Error No. 2:

{¶ 15} THE TRIAL COURT ERRED BY DENYING APPELLANT A TRANSCRIPT OF THE DISPOSITIONAL HEARING AT THE STATE'S EXPENSE.

{¶ 16} In her second assignment of error, Mother argues that, due to her indigency, the juvenile court erred by denying her motion for a transcript of the dispositional hearing at the state's expense. In support of this argument, Mother claims the juvenile court's decision denying her motion violates her due process and equal protection rights found in the United States and Ohio constitutions. We disagree.

{¶ 17} The Tenth District Court of Appeals recently addressed this issue in *In re A.P.*, 10th Dist. Franklin No. 14AP-23, 2014-Ohio-5244. In finding no violation of appellant's constitutional rights, the Tenth District stated, in pertinent part:

[T]he determinative factor is the permanent termination of the parent-child relationship. The total, irreversible elimination of parental rights triggers constitutional protection and entitles an indigent parent to waiver of fees and/or assistance of appointed counsel. Any lesser court action—such as the denial of temporary custody over the child—does not.

The case at bar does not involve the termination of parental rights. Here, the trial court granted legal custody to [the child's maternal grandmother]. Unlike a grant of permanent custody, the grant of legal custody does not terminate the parent-child relationship. A parent who loses legal custody of a child retains certain residual parental rights, privileges, and responsibilities, as well as the right to request return of legal custody in the future.

Because this case does not involve the termination of parental rights, we must apply the rational-basis test to determine whether the United States and Ohio Constitutions require the provision of a transcript to [mother] due to her indigency. The state's need to protect the public coffers justifies its refusal to supply transcripts of dispositional proceedings to indigent parents where legal custody is at issue. Accordingly, the trial court did not deprive [mother] of any constitutional right when it denied her request for a transcript at public expense.

(Internal citations omitted.) *Id.* at ¶ 17-19

{¶ 18} We agree with the Tenth District's decision in *In re A.P.* and similarly conclude the juvenile court did not err in its decision denying Mother's motion for a transcript of the dispositional hearing at the state's expense. As the juvenile court correctly found, unlike a grant of permanent custody, this case does not involve the termination of Mother's parental rights. *In re K.B.*, 12th Dist. Butler Nos. CA2014-02-042 thru CA2014-02-044, 2014-Ohio-3654, ¶ 69 (stating "legal custody does not terminate the parent-child relationship; rather the parent retains residual parental rights and responsibilities"). Therefore, although it may have been better practice in this case to allow Mother to obtain a transcript at the state's expense, just as the Tenth District in *In re A.P.*, we find the juvenile court did not deprive Mother of any constitutional right when it denied her motion. Accordingly, Mother's second assignment of error is overruled.

{¶ 19} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.