

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CJ 0731

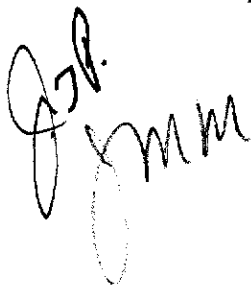
IN THE INTEREST OF K.A.L., A.U.L., K.L.L., AND K.Y.L.

Judgment Rendered: SEP 16 2013

* * * * *

APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 8733JJ

HONORABLE WILLIAM J. BURRIS, JUDGE



* * * * *

Randall A. Fish
Lacombe, Louisiana

Attorney for Plaintiff/1st Appellant
J.L. (Father)

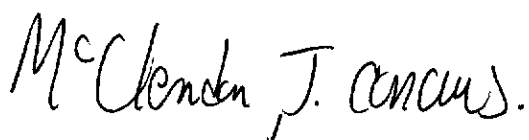
Amanda A. Trosclair
Assistant Public Defender
Covington, Louisiana

Attorney for Plaintiff/2nd Appellant
K.L. (Mother)

Sandra B. Terrell
Covington, Louisiana

Attorney for Appellee
Louisiana Department of Children
And Family Services

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.



McDONALD, J.

This is an appeal of a judgment that approved the change of a case plan for K.L.L., a seven-year-old child living in a certified non-relative foster home, from reunification to adoption.¹ J.L. (the father) and K.L. (the mother) both appealed the judgment, asserting that the trial court abused its discretion in adopting a permanency plan placing K.L.L. with non-relative foster parents when her maternal grandparents were available and had guardianship over her fourteen-year-old brother. After a thorough review, we affirm.

The Department of Children and Family Services (DCFS) took four minor children, K.A.L., A.U.L., K.L.L., and K.Y.L. (an infant) into custody pursuant to an instant order issued on January 18, 2012, after K.Y.L. was discovered wrapped in a towel and lying outside on the back porch of the home crying. The affidavit in support of the instant order reported that K.L. had given birth at home alone on January 16, 2012, and placed the child on the porch without seeking medical attention. K.Y.L. was found the next day and was hospitalized in a NICU where he was treated for low temperature and seizure activity and tested positive for amphetamines. The parents had a history of drug use and a tumultuous relationship, and K.L. had a history of mental health issues. The home was in disarray and the three children had head lice. K.L. was arrested for child desertion and second degree cruelty to a juvenile.

On January 25, 2012, the trial court signed an order of continued custody, finding that the children were in need of care and that continued custody was necessary for their safety and protection. J.L. was ordered to submit to a drug screen, and K.L. was ordered to complete a psychological assessment. DCFS

¹ Pursuant to the Uniform Rules-Courts of Appeal, Rules 5-1(a) and 5-2, the initials of the parties will be used to protect and maintain the privacy of the minor children involved in this proceeding.

placed the three older children with their paternal grandparents, and K.Y.L. was placed in a certified foster home.

After a hearing on April 10, 2012, all four children were adjudicated in need of care, and by trial court judgment dated April 18, 2012, the children were maintained in their placements with a goal of reunification. After a six-month case review hearing, the trial court continued the placement plan in the custody of DCFS with a goal of reunification.

At the twelve-month permanency hearing, the trial court determined that J.L. and K.L. had made inadequate progress toward alleviating or mitigating the causes necessitating placement of the children in foster care and that reunification was impossible. Nine months after the children were removed from the parents' home, the paternal grandparents had determined they could not provide a long-term home for the three oldest children. At the time of the permanency hearing, K.A.L. (who was nearly 18), had been living with a paternal great-aunt, A.U.L. had been living with the maternal grandparents for several weeks, and K.L.L. had been residing in a certified non-relative foster home for two months.

The trial court approved the case plan providing for the two older children, K.A.L. and A.U.L., to have an alternative permanent living arrangement (K.A.L. with the paternal-great aunt and A.U.L. with the maternal grandparents) and a change of goal for K.L.L. and K.Y.L. from reunification to adoption. J.L. and K.L. separately appealed the change of case plan for K.L.L. from reunification to adoption.

Louisiana Children's Code article 702 provides in pertinent part:

C. 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.

(2) Adoption.

(3) Placement with a legal guardian.

(4) Placement in the legal custody of a relative who is willing and able to offer a safe, wholesome, and stable home for the child.

(5) Placement in the least restrictive, most family-like alternative permanent living arrangement. The department shall document in the child's case plan and its report to the court the compelling reason for recommending this plan over the preceding higher priority alternatives.

Louisiana Children's Code article 681 provides in pertinent part:

A. In a case in which a child has been adjudicated to be in need of care, the child's health and safety shall be the paramount concern, and the court may do any of the following:

(1) Place the child in the custody of a parent or such other suitable person on such terms and conditions as deemed in the best interest of the child including but not limited to the issuance of a protective order pursuant to Article 618.

(2) Place the child in the custody of a private or public institution or agency.

(3) Commit a child found to be mentally ill to a public or private institution for the mentally ill.

(4) Grant guardianship of the child to a nonparent.

(5) Make such other disposition or combination of the above dispositions as the court deems to be in the best interest of the child.

Louisiana Children's Code article 683 provides in pertinent part:

A. The court shall impose the least restrictive disposition of the alternatives enumerated in Article 681 which the court finds is consistent with the circumstances of the case, the health and safety of the child, and the best interest of society.

B. The court shall place the child in the custody of a relative unless the court has made a specific finding that such placement is not in the best interest of the child. The court shall give specific written reasons for its findings, which shall be made a part of the record of the proceeding.

The health, safety, and best interest of the child shall be the paramount concern in all child in need of care proceedings. La. Ch.C. art. 601; **State ex rel L.B.**, 08-1539 (La. 7/17/08), 986 So.2d 62, 64.

It is well-settled that an appellate court cannot set aside a juvenile court's findings of fact in the absence of manifest error or unless those findings are clearly wrong. **In re A.J.F.**, 00-0948 (La. 6/30/00), 764 So.2d 47, 61.

The maternal grandparents initially told DCFS they did not want to be considered for long term placement, and, due to the maternal grandfather's criminal record, DCFS did not certify the maternal grandparents as an adoptive placement. Also, after picking up A.U.L. and K.L.L. for a visit, the maternal grandfather had become engaged in an argument with K.A.L. while driving in the car that resulted in his throwing a soft drink can at her and telling her he could punch her. The DCFS case manager, Dawn Hamilton, testified that there had been concern from the beginning about placing the girls with the maternal grandfather, as he seemed more controlling toward girls.

K.L.L.'s foster mother, T.C., testified that K.L.L. talked about staying with her foster family and never expressed a desire to live with A.U.L. She also testified that K.L.L. told her that she thought A.U.L. hated her, that he had broken her arm on two separate occasions, and that she did not want to be around him.

The trial court noted that this was a tough case, and that the children were caught in a difficult situation. The trial court stated that while the children loved each other, the "glue" that had kept the family together had been the oldest daughter, K.A.L., and that for her not to be in the same placement as K.L.L. and A.U.L. was a problem. However, the trial judge pointed out that the case had been going on for a year, and was at a point of permanency, and A.U.L. had only been residing with his maternal grandparents for a few weeks. The record reflects that

A.U.L. appeared to be happiest residing with his maternal grandparents, and had anger issues resulting from his tumultuous childhood. K.L.L. appeared to be thriving in the foster home where she had lived for the previous two months.

The trial court determined that the change of case plan goal from reunification to adoption for K.L.L. was the most appropriate, least restrictive setting under the circumstances. After a thorough review of the record, we cannot conclude that this finding is manifestly erroneous or clearly wrong.

Therefore, for the foregoing reasons, the trial court judgment is affirmed. Costs are assessed against J.L. and K.L.

AFFIRMED.