

[Cite as *In re Z.B.*, 2009-Ohio-3350.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:

Z.B.

Alleged Dependent Child

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CASE NO. 08 MA 106

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from the Court of Common
Pleas, Juvenile Division, of Mahoning
County, Ohio
Case No. 04 JC 207

JUDGMENT:

Affirmed.

APPEARANCES:

For Appellant, Zipporah Battles Coats:

Atty. Jennifer Boyle Beck
412 Boardman-Canfield Road
Boardman, Ohio 44512

For Appellee, Mahoning County
Children Services:

Atty. Lori Shells-Conne
222 West Federal Street, 4th Floor
Youngstown, Ohio 44503

Mr. James Cocco
CASA/Guardian Ad Litem
300 East Scott Street
Youngstown, Ohio 44505

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: June 30, 2009

[Cite as *In re Z.B.*, 2009-Ohio-3350.]
WAITE, J.

{¶1} This is a child dependency case in which the Mahoning County Children Services Board (“MCCSB”) was granted permanent custody of the minor child Z.B., dob 6/22/1996. Appellant, Zipporah Coats, is the mother of the child. The child became dependent in 2004 after she was stabbed by her maternal grandmother, Mildred Battles. Ms. Battles was charged with attempted murder, and Ms. Coats was charged with child endangering. Appellant pleaded guilty to child endangering and was sentenced to two years of supervised release. MCCSB filed for permanent custody in August 2006, and Appellant failed to appear at any of the custody hearings. The trial court found that the child was in the temporary custody of MCCSB for 12 or more months out of a 22 month period, and that it was in the best interests of the child to award permanent custody to MCCSB. The record supports the trial court findings and the judgment of the Mahoning County Court of Common Pleas, Juvenile Division, is affirmed.

Case History

{¶2} Z.B. was stabbed by her grandmother on February 6, 2004. The child and her grandmother were both residing with Appellant at the time. Appellant was charged with felony child endangering, and pleaded guilty to the charge. On February 11, 2004, MCCSB filed a dependency complaint, and temporary custody was granted. The child was adjudicated a dependent child on March 11, 2004. The child was placed in foster care. The putative father has been given notice of all hearings in this case but has not made an appearance at any stage of the proceedings.

{¶3} On August 11, 2006, MCCSB moved for an order of permanent commitment of the child. A final hearing was scheduled for March 30, 2007. The hearing was postponed, in part, because MCCSB was attempting to place the child with a relative. The hearing was also postponed because Appellant's counsel filed a motion to withdraw due to Appellant's lack of cooperation and failure to appear at various hearings. New counsel was appointed, and a new hearing date was set. A final magistrate's hearing was held on October 2, 2007. Appellant did not attend, although her attorney was present.

{¶4} The magistrate found that the child was stabbed by her maternal grandmother, who was indicted for attempted murder but was found not competent to stand trial. Appellant was present in the household when the stabbing occurred. The child was placed with MCCSB and a case plan was prepared. Appellant eventually pleaded guilty to felony child endangering and served two years of probation, which ended on December 12, 2006.

{¶5} The magistrate further found that the MCCSB case plan included parenting classes, drug and alcohol assessment, and the resolution of the criminal charges pending against Appellant. The plan also included a psychological evaluation and counseling for Appellant. The psychological evaluation took place, but the magistrate found that Appellant failed to complete follow up care. The magistrate found that Appellant had been diagnosed with a personality disorder and an adjustment disorder. The magistrate found that Appellant completed parenting

classes, drug and alcohol assessment, and cooperated with her probation such that she was released early from the terms of probation.

{¶6} The magistrate found that Appellant was required to keep and maintain a stable home, but that she was evicted from her home and required to move. She would not permit MCCSB to enter her new apartment and the caseworker could not complete the required monthly home inspections. The magistrate found that visits between Z.B. and Appellant were not going well. The child would complain of stomach aches when the visits occurred. Appellant would yell at Z.B., tell the child that the custody dispute was the child's fault, and tell the child that God would not bless her because she would not return home with Appellant. A MCCSB caseworker noted that Appellant constantly argued with Z.B. during controlled visitation. One visit needed to be stopped because Z.B. was very upset by an argument with Appellant. Z.B. asked, orally and in writing, that visitation be terminated. MCCSB looked into placing Z.B. with a maternal aunt, but the aunt later withdrew her consent to placement.

{¶7} The magistrate noted that Appellant failed to attend any court hearings in the custody case after April of 2006.

{¶8} Another daughter of Appellant, Zanoah Battles, testified at the hearing. Zanoah was 20 years old and was a student at Youngstown State University. Zenoah testified that Appellant was not mentally fit to have custody of Z.B. She also testified that Appellant once threatened to kill her.

{¶9} Zsa Zsa Battles Arrington, Appellant's sister, testified that Z.B. would not be safe with Appellant. She testified that Appellant never took care of her children and that Appellant's mother, Mildred Battles, actually took care of Appellant's children. She testified that Appellant has animosity toward everyone and does not know how to raise children.

{¶10} The magistrate found by clear and convincing evidence that Z.B. had been in the custody of MCCSB for more than 12 of 22 months, that the child could not be placed with either parent, that reasonable efforts were used to prevent the need for placement and to return the child to her home, that the parents had abandoned the child due to failure to visit for more than 90 days, that the child's continued residence in or return to her home would be against her best interests, and that permanent commitment to the custody of MCCSB was in the child's best interests.

{¶11} The magistrate mentioned the following factors in its decision: the custodial history of the child; the interaction of Appellant and child; the likelihood of continued inadequate care; Appellant's emotional disorders; Appellant's failure to support and provide for the child; the probability of adoption; the lack of parental care; the child's need for a secure home; Appellant's criminal conviction; and the probability that Appellant would not be able to care for the child within a reasonable amount of time. The magistrate did not mention danger to the child as a factor in its decision.

{¶12} On November 19, 2007, Appellant filed objections to the magistrate's decision. In her objections, she challenged the findings that she abandoned the child; that she could not provide for the child within a reasonable period of time; and argued that the overall outcome of the decision was not supported by the evidence.

{¶13} The trial judge held an objections hearing on March 17, 2008. Once again, Appellant did not appear at the hearing, although her attorney did attend. The trial judge asked why Appellant was not in attendance, if there were any health issues preventing her attendance, and if she had notice of all hearings. Counsel stated that there were no health issues, that she had proper notice, and that he did not know why Appellant failed to appear at any court appearances after April, 2006.

{¶14} The court found no error in the magistrate's decision. The court repeated the magistrate's findings, including the finding that the parents had abandoned the child and adopted the magistrate's decision. The court ordered that Z.B. be permanently committed to MCCSB, with power of adoption, and held that the child's best interests would be served by permanently terminating the parental relationship. The final judgment was filed on April 16, 2008.

{¶15} This appeal was filed on May 7, 2008. The trial court granted a stay of the judgment so that Appellant could continue visiting Z.B. during the appeal.

ASSIGNMENT OF ERROR

{¶16} "THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION REQUIRES CHILDREN SERVICES BOARD TO PROVIDE CLEAR AND CONVINCING EVIDENCE IN ORDER TO TAKE

PERMANENT CUSTODY OF A CHILD AND THERE IS AN ABUSE OF DISCRETION WHEN THAT STANDARD IS NOT MET WHICH RESULTS IN A CONSTITUTIONAL VIOLATION.”

{¶17} Appellant’s argument begins with her claim that her constitutional rights of due process were violated. This argument was not raised as part of the objections to the magistrate’s decision. Juv.R. 40(D)(3)(b)(iv) prohibits a party from assigning as error on appeal the court’s adoption of any factual finding or legal conclusion unless a proper objection was made to the trial court. Appellant did raise general objections to the magistrate’s findings and to the final result reached by the magistrate, and thus, Appellant may appeal on that basis. As a matter of course, the basic constitutional rights of a parent over a child will be noted in this Opinion.

{¶18} A parent’s right to raise his or her children is an essential and basic civil right. *Stanley v. Illinois* (1972), 405 U.S. 645, 651, 92 S.Ct. 1208, 1212-1213, 31 L.Ed.2d 551. Parents have a “fundamental liberty interest” in the care, custody, and management of the child. *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599. Custody, care and nurture of the child reside, first and foremost, in the parents. *H.L. v. Matheson* (1981), 450 U.S. 398, 410, 101 S.Ct. 1164, 67 L.Ed.2d 388. Permanent termination of parental rights is the family law equivalent of the death penalty in a criminal case, so parents involved in such an action must be afforded every procedural and substantive protection the law allows. *In re Hayes* (1997), 79 Ohio St.3d 46, 48, 679 N.E.2d 680.

{¶19} Appellant acknowledges that, pursuant to R.C. 2151.414(B)(1)(a)-(d), an agency seeking permanent custody of a child must prove by clear and convincing evidence that transfer of permanent custody is in the child's best interests, and the agency must establish one or more of the factors listed in subsections (a)-(d) of the statute. These factors are:

{¶20} "(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

{¶21} "(b) The child is abandoned.

{¶22} "(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶23} "(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child

placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.”

{¶24} An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, 782 N.E.2d 665, ¶16. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 520.

{¶25} Appellant does not dispute that Z.B. has been in the custody of MCCSB for 12 or more months of a consecutive 22-month period. In fact, Z.B. has been in the uninterrupted custody of MCCSB since February 11, 2004. This satisfies the requirements of R.C. 2151.414(B)(1)(d). Therefore, the only remaining issue for review is whether the record supports that permanent placement with MCCSB is in the child's best interests as found by the trial court.

{¶26} In considering the best interests of the child, the court must consider the factors in R.C. 2151.414(D), which include the interaction of the child with parents, siblings, and foster parents; the wishes of the child; the custodial history of the child; and the child's need for a legally secure permanent placement. The court must also consider the factors listed in R.C. 2151.414(E)(7)-(11), although that list of best interests factors is not exhaustive and the court may consider any other factors

that it considers to be relevant. *In re Kayla H.*, 175 Ohio App.3d 192, 2007-Ohio-6128, 886 N.E.2d 235, ¶60.

{¶27} The record indicates that Z.B.'s interaction with Appellant is very poor, while her relationship with her foster parents is very positive. The child's relationship with Appellant was so negative that the child became physically ill from the visits. Z.B. was berated by Appellant, and one visit was terminated early because of the escalating volatility between the two of them. This evidence was not refuted at the final custody hearing.

{¶28} The record indicates that Z.B. did not wish to be returned to Appellant's care or household, and that she wanted all visitation to be stopped. This evidence was not refuted at the final custody hearing.

{¶29} The record indicates that the child has never been returned to Appellant's custody after the initial assault was committed in 2004.

{¶30} The trial court relied on a variety of other factors to support its decision. The court noted that Appellant did not complete follow up care after her psychological evaluation. Appellant attended some counseling sessions, but changed counseling centers three times due to disagreements with the treatment, and then stopped going altogether. Because she was evicted, Appellant did not keep a stable home as required by the case plan. The court noted that Appellant would not then allow MCCSB workers to conduct home inspections in her new home. The court recognized that Appellant was required by the case plan to have an income, but her only income was from Mahoning County Job & Family Services.

{¶31} Appellant failed to attend a semi-annual review hearing to discuss the child's placement situation. The court found that Appellant failed any attempt at reunification with her daughter, and has refused to attend any court hearings since April of 2006. The court also found that Appellant was an unfit parent. The court determined that reasonable efforts were made to prevent the need for placement, even though the court was not required to make this finding under the facts of this case.

{¶32} The court found that the child's father had abandoned the child, and there is no dispute that the father has waived all rights in this case and is not objecting to the transfer of permanent custody to MCCSB. In fact, he has not made any appearance in this case.

{¶33} Finally, the court specifically found by clear and convincing evidence that the best interests of the child were served by permanently committing the child to the custody of MCCSB with power of adoption, and the court expressly divested Appellant of any and all parental rights.

{¶34} Appellant would like us to believe that she cooperated fully with her case plan and was not at fault in the original assault against her daughter, and thus, should not be punished by having her daughter permanently taken away from her. Although Appellant correctly points to many aspects of her case plan that were successfully completed, these positive aspects (which were duly noted by both the magistrate and trial judge) do not overcome the overwhelmingly negative findings of the court regarding Appellant's interaction with MCCSB, with the court system, and

with her daughter. The record contains clear and convincing credible evidence to support the juvenile court's determination, and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

DeGenaro, J., concurs.