[Cite as *In re K.F.*, 2012-Ohio-3026.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

IN THE MATTER OF:	**:**	**O P I N I O N**
K.F., DEPENDENT CHILD.	**:**	**CASE NO. 2011-L-143**

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 2008DP02520.

Judgment: Affirmed.

Christopher J. Boeman, 3537 North Ridge Road, Perry, OH 44081 (For Appellants, Amy M. Frank and James A. Frank).

Maureen A. Sweeney, 11805 Girdled Road, Concord, OH 44077 (For Appellant, James A. Frank).

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Appellee, Lake County Department of Job and Family Services).

Ann S. Bergen, 24 Public Square, Willoughby, OH 44094 (For Appellee, Cindy Pokorny).

Susan K. Jankite, Susan Jankite Co., L.P.A., 1253 Arlington Road, Lakewood, OH 44107 (Guardian ad litem).

TIMOTHY P. CANNON, P.J.

{¶1} Appellants, Amy M. Frank and James A. Frank, appeal the judgment of the Lake County Court of Common Pleas, Juvenile Division, overruling their objections to the magistrate's decision, which ordered court-appointed attorney fees and guardian

ad litem fees to be taxed as costs and paid by appellants. For the reasons that follow, the judgment is affirmed.

{¶2} The underlying case involves the dependency of K.F., son of appellants, Amy and James Frank. A complaint alleging K.F. to be dependent was filed in December 2008. The complaint stated that a Mentor police officer initiated a traffic stop of appellant, Amy Frank, K.F.'s mother. During the stop, the officer observed K.F.'s older half-sister, T.M., not restrained by a child seat or a seat belt and, moreover, not in a seat at all. Rather, the officer found T.M. moving freely about a large accumulation of trash and clutter in the neglected, unkempt interior cabin. The officer reported that a door to the automobile could not be opened without something falling out. The officer noted that T.M.'s head was resting near the front center console, where the car's radio was precariously dangling from the dashboard.

{¶3} Ms. Frank was found to be in possession of multiple prescription drugs and was charged with driving under a suspended license, failure to wear a safety belt, aggravated possession of drugs, possession of a dangerous drug, and endangering children. As an investigation unfolded, it became apparent that the Franks had no established place of residency but, instead, drifted between motels when they were able to afford a room. Counsel for both parents and a guardian ad litem for K.F. were appointed. Ultimately, the complaint resulted in a finding that K.F. was a dependent child. Temporary custody was granted to the paternal aunt, Cindy Pokorny. Protective supervision was granted to the Lake County Department of Job and Family Services. A case plan was agreed upon by the parties. Soon thereafter, a show cause order requesting evidence of case plan compliance was filed.

{¶4} Ms. Pokorny subsequently filed a motion for legal custody. The Franks also filed a motion for legal custody. A hearing ensued. Upon consideration of the motions, the magistrate issued a decision designating legal custody to Ms. Pokorny. Specifically relevant to this appeal, the magistrate concluded that guardian ad litem fees and court-appointed counsel fees shall be taxed as costs to the parties, with each party paying one-third of the costs. The magistrate explained that failure to pay those costs would result in a finding of contempt and potential incarceration. Objections to the magistrate's decision as to the costs were filed. A hearing on the objections was held.

{¶5} The trial court adopted the magistrate's decision, but limited the finding related to costs. The trial court opined that, although this matter began as a dependency action, it evolved into a private custody matter, effective March 16, 2010. The trial court chose this date because it found the magistrate provided notice to the parties that the matter was being bifurcated. A March 16, 2010 order from the magistrate states: "The motion to show cause [for case plan compliance] and the motion for custody shall proceed to trial as scheduled on April 15, 2010. *The show cause hearing shall be completed prior to the commencement of the custody hearing*." (Emphasis added.) The trial court found that this March 16 order was the magistrate giving the parties notice that there was a distinction between the custody battle and the show cause order.

{¶6} The trial court stated it would pay the guardian ad litem fees and legal fees for both attorneys that were incurred prior to March 16, 2010. The parties (Amy Frank, James Frank, and Cindy Pokorny) were each ordered to pay a one-third share of the guardian ad litem fees incurred after March 16, 2010. Appellants Amy and James

Frank were ordered to pay their own legal fees incurred after March 16, 2010, for their respective counsel.

{¶7} Appellants timely filed this appeal and assert one assignment of error:

{¶8} "The trial court abused its discretion and erred, to the prejudice of appellant-mother and appellant-father, by overruling the mother and father's objections to the magistrate's decision of June 16, 2011, and the decision was against the manifest weight of the evidence."

{¶9} Appellants do not appeal the portion of the judgment granting full custody of K.F. to Ms. Pokorny, but instead only appeal the judgment as it pertains to costs.

{¶10} An appellate court evaluates an order for compensation to a guardian ad litem or court-appointed counsel under an abuse of discretion standard. *In re Marquez*, 1996 Ohio App. LEXIS 5232, *3 (11th Dist.), citing *Robbins v. Ginese*, 93 Ohio App.3d 370 (8th Dist.1994), and *Davis v. Davis*, 55 Ohio App.3d 196 (8th Dist.1988). An abuse of discretion is the trial court's "'failure to exercise sound, reasonable, and legal decision-making.'" *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting *Black's Law Dictionary* 11 (8th Ed.2004).

{¶11} Appellants contend the decision to tax guardian ad litem fees and court-appointed counsel fees as costs was an abuse of discretion. However, regardless of whether the action is considered "dependency" or "custody," the court may tax these fees as costs in its discretion.

{¶12} Juv.R. 4(A) allows for the assistance of counsel in juvenile cases. It states, in pertinent part: "Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed

counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding." Because appellants became parties to a juvenile court proceeding and were deemed indigent, they were entitled to court-appointed counsel.

{¶13} Juv.R. 4(B) directs the court to appoint a guardian ad litem to protect the interests of a child. As this was a juvenile proceeding where the interests of the child and the parents may conflict, the court was required to appoint a guardian ad litem.

{¶14} Juv.R. 4(G) grants the authority to levy fees for both court-appointed counsel and a guardian ad litem: "The court may fix compensation for the services of appointed counsel and guardians ad litem, tax the same as part of the costs and assess them against the child, the child's parents, custodian, or other person in loco parentis of such child." R.C. 2152.281(D) also grants the court authority to "fix compensation for the service of the guardian ad litem." Thus, the rules specifically allow for the court to tax these fees as costs for the entire case.

{¶15} The trial court made a distinction as to when this matter became "private," i.e., when the matter became a custody issue instead of a dependency issue. This distinction is not necessary because, as explained above, a trial court may tax court-appointed counsel and guardian ad litem fees even in dependency cases. The trial court's decision as it pertained to costs was actually to the benefit of appellants. Initially, the magistrate recommended that *all* guardian and attorney fees be taxed as costs. The trial court limited the costs appellants were liable for by narrowing the time frame. In doing so, the trial court incurred all court-appointed counsel and guardian ad litem fees for the time frame prior to May 16, 2010, *even though it could have taxed these costs to appellants*.

{¶16} Appellants contend their indigency status precluded imposition of costs because the court was required to make a finding that they had the means to pay, pursuant to R.C. 120.05(D). That statute, relevant only to criminal cases, states: "Where the person represented has, or may reasonably be expected to have, the means to meet some part of the cost of the services rendered to him, he shall reimburse the state public defender in an amount which he can reasonably be expected to pay." This statute is virtually mirrored in R.C. 2941.51, where "[a] trial court is required to make a finding on the record regarding an offender's ability to pay appointed counsel fees before assessing the costs of appointed counsel." *State v. Clark*, 11th Dist. No. 2006-A-0004, 2007-Ohio-1780, ¶38 (reversed on other grounds). Appellants seem to acknowledge the statutes apply to criminal cases but argue that a similar logic should apply here. Their argument is not persuasive.

{¶17} This court has expressly held that court costs, including those for a guardian ad litem, may be imposed on an indigent civil litigant. *Jackson v. Herron*, 11th Dist. No. 2004-L-045, 2005-Ohio-4039, ¶12, relying on *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, paragraph one of the syllabus ("the imposition of court costs on an indigent defendant is not an infringement of his rights nor does it violate any statute"), and *Strattman v. Studt*, 20 Ohio St.2d 95, 103 (1969) ("by being involved in court proceedings, any litigant, by implied contract becomes liable for the payment of court costs if taxed as part of the court's judgment"). The trial court therefore did not abuse its discretion when it taxed the court-appointed counsel and guardian ad litem fees as costs against appellants. It scheduled a hearing, allowed the parties an opportunity to be heard, and considered the arguments from the parties' attorneys, even

though the parties were not present for the hearing until it concluded. The subsequent allocation of the guardian ad litem compensation is a burden shared between appellants, the paternal aunt, and the trial court. It is not arbitrary or unreasonable.

{¶18} Although it has not been raised in this appeal, it should be noted that, as Juv.R. 4(G) applies in this case, court costs constitute a civil obligation for which a party may *not* be incarcerated under Article 1, Section 15 of the Ohio Constitution. *See In re Bailey*, 1st Dist. No. C-060700, 2007-Ohio-4192, ¶17 (when "fees are denoted court costs under Juv.R. 4(G), the obligation to pay the fees is a civil obligation for which a party may not be incarcerated"). *See also In re Buffington*, 89 Ohio App.3d 814, 816, (6th Dist.1993) (an order to pay costs is a judgment on a contractual debt where the court is the creditor able to collect only by the methods provided for the collection of civil judgments).

{¶19} Appellants' sole assignment of error is without merit. The judgment of the Lake County Court of Common Pleas, Juvenile Division, is affirmed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.