

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

In re: K.P.	:	
	:	Case No. 25CA18
Adjudicated Dependent Child.	:	
	:	
	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
	:	
	:	RELEASED: 10/16/2025

APPEARANCES:

Jessica S. McDonald, Chillicothe, Ohio, for appellant.

Jeffrey C. Marks, Ross County Prosecutor, and Alisa Turner, Ross County Assistant Prosecutor, Chillicothe, Ohio, for appellee.

Wilkin, J.

{¶1} Appellant, C.Y., the child’s mother, appeals a judgment of the Ross County Court of Common Pleas, Juvenile Division, that placed her two-year-old child, K.P., in the legal custody of appellant’s relatives.

{¶2} Appellant raises one assignment of error that asserts that trial counsel failed to provide the effective assistance of counsel. Appellant claims that trial counsel’s ineffectiveness caused the trial court to place the child in the relatives’ legal custody. After our review of the record and the applicable law, we do not find any merit to appellant’s assignment of error. Therefore, we affirm the trial court’s judgment.

FACTS AND PROCEDURAL BACKGROUND

{¶3} On February 3, 2023, the agency filed a complaint that (1) alleged that the child, then approximately two weeks of age, was an abused and dependent child and

(2) requested temporary custody of the child. The statement of facts attached to the complaint set forth the following facts.

{¶4} On January 23, 2023, the agency received a report that indicated the child's "cord stat" tested positive for cocaine. Before medical personnel received the test result, the hospital released the child to appellant.

{¶5} Shortly thereafter, two caseworkers visited appellant's residence. The caseworkers informed appellant about the test result, and appellant denied that she used cocaine. The caseworkers administered a drug screen, and appellant tested positive for cocaine and THC.

{¶6} A caseworker later administered a second drug screen, and appellant again tested positive for cocaine and THC. The agency then sought and obtained an ex parte removal.

{¶7} The trial court subsequently adjudicated the child a dependent child and placed the child in the agency's temporary custody.

{¶8} In October 2023, the court placed the child in the temporary custody of appellants' relatives.

{¶9} In January 2025, appellant filed a motion that asked the court to return the child to her custody or, alternatively, to increase her visitation. She asserted that she had complied with all of her case plan requirements.

{¶10} A couple of weeks later, the agency filed a motion that asked the court to place the child in the relatives' legal custody.

{¶11} On April 8, 2025, the court's magistrate held a hearing to consider the agency's motion. At the hearing, the family's caseworker testified that the case plan

required appellant to, among other things, (1) refrain from using illegal substances, (2) submit to random drug testing, (3) complete an alcohol and drug assessment and follow any treatment recommendations, (4) complete parenting classes, and (5) maintain contact with the caseworker.

{¶12} The caseworker indicated that appellant had not fully complied with treatment recommendations. He explained that he met with appellant and advised her of the agency's concerns regarding her lack of compliance with the treatment recommendations. The caseworker informed appellant that she would need to be fully compliant with her treatment before the agency would consider increasing visits with the child.

{¶13} The caseworker stated that, in early January 2025, he received a report that appellant no longer was compliant with her treatment program. Appellant's counsel objected, and the court paused the hearing to discuss the matter with the attorneys.

{¶14} The agency's counsel requested the court to continue the hearing. She stated that, before the hearing began, the agency thought that the parties had reached an agreement regarding the agency's request for legal custody. The agency's counsel thus indicated that not all of the agency's intended witnesses had been called to testify that day. Appellant's counsel did not agree with the agency's representation and objected to continuing the hearing. The court noted appellant's objection, granted the agency's request for a continuance, and continued the hearing for 30 days.

{¶15} When the court reconvened, the agency caseworker continued his testimony. He stated that appellant has not reached all of the goals required to reunify

her with the child. The caseworker explained that appellant has not been submitting drug screens and was not fully compliant with her treatment program.

{¶16} The caseworker stated that, in January or February 2025, the caseworker and his supervisor met with appellant to discuss the agency's concerns. They noted that the child had been in the agency's custody for two years and advised appellant that the agency intended to ask the court to place the child in the maternal relatives' legal custody.

{¶17} The caseworker also testified that the child has been living with the maternal relatives for more than one year and is "thriving" in the relatives' home.

{¶18} Appellant's substance abuse addiction counselor testified that she has been counseling appellant for about a year and a half. The counselor indicated that, between January 2025 through the date of the hearing, two of appellant's urine screens were "abnormal." The counselor further stated that appellant has not appeared for all of her twice-weekly drug screens and that appellant did not attend all of her scheduled counseling sessions. The counselor reported that, over the past few months, appellant has continued to miss both drug screens and counseling sessions.

{¶19} Appellant testified and explained that she had missed some counseling sessions because she was pregnant and had been hospitalized due to hemorrhaging.

{¶20} The magistrate subsequently entered a decision that placed the child in the relatives' legal custody. Soon after, the trial court adopted the magistrate's decision. The court found that appellant had "complied with many of her caseplan [sic] goals," but "she did not comply fully with treatment and relapsed twice with alcohol." The court

determined that appellant still needed to work on maintaining sobriety and that the child could not be placed with her within a reasonable time.

{¶21} The court additionally observed that the child is doing well in the current home and is bonded with the family. The court noted that the child has lived with the family for more than one year and that the home provides the child with permanence and stability.

{¶22} The court concluded that a preponderance of the evidence established that placing the child in the relatives' legal custody was in the child's best interest. The court thus granted the maternal relatives legal custody of the child. This appeal followed.

ASSIGNMENT OF ERROR

WAS TRIAL COUNSEL INEFFECTIVE IN PROPERLY REPRESENTING MOTHER, [C.Y.], RESULTING IN THE TRIAL COURT GRANTING THE STATE OF OHIO'S MOTION FOR LEGAL CUSTODY.

{¶23} In her sole assignment of error, appellant contends that trial counsel did not provide the effective assistance of counsel. She asserts that trial counsel was ineffective for failing to object (1) to the court's decision to continue the hearing and (2) to the magistrate's decision. Appellant argues that if trial counsel had objected to the continuance, the agency may have been unable to satisfy its burden of proof. She claims that, if counsel had filed objections to the magistrate's decision, then appellant would not be precluded "from arguing any meaningful issues at the appellate level." Appellant states that trial counsel should have objected to the magistrate's decision on the basis that she "had made substantial strides in completing her case plan, and while it had not been completed in its entirety, because of the progress that had been made, the granting of legal custody to the [relatives] was premature."

{¶24} The agency asserts that appellant did not have a constitutional right to counsel in the legal custody proceeding and that she cannot, therefore, assert a violation of the Sixth Amendment right to the effective assistance of counsel. The agency recognizes that appellant had a statutory right to counsel but contends that the statutory right to counsel does not equate to a constitutional right to the effective assistance of counsel as recognized in *Strickland v. Washington*, 466 U.S. 668 (1984).

{¶25} The agency further argues that, even if the *Strickland* standard applies to a legal custody proceeding, appellant cannot establish that trial counsel failed to provide the effective assistance of counsel. The agency asserts that, even if counsel's performance was deficient, appellant cannot establish a reasonable probability that the outcome of the proceeding would have been different in the absence of counsel's alleged deficient performance.

A. The Sixth Amendment Right to Counsel

{¶26} The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to “the Assistance of Counsel for [their] defence.” U.S. Const., amend. VI. This right to the assistance of counsel includes “the right to the effective assistance of counsel.” *Strickland*, 466 U.S. at 686, quoting *McMann v. Richardson*, 397 U.S. 759, 771, fn. 14 (1970).

{¶27} Ohio appellate courts uniformly agree that parents facing the permanent termination of their parental rights also are guaranteed the right to the effective assistance of counsel. See, e.g., *In re S.W.*, 2023-Ohio-793, ¶ 53 (4th Dist.); see also *In re Wingo*, 143 Ohio App.3d 652, 666 (4th Dist.), quoting *In re Heston*, 129 Ohio App.3d 825, 827 (1st Dist. 1998) (“Where the proceeding contemplates the loss of

parents' 'essential' and 'basic' civil rights to raise their children, . . . the test for ineffective assistance of counsel used in criminal cases is equally applicable to actions seeking to force the permanent, involuntary termination of parental custody.' ").

{¶28} Ohio appellate courts do not, however, agree whether parents are entitled to the effective assistance of counsel in legal custody cases. See *In re S.L.*, 2024-Ohio-1989, ¶ 17 (8th Dist.) ("this court has not extended the constitutional guarantee of effective assistance of counsel to legal custody proceedings"); *In re C.L.*, 2024-Ohio-616, ¶ 39 (12th Dist.) ("Father is entitled to effective assistance of counsel in legal custody proceedings."); *In re L.L.*, 2022-Ohio-4492, ¶ 15-16 (9th Dist.) (evaluating counsel's effectiveness in a legal custody case); *In re V.H.*, 2019-Ohio-3097, ¶ 33 (8th Dist.) (reviewing ineffectiveness claim in a case involving grants of temporary and legal custody); *In re A.C.*, 2018-Ohio-2687, ¶ 29 (5th Dist.) (stating that the court has "not expanded the doctrine of ineffective assistance of counsel beyond criminal cases and those involving permanent custody"); *In re S.G.*, 2015-Ohio-2503, ¶ 13 (9th Dist.) ("The test for ineffective assistance of counsel used in criminal cases is also applicable to juvenile cases alleging abuse, dependency, or neglect."); *In re M.I.S.*, 2012-Ohio-5178, ¶ 26 (8th Dist.) (declining to apply the *Strickland* standard when the case did not involve a criminal proceeding or an involuntary termination of parental rights); see also *In re L.A.*, 2024-Ohio-1241, ¶ 12 (3d Dist.) (determining that the ineffective assistance of counsel test does not apply "to a legal custodian involved in a proceeding involving the visitation rights of the natural parents"); *In re S.W.*, 2024-Ohio-681, ¶ 40 (2d Dist.) (agreeing to review the parent's claim of ineffective assistance of counsel in a temporary custody case). See generally *State ex rel. Asberry v. Payne*, 82 Ohio St.3d

44, 46, 48 (1998) (recognizing that Ohio statutory law provides “indigent children, parents, custodians, or other persons *in loco parentis*” with the right “to appointed counsel in all juvenile proceedings” and stating that the “statutory right to appointed counsel . . . goes beyond constitutional requirements”).

{¶29} In the case before us, even if we agree that a parent is entitled to the effective assistance of counsel in a legal custody case, appellant is not entitled to a reversal of the trial court’s judgment that placed her child in the relatives’ legal custody.

{¶30} A claim that counsel’s assistance was so ineffective as to require reversal of a trial court’s judgment in a custody case involving an abused, neglected, or dependent child requires a parent to establish “ ‘(1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel’s errors, the proceeding’s result would have been different.’ ” *In re S.W.*, 2023-Ohio-793, ¶ 53 (4th Dist.), quoting *State v. Madison*, 2020-Ohio-3735, ¶ 202. “Failure to establish either element is fatal to the claim.” *State v. Jones*, 2008-Ohio-968, ¶ 14 (4th Dist.).

B. Trial Counsel Was Not Ineffective

{¶31} In the case at bar, we are unable to conclude that trial counsel failed to provide appellant with the effective assistance of counsel. We first observe that, although appellant alleges that trial counsel did not object when the court continued the hearing, the transcript indicates that counsel did, in fact, object. The record does not contain any evidence to support appellant’s assertion that trial counsel failed to object to the continuance. Appellant, thus, cannot establish deficient performance.

{¶32} Additionally, we do not agree with appellant that trial counsel was ineffective for failing to object to the magistrate's decision. Even if counsel's decision not to object to the magistrate's decision was professionally unreasonable, appellant cannot establish a reasonable likelihood that the outcome of the trial court proceeding would have been different if trial counsel had objected. See *In re J.K.*, 2008-Ohio-4004, ¶ 19 (10th Dist.) ("Appellant has not shown that, if he had advanced specific objections, there was a reasonable likelihood that the outcome would have been different."). Nothing in the record suggests that the trial court would have rejected the magistrate's decision to place the child in the relatives' legal custody if appellant's counsel had objected to the magistrate's decision. The record shows that the child had been removed from appellant's custody shortly after the child's birth and remained out of appellant's custody throughout the pendency of the case. At the time of the legal custody hearing, the child had been living with the maternal relatives for the majority of her young life. The trial court could have reasonably decided that giving the child stability by placing her in the relatives' legal custody would be in the child's best interest. Any argument that the trial court would have rejected the magistrate's decision or that the outcome of the proceedings would have been different if appellant's trial counsel had objected to the magistrate's decision "is no more than unsupported speculation." *In re L.J.R.*, 2022-Ohio-3418, ¶ 53 (5th Dist.).

{¶33} Moreover, although appellant contends that counsel's failure to object to the magistrate's decision has prevented her appellate counsel from presenting an argument other than an argument for plain error, we observe that the question is whether trial counsel's alleged deficiency affected the outcome of the trial court

proceedings, see *Strickland*, 466 U.S. at 687 (explaining that the prejudice component “requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable”). Even if we were to consider whether any alleged deficiency affected appellant’s appellate arguments, appellant cannot show a reasonable likelihood that the outcome of the appeal would have been different if trial counsel had objected to the magistrate’s decision.

{¶34} For the foregoing reasons, we do not believe that appellant has demonstrated that trial counsel failed to provide the effective assistance of counsel. Accordingly, we overrule appellant’s sole assignment of error.

CONCLUSION

{¶35} Having overruled appellant’s sole assignment of error, we affirm the trial court’s judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.