

STATE OF OHIO, JEFFERSON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:) CASE NO. 14 JE 14
A.L.F.)

DAVID FRY, ET AL.,)

PLAINTIFFS-APPELLANTS,)

VS.)

JODI LASURE,)

DEFENDANT-APPELLEE.)

OPINION

CHARACTER OF PROCEEDINGS:

Appeal from Common Pleas Court,
Juvenile Division
Case No. 2013CU00127

JUDGMENT:

Affirmed.

APPEARANCES:

For Appellants:

David Fry, Pro Se
Melissa Fry, Pro Se
505 Harrison Street, Apt. C
P.O. Box 620
Empire, Ohio 43926

For Appellee:

No Brief Filed

JUDGES:

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

Dated: June 5, 2015

DeGENARO, J.

{¶1} This pro-se appeal filed by Appellants, David Fry and Melissa Fry, challenges the Jefferson County Juvenile Court's decision denying their motion to terminate Appellee, Jodi Lasure's, temporary custody of their minor child, A.L.F. For the reasoning provided below, Appellants' argument is meritless, and the decision of the juvenile court is affirmed.

{¶2} A.L.F. was born to David and Melissa on July 15, 2012. In March of 2013, the Mahoning County Juvenile Court adjudicated A.L.F. to be dependent and ordered the child into the temporary custody of Melissa's cousin, Jodi Lasure. Melissa and David were awarded two hours of parenting time each week.

{¶3} On August 13, 2013, Melissa and David initiated this matter in the Jefferson County Juvenile Court by filing a pro-se "Judgment Entry on Reallocation of Parental Rights and Responsibilities." Although no statements were made invoking the jurisdiction of the juvenile court in these filings, apparently they were deemed sufficient to initiate proceedings. Jodi filed a handwritten response, which the clerk's office docketed as an answer. Melissa and David then filed a "Motion to End Temporary Custody Contempt of Court."

{¶4} On February 13, 2014, a hearing was held on this motion. Melissa did not appear and David represented himself. The magistrate acknowledged the minor child had been removed by Mahoning County Children Services shortly after birth and placed in Jodi's custody where he has resided with her in Jefferson County since October 2012, thus establishing jurisdiction. Finding not only that there was no change in circumstances, but also that a change in custody would not be in the child's best interest, the magistrate recommended Jodi remain the legal custodian and Melissa and David remain as the "non-residential parents" continuing to receive the previous visitation order.

{¶5} Melissa and David filed a pro se "Objection to Decision Request for Oral Argument," challenging the dependency finding and allocation of temporary custody made in Mahoning County; they did not challenge the Jefferson County Magistrate's Decision. The juvenile court overruled the objections, adopted the magistrate's decision in full, and left in place the prior order.

{¶6} In "Proposition of Law No. 1" Melissa and David assert:

{¶7} "A Juvenile Court abuses discretion in granting temporary custody to anyone when the reports that were made (sic) not contain true circumstance where evidence could not be produce (sic) to meet clear convincing standard."

{¶8} Melissa and David appear to argue that the juvenile court improperly granted temporary custody because the appropriate legal standard was not met. Their appeal fails for two reasons.

{¶9} First, Juv.R. 40(D)(3)(b)(iv) provides that "[a] party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule." While Melissa and David did file a document they styled as objections, they failed to state any grounds with specificity and to reference the record as Juv.R. 40 requires. Thus, they have waived all but plain error which is generally not favored in civil cases. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122, 1997-Ohio-401, 679 N.E.2d 1099.

{¶10} "Plain error exists where there is an obvious deviation from a legal rule that affected the defendant's substantial rights by influencing the outcome of the proceedings." *In re J.C.*, 2013–Ohio–2819, 994 N.E.2d 919, at ¶ 10 (11th Dist.) citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002–Ohio–68, 759 N.E.2d 1240 (2002). Melissa and David do not allege the existence of such error of law or other defect on the face of the magistrate's decision, and no such error or defect can be found. See *Mlinarcik v. Mlinarcik*, 7th Dist. No. 04 CO 30, 2006-Ohio-1287.

{¶11} Because Melissa and David failed to raise the issue through objections and do not argue plain error on appeal, they have failed to preserve any challenges for us to consider on appellate review. An appellate court will not consider any error which the complainant could have called to the trial court's attention at a time when such error could have been corrected or avoided by the trial court. *In re I.T.A. and A.A.*, 7th Dist. Nos. 11 BE 27, 11 BE 29, 2012–Ohio–1689, ¶ 17 citing *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 210, 436 N.E.2d 1001.

{¶12} Second, and more importantly, in their objections Melissa and David challenge findings and orders made in the proceedings that had taken place in Mahoning County which previously granted Jodi temporary custody. The Jefferson

County Juvenile Court denied Melissa and David's motion to terminate Jodi's temporary custody. In order to challenge the adjudication of dependency and placement of the minor child with Jodi as ordered by the Mahoning County Juvenile Court, Melissa and David should have appealed the appropriate judgments issued by that court. They cannot use an appeal of the Jefferson County Juvenile Court's judgment denying their motion to terminate temporary custody as a collateral attack on the Mahoning County Juvenile Court's adjudication and placement. See *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶22. (“ * * * subject to only rare exceptions, direct attacks, i.e., appeals, by parties to the litigation, are the primary way that a civil judgment is challenged. For these reasons, it necessarily follows that collateral or indirect attacks are disfavored and that they will succeed only in certain very limited situations.”)

{¶13} Accordingly, Melissa and David's assignment of error is meritless and the judgment of the trial court is affirmed.

Donofrio, P.J. concurs.

Waite, J. concurs.