

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: R.R.

C.A. Nos. 30553
 30582

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN 22 06 0519

DECISION AND JOURNAL ENTRY

Dated: August 23, 2023

HENSAL, Judge.

{¶1} Appellants Mother and Father appeal the judgment of the Summit County Court of Common Pleas, Juvenile Division, that adjudicated their child R.R. dependent. This Court affirms.

I.

{¶2} Mother and Father are the biological parents of R.R., born January 22, 2022. They are also the biological parents of four other children, whose history with Summit County Children Services Board (“CSB” or “the agency”) is relevant to this appeal. In July 2021, when Mother was pregnant with R.R., CSB removed the parents’ four older children because of deplorable, unsanitary, and dangerous conditions in the home. The agency filed complaints alleging that those children were at a minimum dependent. After the two oldest children disclosed allegations of sexual abuse by Father, CSB amended its complaints to allege that the children were dependent, neglected, and abused. Mother and Father waived their rights to an adjudicatory hearing and the

juvenile court found that the four siblings were dependent, neglected, and abused children as alleged in the amended complaints.

{¶3} The siblings' cases proceeded with the children remaining in the agency's temporary custody while Mother and Father had the opportunity to work on case plan objectives for reunification. CSB eventually moved for permanent custody. While the juvenile court granted permanent custody as to the three oldest siblings, it extended temporary custody as to the youngest to allow for the completion of an Interstate Compact for the Placement of Children ("ICPC") evaluation of an out-of-state relative.

{¶4} While the siblings' cases were pending, CSB coordinated with Berks County Children and Youth Services ("CYS") in Pennsylvania to conduct an ICPC evaluation of the maternal grandparents ("Grandparents," or individually, "Grandfather" and "Grandmother") to determine their viability for placement of those children. Unbeknownst to CYS and contrary to the ICPC, Mother and Father had moved in with Grandparents a couple months before R.R. was born. The parents intended for Mother to give birth to the child in Pennsylvania, although they continued to maintain and pay rent for their home in Akron, Ohio. Having become aware of R.R.'s birth, CSB notified CYS, whose caseworker visited the parents in the Pennsylvania hospital. Because of concerns for the child's well-being, CYS obtained physical custody of R.R. and filed a complaint alleging that he was a dependent child. The juvenile court in Pennsylvania adjudicated R.R. dependent. As Mother and Father had left Grandparents' home and moved into a hotel in Pennsylvania while continuing to pay rent on their Akron home, the Pennsylvania juvenile court transferred R.R.'s case to Summit County Juvenile Court, in March 2022.

{¶5} Summit County was unable to hold an initial dispositional hearing within the statutory time limits, so CSB dismissed R.R.'s case and refiled a complaint in June 2022, alleging

that he was a dependent child pursuant to Revised Code Sections 2151.04(B), (C), and (D). The agency alleged concerns regarding the adjudications of R.R.'s four older siblings as dependent, neglected, and abused children. Those adjudications were based on Mother's and Father's stipulations as to the allegations in the complaints relating to those children. Specifically, CSB had alleged extreme clutter and filth in the home, neglect based on the parents' failures to properly feed and bathe the siblings, and sexual abuse of the two oldest children by Father. In addition, the complaint involving R.R. noted concerns about the parents' mental health, Father's controlling behaviors of Mother, the parents' history with the child welfare agencies in Pennsylvania prior to R.R.'s case, the parents' lack of cooperation and failure to allow CSB access to their home during the siblings' ongoing cases, and the disapproval of Grandparents as a placement option for the siblings after completion of an ICPC assessment.

{¶6} Mother and Father waived their rights to a shelter care hearing and stipulated to a finding of probable cause for R.R.'s removal. The juvenile court placed the child in the emergency temporary custody of CSB, granted Mother supervised virtual visits, and ordered no contact between Father and the child.

{¶7} Unlike in the cases of the four older siblings, in this case Mother and Father contested the adjudication of R.R. After a hearing, the magistrate found him to be a dependent child pursuant to Section 2151.04(D) but dismissed the remaining allegations of dependency pursuant to subsections (B) and (C) for lack of proof by CSB. Mother and Father filed timely objections to the magistrate's decision, each arguing that there was not clear and convincing evidence of R.R.'s dependency pursuant to Section 2151.04(D). The juvenile court issued a judgment overruling the parents' objections and ordering that R.R. was a dependent child.

{¶8} Mother and Father waived their hearing rights at the dispositional hearing and agreed to R.R.'s placement in the temporary custody of CSB. The parents filed separate timely appeals. Each raises one assignment of error for review. This Court consolidates the assignments of error as they implicate the same considerations.

II.

MOTHER'S ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY ADJUDICATING THE MINOR CHILD AS A DEPENDENT CHILD, AS THE ADJUDICATION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

FATHER'S ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN FINDING THAT THE MINOR CHILD IS DEPENDENT. SUCH DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶9} Mother and Father argue that the Summit County Juvenile Court's judgment that adjudicated R.R. a dependent child is against the manifest weight of the evidence. This Court disagrees.

{¶10} A child welfare agency initiates a juvenile dependency, neglect, and/or abuse case by filing a complaint in the juvenile court. *See* Juv.R. 22(A); Juv.R. 10; R.C. 2151.27(A). The complaint is "the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction." Juv.R. 2(H). The juvenile court must base its adjudication on the evidence adduced at the adjudicatory hearing to support the allegations in the complaint. *See In re Hunt*, 46 Ohio St.2d 378, 380 (1976). If the agency fails to prove the allegations in the complaint by clear and convincing evidence at the adjudicatory hearing, the juvenile court must dismiss the complaint. Juv.R. 29(F)(1); R.C. 2151.35(A)(1). Clear and convincing evidence is that which will "produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established."

(Internal quotations omitted.) *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 368 (1985), quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶11} This Court reviews a manifest weight challenge to an adjudicatory finding as follows:

In determining whether the juvenile court’s adjudication of dependency is against the manifest weight of the evidence, this court [reviews] the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the [adjudication] must be reversed[.]

(Alterations sic.) *In re R.L.*, 9th Dist. Summit No. 28387, 2017-Ohio-4271, ¶ 8, quoting *In re C.S.*, 9th Dist. Summit No. 26178, 2012-Ohio-2884, ¶ 5, quoting *In re A.W.*, 195 Ohio App.3d 379, 2011-Ohio-4490, ¶ 8 (9th Dist.).

{¶12} Mother and Father challenge the finding that R.R. was dependent pursuant to Section 2151.04, which, in relevant part, defines “dependent child” as any child:

(D) To whom both of the following apply:

(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

{¶13} Section 2151.06 defines “residence” for purposes of Chapter 2151. “[A] child has the same residence * * * as his parents, legal guardian of his person, or his custodian who stands in the relation of loco parentis.” *Id.*

{¶14} For purposes of finding dependency pursuant to Section 2151.04(D), this Court has recognized the following:

It is clear that, with the addition of [Section] 2151.04(D), the legislature considered a parent's prior history with a child welfare agency significant in regard to a determination that a subsequent child might be dependent. Further, while [Section] 2151.04(D)(2) requires that the trial court base its finding of dependency, in part, on "other conditions in the household of the child," the legislature did not limit which conditions may be considered.

In re W.C., 9th Dist. Summit No. 22356, 2005-Ohio-2968, ¶ 18. Moreover, "[Section] 2151.04(D) allows the trial court to make a determination that a child is dependent *before* any actual harm is suffered by the child as a result of previous acts by the parents and contemporaneous conditions * * * [.]” *In re T.P.-M.*, 9th Dist. Summit No. 24199, 2008-Ohio-6437, ¶ 11. In other words, the law does not require the juvenile court to ““experiment with the health and safety of a newborn baby where the state can show by clear and convincing evidence, that placing the child in such an environment would be threatening to the health and safety of that child.”” *Id.* at ¶ 17, quoting *In re Campbell*, 13 Ohio App.3d 34, 36 (12th Dist.1983).

{¶15} Neither parent disputes that their four older children were previously adjudicated dependent, neglected, and abused. Mother and Father did not contest those adjudications. They were based, in part, on deplorable conditions in the home; neglect leaving the children unfed and filthy; and allegations against Father of sexual abuse of the children which resulted in a diagnosis of child sexual abuse regarding the six-year-old sibling.

{¶16} Both parents challenge the juvenile court's finding as to Section 2151.04(D)(1), the first prong of the test, arguing that CSB failed to prove that R.R. was residing with them when the agency filed the complaint. Mother and Father argue that, because they intended to place the child in Grandparents' home upon his birth, R.R. never resided with his parents. The evidence demonstrates, however, that the parents failed to take the necessary legal actions to place R.R. in the legal custody or under the guardianship of Grandparents.

{¶17} Grandfather testified at the hearing that no court recognized the validity of a document not part of this record, that the parents and grandparents signed in contemplation of transferring guardianship of R.R. to Grandparents. The parents did not offer that alleged agreement as an exhibit. Accordingly, the child was not residing with Grandparents instead of Mother and Father.

{¶18} The parents were residing in Summit County, Ohio, when CSB refiled its complaint alleging R.R.'s dependency. The agency had dismissed its prior case the day before, returning the child to his parents' legal custody by operation of law. R.R., therefore, shared his parents' residence. R.C. 2151.06. Accordingly, the child was "residing" with Mother and Father when the agency alleged he was dependent pursuant to Section 2151.04(D).

{¶19} Father further argues that CSB failed to prove the first prong of dependency pursuant to subsection (D) because there was no evidence that R.R. had ever resided with any of his siblings. This Court has long recognized that the statute contains no such requirement. "[W]hen the previously harmed child and the child at issue are siblings, the child at issue is not required to reside in the same household as the sibling who had previously been harmed." *In re A.W.*, 9th Dist. Summit No. 25601, 2011-Ohio-4490, ¶ 13, citing *In re E.R.*, 9th Dist. Medina No. 05CA0108-M, 2006-Ohio-4816, ¶ 32 ("The statute does not require that the sibling must currently reside in the household; but rather requires that a parent who resides in the same household as a child whose status is at issue, previously committed an act that resulted in an adjudication of neglect, abuse or dependency regarding a sibling of that child."). For the above reasons, this Court concludes that CSB presented clear and convincing evidence to support the juvenile court's finding that the agency proved the requirements of Section 2151.04(D)(1).

{¶20} Only Mother challenges the juvenile court's second prong finding for dependency pursuant to Section 2151.04(D)(2). She argues only that R.R. is not at risk of abuse or neglect because Grandparents' home is safe and appropriate. As the child was never in the legal custody or under the guardianship of Grandparents, that argument lacks merit. Moreover, Grandparents' home was not approved for placement of the child pursuant to an ICPC assessment.

{¶21} The clear and convincing evidence in this case demonstrates that the circumstances surrounding the dependency, neglect, and/or abuse of the four siblings put R.R. in danger of being abused or neglected by Mother and/or Father. The filth in the parents' home included pet urine and feces, high piles of trash and debris, and gnats throughout the residence. The siblings' clothes and bodies were dirty. The youngest children in diapers had feces and pet hair in the folds of their bodies. Safety hazards in the home included electrical cords hanging from the ceiling and so much clutter that there were no paths for a child to maneuver. The items cluttering the home were piled so high that they could easily fall and harm a child below. Mother and Father demonstrated the inability to provide proper care for the children who often went without meals. The oldest sibling¹ provided very detailed descriptions of the sexual acts in which Father compelled her to engage.

{¶22} CSB prepared a case plan in the siblings' cases designed to help Mother and Father remedy the concerns necessitating the children's removal. The first objective required the parents to clean the home and rid it of all hazards, including clutter and pet waste; and allow access to the caseworker to assess the home conditions. Because the agency believed the extreme conditions in the home could be indicative of mental health issues, both parents were required to submit to mental health evaluations, follow all recommendations, and sign releases of information for the

¹ The second oldest sibling also reported sexual abuse by Father, although her delayed cognitive abilities prevented her from giving specific details.

agency. Finally, based on the oldest two siblings' disclosures of inappropriate sexual touching and activity by Father, his final objective required him to participate in a sex offender evaluation to determine whether he was a sex offender and his likelihood of reoffending. Father also had to follow all recommendations and sign a release of information.

{¶23} The caseworker testified that Mother and Father had refused her access to their home during the five months prior to the adjudicatory hearing. Accordingly, she had not been able to assess the home conditions at all during the refiled case. When the parents allowed her to enter the home five months earlier, she noted that the smell of urine had dissipated and the animal feces was gone. However, the home remained excessively cluttered. Although there were some pathways through the high piles of various items, they were not adequate to allow a child to crawl. Moreover, the tall stacks of debris presented both a crushing hazard should they fall over on a child and a fire hazard given the limited means of maneuvering through the home in the case of a fire emergency.

{¶24} The caseworker attempted to conduct home visits but the parents were either not home or did not answer the door. On one occasion, the caseworker observed the backyard which was so full of toys, metal, and other items that it appeared it would be difficult to walk through the yard. Mother and Father refused to meet with the caseworker for any reason, so the caseworker had no updates from the parents regarding their home conditions. Accordingly, the evidence demonstrated that Mother and Father had not remedied the conditions of their home underlying the siblings' adjudications.

{¶25} The caseworker testified that Mother obtained a mental health assessment and admitted that she suffers from depression. Mother had only attended two counseling sessions. Father failed to submit to a mental health assessment, as required.

{¶26} In addition, Father refused to participate in a sex offender evaluation. The juvenile court qualified the mental health provider who conducted the forensic interviews of the two oldest siblings as an expert in the field of child sexual abuse. The expert testified that the oldest sibling described multiple incidents of sexual abuse by Father in great and consistent detail. While the next oldest sibling also disclosed incidents of sexual abuse, she lacked the capacity to provide clear details. Nevertheless, the expert testified that the younger girl made “some concerning statements related to sexual abuse[.]” The expert diagnosed the oldest sibling with post traumatic stress disorder, and both girls with adjustment disorders. The evidence demonstrated that Father had behaved in inappropriate sexual manners with at least two of his children. Because he refused to submit to a sex offender evaluation, however, his ongoing risk of reoffending remained unknown.

{¶27} Mother and Father remained married and continued to share a home at the time of the adjudicatory hearing. Mother does not believe that Father sexually abused any of the children, despite the expert’s opinion to the contrary.

{¶28} The agency presented clear and convincing evidence that the circumstances surrounding the dependency, neglect, and abuse of the child’s siblings, as well as other conditions in the child’s household, place R.R. in danger of being abused or neglected by Mother and Father. The conditions in the home made it unsafe and uninhabitable for children. The filth and clutter posed risks to the children’s health and well-being. The case plan required Mother and Father to clean the home and remove all safety hazards. They refused to allow the caseworker to view the inside of their home to assess it for cleanliness and safety. Mother and Father would not meet or speak with the caseworker to discuss the conditions of the home. The parents had not addressed the mental health component of their case plan in any meaningful way. Notwithstanding detailed evidence that Father sexually abused at least two of the siblings, he refused to submit to a sex

offender evaluation. Accordingly, R.R. remained at risk for abuse and neglect by parents who had done nothing to remedy the filthy and hazardous physical conditions in the home or protect the child from abuse by a parent whose risk of sexually reoffending remained unknown. Under these circumstances, this Court concludes that CSB presented clear and convincing evidence to support the juvenile court's finding that the agency proved the requirements of Section 2151.04(D)(2).

{¶29} Based on a thorough review of the record, this is not the exceptional case in which the trier of fact clearly lost its way and created a manifest miscarriage of justice by adjudicating R.R. a dependent child. R.R. was in the legal residence of the parents who stipulated to committing acts that formed the bases for the adjudications of the child's four siblings. Because of those circumstances which Mother and Father had not remedied, R.R. remained in danger of abuse and neglect should he remain in his parents' care. The juvenile court's finding that R.R. was a dependent child pursuant to Section 2151.04(D) is not against the manifest weight of the evidence. The parents' assignments of error are overruled.

III.

{¶30} Mother's and Father's separate assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

JENNIFER HENSAL
FOR THE COURT

SUTTON, P. J.
STEVENSON, J.
CONCUR.

APPEARANCES:

THOMAS C. LOEPP, Attorney at Law, for Appellant.

ALAN M. MEDVICK, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and C. RICHLEY RALEY, JR., Assistant Prosecuting Attorney, for Appellee.