

STATE OF LOUISIANA IN THE
INTEREST OF T. B. AND Z. C.

NO. 16-CA-215

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 15-CC-35, DIVISION "B"
HONORABLE ANDREA PRICE JANZEN, JUDGE PRESIDING

September 22, 2016

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Susan M. Chehardy,
Marc E. Johnson, and Robert A. Chaisson

AFFIRMED

SMC

MEJ

RAC

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA, DEPARTMENT OF CHILDREN AND FAMILY
SERVICES

Jessica Coalter

COUNSEL FOR PARENT/APPELLANT,
RACHEL CRESSIONNE (MOTHER)

Jennifer G. Womble

CHEHARDY, C.J.

In this appeal, R.C. seeks review of the Jefferson Parish Juvenile Court's January 19, 2016 judgment permanently placing her minor daughters, T.B. and Z.C., in the guardianship of their grandparents. For the reasons that follow, we affirm this judgment of the juvenile court.

FACTS AND PROCEDURAL HISTORY

On June 12, 2004, T.B. was born to R.C., her mother, and P.B., her father. R.C.'s relationship with P.B. subsequently ended and R.C. began dating J.G. in 2007. On May 26, 2009, Z.C. was born to R.C. and J.G. The couple later married in 2011. In September of 2012, after having confided in her friends, T.B. lodged a complaint with the Louisiana Department of Child Services ("DCFS") that she had been sexually abused by her stepfather, J.G. DCFS investigated and validated this complaint. Law enforcement also investigated this complaint, which resulted in J.G.'s arrest, though he was ultimately never charged with a crime.¹ DCFS implemented a safety plan that permitted the girls to remain with their mother on the condition that J.G. not contact them. Although he denied the allegations, J.G. moved out of the home.

Several years later, on February 24, 2015, DCFS received a report that J.G. had been in contact with T.B., Z.C., and R.C. The subsequent investigation determined that R.C. had been visiting with J.G. and permitting her daughters to visit with him. As a result, in order to ensure the safety and well-being of the children, DCFS requested temporary custody. The juvenile court granted this request on February 26, 2015, issuing an oral instant order in accordance with La. Ch.C. arts. 619 and 620. The girls were then placed in the care of their maternal grandparents pursuant to La. Ch.C. art. 622. On March 3, 2015, the court

¹ 24th Judicial District Court No. 13-3391.

held the continued custody hearing in accordance with La. Ch.C. art. 624 and found reasonable grounds to believe that the children were in need of care and that continued custody with DCFS was necessary for their safety and protection.

On March 19, 2015, the Jefferson Parish District Attorney filed a petition pursuant to La. Ch.C. art. 631, alleging that T.B. and Z.C. were children in need of care. The adjudication hearing on this in-need-of-care petition was held on May 15, 2015. At this hearing, both R.C. and J.G. stipulated, in accordance with La. Ch.C. art. 647, that T.B. and Z.C. were in need of care without admitting to the allegations in the petition. In accepting their stipulation, the court advised R.C. and J.G. that they would “be required to work a case plan to correct any conditions that brought the children into the jurisdiction of the court.”

In accordance with La. Ch.C. art. 678, the court held the disposition hearing on June 16, 2015, in which DCFS presented the case plan to the court. In the resulting judgment of disposition, the court found that custody of the children with their grandparents was the least restrictive disposition consistent with the circumstances of the case, the health and safety of the children, and the best interest of society. *See* La. Ch.C. art. 683(A). The court also adopted the case plan developed by DCFS.

While the primary goal of the case plan was to reunite the children with their parents, the court articulated a secondary goal at the disposition hearing, which was incorporated into the case plan:

I am actually going to approve a dual case plan goal of reunification with the parents and/or maintaining the family unit with the [grandparents] so that in the event the parents are not able to demonstrate to me that the children can be reunited with them, the secondary goal here is to have legal custody remain with the [grandparents].

Among other things, the plan required R.C. and J.G. to maintain safe and stable housing, to maintain contact with DCFS, to make financial contributions to

the children's care, to participate in the Tulane Parenting Education Program ("T-PEP"), and to undergo psychological evaluations. T.B. and Z.C. were also referred to counseling with T-PEP.

P.B., T.B.'s biological father who resided in Michigan, was likewise ordered to maintain safe and stable housing, to make financial contributions, to establish a relationship with and make a plan of care for T.B., and to participate in any therapy recommendations. All three parents were ordered to participate in sexual abuse education for the purpose of understanding the effects of the abuse on T.B. In addition, J.G. was ordered to undergo sexual perpetrator treatment. The case plan also implemented a supervised visitation schedule.

At the conclusion of the disposition hearing, the court admonished all three parents:

If I don't see significant measurable progress toward all of these treatment goals—that you can demonstrate that you have learned from the treatment process and that you can improve your parenting ability for these children and that you can keep them safe—then you will not be reunited with your children.

The next hearing was held on September 15, 2015. Prior to that, T-PEP's monthly progress report for August was submitted to the court. This report reflected that although R.C. "has engaged in T-PEP services and has been willing to begin delving into difficult topics," "she has stated that she does not believe that [T.B.] was sexually abused." As a result, the clinicians found that R.C. "has not yet indicated an understanding of [T.B.'s] experience of sexual abuse, expressed empathy toward her experiences, emotions, and related needs or made progress that suggests that she would protect her daughters differently in the future." With respect to J.G., the report similarly found that "he has not demonstrated an acceptance of responsibility for [T.B.'s] sexual abuse or made progress that would indicate a change in his thoughts or behaviors in this regard."

At the status hearing on September 15, 2015, Denise Williams, the DCFS case worker, testified that although J.G. and R.C. had been compliant with their obligations under the case plan—*i.e.*, attending counseling and therapy sessions—they had not made measurable progress toward achieving the goals of the plan. They both continued to deny that the sexual abuse had occurred. “Until the parents realize their role in all of this,” Ms. Williams explained, “then [T.B.] is never going to be safe in that home.” Ms. Williams added that the girls were doing well in the custody of their grandparents and recommended that they remain there. Similarly, Cynthia Dauner, the Court Appointed Special Advocate (“CASA”) of Jefferson Parish, recommended that the children remain with their grandparents.

After this hearing, the parents continued with the case plan and T-PEP continued to compile monthly progress reports. The reports of September and October 2015 included similar findings as the August report: neither R.C. nor J.G. demonstrated progress, continuing to deny that the sexual abuse had occurred.

And the October report included a new observation:

[R.C.] has also expressed her belief that she can support [T.B.], and parent her warmly, without believing [T.B.]’s allegations of sexual abuse. This is a significant concern because [R.C.] appears unaware of the way in which her beliefs and feelings negatively affect her emotional presentation and behaviors as a parent, and thus affect her daughter.

For the months of November and December 2015, T-PEP issued one report, which reflected that J.G. and R.C. continued to deny the sexual abuse. This report also reflected that R.C. persisted in her failure to understand how her denial of the abuse affects her parenting ability:

[R.C.] verbalized her desire to support [T.B.] regardless of her own beliefs about [T.B.’s] experience of sexual abuse. However, she does not seem [to] recognize how her disbelief and her feelings about [T.B.’s] allegations do, and likely would, affect her ability to truly be supportive and protective of her daughter. ... [R.C.] denies that her feelings about [T.B.’s] sexual abuse play a role in her ability to parent [T.B.] effectively and sensitively.

The November/December report further reflected that J.G. had ceased communication with T-PEP on December 8, 2015 and that T-PEP planned to discontinue services with R.C. and J.G. due to their lack of demonstrable progress. J.G. committed suicide on January 6, 2016.

In anticipation of the next hearing, DCFS submitted to the court its own report, dated January 8, 2016. This report found that R.C. “has not yet indicated an acceptance of [T.B.’s] experience of sexual abuse, expressed genuine empathetic understanding related to [T.B.’s] experiences, emotions, and related needs, or made progress that indicates she would protect her daughters differently in the future.” The report expressed further concern...

...that [R.C.] has not sufficiently developed an understanding of [T.B.’s] sexual abuse and its effects, and as such [the agency] cannot say with any confidence that she would make appropriate decisions and choices in the future to adequately protect [T.B.] or that she could support [T.B.’s] optimal recovery from past sexual abuse. [R.C.] has not made demonstrable progress that remediates the concerns that brought the children into care.

On January 19, 2016, the court conducted the permanency hearing in accordance with La. Ch.C. art. 702, the purpose of which was to determine the permanent plan for the children. *See* La. Ch.C. art. 603(21).

The testimony offered at the permanency hearing reiterated the findings by T-PEP and DCFS. Daria Morris, the DCFS supervisor on the case, testified that R.C. “never really grasped the abuse that [T.B.] experienced” and recommended that the girls remain with their grandparents. The CASA advocate agreed that the girls should remain in the custody of their grandparents. Ms. Morris further added that the girls were doing well with their grandparents: receiving all medical and therapeutic treatment and excelling in school.

R.C. testified at this hearing. She still failed to indicate an acceptance of her daughter’s allegations of sexual abuse, stating: “I believe that something happened to [T.B.] and I’m not sure what that is.”

At the conclusion of the hearing, the court permanently placed T.B. and Z.C. in the guardianship of their grandparents. The court explained its findings to R.C.:

[T]he issue before me is have you made substantial progress toward your case plan goal one year after [the children] came into the court system? The answer is no, you have not. The experts that are advising me today say no. Your own self-serving testimony tells me perhaps you have, but I don't have...any expert opinion to contradict what the experts at T-PEP are telling me. What I do have are two children who have been living with their grandparents who have made enormous progress from the stability of [their grandparents]. They have stabilized in school. They have stabilized in the community. They have stabilized in their family. They feel safe. They are safe. And I simply have absolutely nothing to convince me that it is not in their best interest, number one, to keep them together as close as they are as sisters. And, number two, keep them together with [their grandparents] who are providing for all of their needs in an outstanding manner. There is absolutely not one shred of evidence that it is not in their best interest to remain where they are in the stable loving placement of their grandparents.

The court followed this ruling with extensive written reasons for judgment on February 17, 2016. It is from the juvenile court's judgment of January 19, 2016 that R.C. has appealed.

ASSIGNMENTS OF ERROR

On appeal, R.C. raises three assignments of error: (1) the juvenile court committed manifest error in its ruling of January 19, 2016 by finding that the legal custody of T.B. and Z.C. to the maternal grandparents as the permanent plan was in the best interests of the children; (2) the juvenile court committed manifest error by refusing to allow R.C.'s attorney to question witnesses concerning the credibility and reliability of T.B.; and (3) the juvenile court committed manifest error by refusing R.C.'s request to set a further hearing.

DISCUSSION

Assignment of Error One

In R.C.'s first assignment of error, she argues that the juvenile court erred in its January 19, 2016 judgment by permanently placing T.B. and Z.C. in the guardianship of their grandparents.

An appellate court's review of a juvenile court's determination of a permanent plan is governed by the manifest error standard. *State v. N.C.*, 50,446 (La. App. 2 Cir. 11/18/15), 184 So.3d 760, 770. Under this standard, the appellate court must not substitute its own opinion when it is the juvenile court that is in the unique position to see and hear the witnesses as they testify. *Id.* Where there is conflicting testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even when the appellate court may feel that its own evaluations and inferences are as reasonable as those of the juvenile court. *Id.* If the juvenile court's findings are reasonable in light of the record reviewed in its entirety, the appellate court may not reverse, even though convinced that, had it been sitting as the trier of fact, it would have weighed the evidence differently. *Id.*

A court's determination as to the permanent plan for a child who has been adjudicated in need of care is governed by La. Ch.C. art. 702. Subsection (C) provides:

The court shall determine the permanent plan for the child that is most appropriate and in the best interest of the child in accordance with the following priorities of placement:

(1) Return the child to the legal custody of the parents within a specified time period consistent with the child's age and need for a safe and permanent home. *In order for reunification to remain as the permanent plan for the child, the parent must be complying with the case plan and making significant measurable progress toward achieving its goals and correcting the conditions requiring the child to be in care.*

(Emphasis added).

A juvenile court's determination that a parent has not made significant measurable progress toward achieving the goals of his/her case plan, as required by La. Ch.C. art. 702(C)(1), has been held sufficient to support the permanent placement of a child outside the parental home. In *State ex rel. E.F.*, 10-1185 (La. App. 1 Cir. 10/29/10), 49 So.3d 575, 579, EJ, a minor child, had been adjudicated

in need of care on the basis of physical abuse. The case plan that was later adopted at the disposition hearing provided in pertinent part:

The parents will need to gain an understanding of the injuries their child sustained. They will need to acknowledge that the injuries were non-accidental in nature and that [EJ] was the victim of physical abuse. They need to be able to verbalize how they are going to be able to protect him in the future from an injury such as he has suffered.

See id. at 580.

After the permanency hearing, the juvenile court determined that the parents had not made significant measurable progress toward achieving this goal of their case plan. *See id.* at 581-82. As a result, the court determined that reunification was not in the child's best interest and so permanently placed EJ in the guardianship of his godparents. *See id.* His parents appealed and the First Circuit affirmed. *See id.* at 586. The court found that the juvenile court had not erred in permanently placing the child in the guardianship of his godparents on the basis of the parents' failure to make progress toward understanding their child's injuries, as set forth in the case plan. The court explained:

Pursuant to La. Ch. C. art. 702(C)(1), in order for reunification to remain as the permanent plan for the child, the parents must be complying with the case plan and making significant measurable progress toward achieving its goals and correcting the conditions requiring the child to be in care. The parents contend that they were complying with their case plan, as was stipulated. However, as noted by the juvenile court, the parents failed to make any progress in complying with the single most important part of their case plan, namely, they failed to provide any explanation for the life-threatening injuries sustained by EJ, and they failed to provide OCS with a plan to ensure EJ's safety if he were to be returned to them.

Id. at 584.

Similarly, in the present case, the juvenile court's decision to permanently place the girls in the guardianship of their grandparents was based upon its determination that R.C. had not demonstrated significant measurable progress toward the case plan goal of understanding the effects of sexual abuse on T.B.

All parties and the court approved the case plan at the disposition hearing on June 16, 2015. One component of the plan required R.C. to “participate in sexual abuse education *to understand the effects of the abuse on [T.B.]*.” (Emphasis added). No objections were lodged and the court specifically advised R.C. that “if I don’t see *significant measurable progress* toward all of these treatment goals...then you will not be reunited with your children.” (Emphasis added).

Thereafter, R.C. began participating in the case plan. But at each evaluation along the way, both T-PEP and DCFS found that R.C.’s progress was stunted by her refusal to accept that T.B. had been sexually abused. Absent this acceptance, R.C. was unable to empathize with or understand T.B.’s experiences, emotions, and needs, which in turn raised the further concern that R.C. was not suited to ensure her children’s safety and protection. Even at the permanency hearing on January 19, 2016, R.C. was still unwilling to accept T.B.’s allegations of sexual abuse.

Upon our review of the record, we find there is a reasonable factual basis for the juvenile court’s determination that R.C. had not demonstrated significant measurable progress toward the case plan goal of understanding the effects of sexual abuse on T.B. Accordingly, the juvenile court did not manifestly err in concluding that it was in the best interest of T.B. and Z.C. to be permanently placed in the guardianship of their grandparents, rather than be reunited with their mother.

This assignment of error has no merit.

Assignment of Error Two

In R.C.’s second assignment of error, she argues that the juvenile court erred in refusing to allow trial counsel to question witnesses at the permanency hearing regarding T.B.’s credibility.

At the hearing on January 19, 2016, Jesse George, counsel for the children, objected to a line of questioning posed by Jennifer Womble, counsel for R.C., during the direct examination of R.C.'s brother, the girls' uncle.

MS. WOMBLE: Do you believe the allegation that [T.B.] has made?

THE COURT: Okay. I am not going to allow that. That is completely irrelevant. Move on, Ms. Womble.

MS. WOMBLE: Can you tell me...about [T.B.]. How is [sic] her interactions with everyone?

WITNESS: ...[T.B.] has some struggles, some social anxiety[.] She...has a little problem with authority. She...will try to manipulate her way into getting...

MR. GEORGE: I'm going to object, Your Honor.

THE COURT: Sustained. ...where are you going with this, Ms. Womble?

MS. WOMBLE: Your Honor, my point is I wanted to point out to the Court that...my client has had some hesitation in the past believing [T.B.], and that [T.B.] isn't always...

THE COURT: She's an 11-year-old child. Let's move on. I'm not going to allow this line of questioning.

Without lodging an objection to this ruling, Ms. Womble moved on to another line of questioning with the witness. The lack of an objection precludes our review.

To preserve an issue for appellate review, a party must make a timely objection and state the specific ground for the objection. *L.R.F. v. A.A.*, 13-797 (La. App. 5 Cir. 2/26/14), 133 So.3d 716, 722, *writ denied*, 14-0655 (La. 4/17/14), 138 So.3d 633, *cert. denied*, 2014 U.S. LEXIS 5986, 135 S.Ct. 224, 190 L.Ed.2d 134 (2014) (citing La. C.E. art. 103(A)(1); La. C.C.P. art. 1635). Failure to contemporaneously object constitutes a waiver of the right to complain on appeal. *Id.*

The failure of R.C.'s counsel to object to the juvenile court's ruling precludes our appellate review of this issue. Consideration of this assignment of error is therefore pretermitted.

Assignment of Error Three

In R.C.'s third assignment of error, she argues that the juvenile court erred in denying her request for custody of her children and her alternative request for a later hearing. During closing arguments on January 19, 2016, counsel for R.C. requested that the court return T.B. and Z.C. to R.C.'s custody, and in the alternative, that the court set the matter for another hearing in light of J.G.'s recent death.

For the reasons articulated above in our discussion of the first assignment of error, we find that the juvenile court did not err in declining to award custody to R.C. With respect to R.C.'s argument that the court erred in denying her request for another hearing on the matter, she submits in her brief that "[t]o not allow further review of this matter terminates the rights of R.C. to her children[.]" To the contrary, the juvenile court did not terminate R.C.'s parental rights; the court granted guardianship of T.B. and Z.C. to their grandparents. This disposition remains in force until each child's respective eighteenth birthday, or until it is modified by the juvenile court. *See* La. Ch.C. art. 686. If R.C. wishes to regain custody, she may file a motion to modify the disposition pursuant to La. Ch.C. art. 714. *See E.F., supra* at 585; *see also State ex rel. H.W.*, 13-0231 (La. App. 1 Cir. 07/25/13), 121 So.3d 1200, 1203, *writ denied*, 13-2217 (La. 10/11/13), 123 So.3d 1229. Accordingly, we find no error in the juvenile court's refusal to set the matter for another hearing after establishing a permanent plan.

This assignment of error is without merit.

DECREE

For the foregoing reasons, the January 19, 2016 judgment of the juvenile court is affirmed.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **SEPTEMBER 22, 2016** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

16-CA-215

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HON. ANDREA PRICE JANZEN (DISTRICT JUDGE)
JENNIFER G. WOMBLE (APPELLANT)

MAILED

MARK A. MARINO (APPELLEE)
ATTORNEY AT LAW
104 CAMPUS DRIVE EAST
SUITE 101
DESTREHAN, LA 70047

JESSE S. GEORGE (APPELLEE)
ATTORNEY AT LAW
615 BARONNE STREET
SUITE 203
NEW ORLEANS, LA 70113

AMANDA L. CALOGERO (APPELLEE)
ASSISTANT DISTRICT ATTORNEY
JUVENILE COURT
1546 GRETNA BOULEVARD
HARVEY, LA 70058

LISA P. HARRELL (APPELLEE)
ATTORNEY AT LAW
POST OFFICE BOX 1900
HARVEY, LA 70059

JESSICA COALTER (APPELLEE)
ATTORNEY AT LAW
STATE OF LOUISIANA, DEPARTMENT
OF FAMILY SERVICES
1450 POYDRAS STREET
SUITE 1600
NEW ORLEANS, LA 70112