

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of:
O.M., J.M., E.M.

Court of Appeals No. L-10-1028

Trial Court No. JC 09-191779

DECISION AND JUDGMENT

Decided: September 30, 2010

* * * * *

Lucinda J. Weller, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, D.M. or "mother," appeals the January 12, 2010 judgment of the Lucas County Court of Common Pleas, Juvenile Division, which adopted the October 26, 2009 magistrate's decision denying appellant's request that the court

establish parental rights and responsibilities regarding appellant's and appellee father's three minor children.¹ For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} The relevant facts of this case are as follows. On March 6, 2009, Lucas County Children's Services ("LCCS") filed a complaint in dependency and neglect and requested that it acquire protective supervision over appellant's and the father's three children. The complaint alleged that the parents had substance abuse and domestic violence issues.

{¶ 3} On April 20, 2009, the parties consented to the finding that the children were dependant and neglected. Custody of the children remained with appellant, appellee was required to vacate the family residence, the two youngest children were placed in protective daycare, and the parties were required to participate in various assessments and counseling.

{¶ 4} On July 21, 2009, LCCS filed a motion to terminate protective supervision. Appellee filed a motion to order appellant to return the children to Lucas County or, alternatively, an order granting him custody of the children. Thereafter, on September 2, 2009, appellant filed a motion to establish parental rights and responsibilities. In her motion, appellant stated that because appellee failed to pay the rent on the family home, she was forced to move to Detroit, Michigan, to be closer to her family. Appellant further indicated that on July 15, 2009, she filed for divorce from appellee in the Lucas

¹Neither appellee father nor LCCS filed a brief in this matter. LCCS did file a notice stating that because it was no longer a party to the proceeding, it would not be filing an appellate brief.

County Court of Common Pleas, Domestic Relations Division. Appellant requested that the court designate her residential parent and legal guardian and establish parenting time. Appellant further requested that appellee be ordered to pay child support.

{¶ 5} On September 24, 2009, a hearing was held on the motions. Current LCCS caseworker, Rhonda Nicholson, testified that LCCS was requesting the protective supervision be terminated because appellant and her children had moved to Detroit and wished to receive services in Wayne County, Michigan. Nicholson testified that it was her understanding that if LCCS does not take custody of the children, it does not maintain an open case. Nicholson stated that LCCS had no ongoing concerns regarding the children.

{¶ 6} Appellant testified that upon moving to Detroit she contacted the local children's services agency for assistance. They stated that the LCCS case must first be closed before appellant would qualify for services. Appellant testified that she applied to the Ohio Child Support Enforcement Agency for child support but that they dismissed the application. Appellant further testified that she wishes to be designated the legal custodian and residential parent of the children and that appellee receive visitation.

{¶ 7} The guardian ad litem testified that it was in the children's best interests to terminate protective supervision. The guardian stated that appellant has a good family network in Detroit and that she is in the process of getting services.

{¶ 8} On October 26, 2009, the magistrate granted LCCS' motion to terminate protective supervision and denied the parents' respective motions. As to appellant's

motion, the magistrate stated: "Parents are married and have always had custody of the children. They have filed for divorce in Lucas County Domestic Relations Division. Therefore, APR&R [allocation of parental rights and responsibilities] and child support should be addressed within the divorce proceedings." Appellant filed objections to the magistrate's decision.

{¶ 9} On January 12, 2010, the court denied appellant's objections agreeing that because the parents had always maintained custody, the parental rights and child support issues should be addressed by the domestic relations court. Thereafter, the court denied appellant's request for the appointment of appellate counsel finding that the issues involved a "private custody dispute." This appeal followed.

{¶ 10} Appellant now raises the following two assignments of error:

{¶ 11} "Assignment of Error I: The trial court erred in denying the Defendant-Appellant's Motion to Establish Parental Rights and Responsibilities and for child support as the Trial Court had exclusive jurisdiction pursuant to R.C. 2151.353 to make those determinations and failed to.

{¶ 12} "Assignment of Error II: The trial court's denial of Appellant's request for court appointed counsel for appeal was contrary to law and in violation of the Appellant's Due Process Rights."

{¶ 13} In appellant's first assignment of error, she argues that the trial court erroneously denied her motion to determine custody and child support by stating that because the parents had always maintained custody of the children, it lacked jurisdiction

due to the pending divorce action. As appellant correctly cites, R.C. 2151.23 provides the jurisdictional parameters for juvenile courts in Ohio; it provides, in part:

{¶ 14} "(A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

{¶ 15} "(1) Concerning any child who on or about the date specified in the complaint, indictment, or information is alleged to have violated section 2151.87 of the Revised Code or an order issued under that section or to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child and, based on and in relation to the allegation pertaining to the child, concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant; * * *."

{¶ 16} Upon a finding of dependency and neglect, pursuant to R.C. 2151.353, a juvenile court may make one of the following dispositional orders:

{¶ 17} "(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

{¶ 18} "(1) Place the child in protective supervision;

{¶ 19} "(2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;

{¶ 20} "(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. * * *

{¶ 21} "(4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

{¶ 22} "(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, * * *.

{¶ 23} "(6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings."

{¶ 24} Once a dispositional order under R.C. 2151.353 has been made, the court retains jurisdiction to review a child's placement or custody arrangement. R.C. 2151.417(A). Further, pursuant to R.C. 2151.353(E)(1), the court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to R.C. 2151.353(A) until the child reaches the age of 18.

{¶ 25} As to child support, juvenile courts and domestic relations courts have concurrent jurisdiction over child support matters. See *Albertson v. Ryder* (1993), 85 Ohio App.3d 765. A juvenile court has original exclusive jurisdiction over support issues only if "the request is not ancillary to an action for divorce, dissolution or marriage, annulment, or legal separation * * *." R.C. 2151.23(A)(11). See R.C. 2152.23(B)(4).

{¶ 26} Appellant relies on *In re Polling* (1992), 64 Ohio St.3d 211, wherein the Supreme Court of Ohio addressed the issue of a juvenile court's jurisdiction to determine custody of a child alleged to be abused, neglected, or dependent where custody had been determined in a prior divorce decree. In *Poling*, the parents were divorced and custody of the children was granted to the mother. *Id.* Thereafter, children services filed a neglect and dependency action and temporary custody was issued to the agency. The agency placed the children in their father's physical custody. *Id.* at 212.

{¶ 27} Following an uncontested hearing, the children were found to be dependent. The agency filed a motion to terminate its temporary custody order and to grant custody of the children to the father. The mother filed objections which were overruled. On appeal, the appellate court reversed the trial court's judgment finding that because the

parties were once married and the mother had been awarded legal custody, "legal custody can only be granted to [the father] * * * pursuant to a change of custody as prescribed by R.C. 3109.04(B)." Id. at 212-213.

{¶ 28} On review, the Ohio Supreme Court determined that the plain language of R.C. 2151.23(A)(1) granted "exclusive original jurisdiction" once the complaint in dependency and neglect was filed. Id. at 213. Such jurisdiction encompassed the court's ability to determine the care and custody of the children. The court stressed that this jurisdiction included children that were subject to a divorce decree granting custody.

{¶ 29} Also cited by appellant and interpreting *Poling*, in *Ryan v. Ryan*, 8th Dist. No. 85506, 2005-Ohio-4166, the court determined that where no custody determination had been ordered in a pending divorce action, pursuant to a dependency and neglect complaint which included a transfer of temporary custody, the juvenile court had exclusive jurisdiction to determine custody of the child, including support. Thus, the court affirmed the domestic relations court's order vacating its determinations regarding custody and support.

{¶ 30} The present case presents a distinct factual scenario. First, appellant was never divested of custody of her children. It is axiomatic that a natural parent has an inherent right to the custody of his or her child. *In re Perales* (1977), 52 Ohio St.2d 89, 97 (citations omitted). See, also, *In re Hayes* (1997), 79 Ohio St.3d 46, 48. Accordingly, because appellant has always maintained legal custody, she is not requesting a "change" in disposition.

{¶ 31} Next, following the court's dispositional order granting LCCS protective supervision, the parties each filed respective motions: appellant filed a motion for legal custody and child support and father filed a motion to return the children to Lucas County or, alternatively, for legal custody with protective supervision to LCCS. LCCS filed a motion to terminate protective supervision. Appellant also desired that LCCS terminate protective supervision so that she could obtain services in Detroit, Wayne County, Michigan.

{¶ 32} Finally, unlike many of the cases this court has reviewed, there is no lengthy factual history in the juvenile court that would make consideration of these issues in domestic relations court cumulative and in contravention of judicial economy. Although appellant submitted some financial information at the September 24, 2009 hearing, the relevant information is before the domestic relations court. Further, the domestic relations court granted appellant a civil protection order which would have a bearing on the visitation details.

{¶ 33} Combining all these factors, we cannot say that the trial court erred when it denied appellant's motion to establish parental rights and responsibilities. Appellant's first assignment of error is not well-taken.

{¶ 34} In appellant's second assignment of error she argues that the trial court erroneously denied appellant's request for appointed counsel in contravention of R.C. Chapter 2151. Appellant asserts that this right stems from the fact that the right to raise a

child is "an essential and basic civil right." See *In re Hayes*, supra. While we agree with this premise, it does not apply to the facts of the present case.

{¶ 35} In *In re L.S.*, 152 Ohio App.3d 500, 2003-Ohio-2045, ¶ 49, the court held that in "civil cases between individual parents involving visitation and residential-parent status * * * there is no constitutional right * * * to effective representation by counsel." See *In the Matter of Rosier-Lemmon*, 5th Dist. No. 2003 CA 00306, 2004-Ohio-1290. Thus, because LCCS is no longer involved in the present matter and because the issue at hand deals with a custody matter between the parties, we must conclude that the trial court did not err when it denied appellant's request for appointed counsel. Accordingly, appellant's second assignment of error is not well-taken.

{¶ 36} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Pursuant to App.R.24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.
CONCUR.

JUDGE

Keila D. Cosme, J.
CONCURS IN JUDGMENT ONLY.

JUDGE

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