[Cite as *In re R.M.*, 2010-Ohio-165.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
NOS. 93471, 93473, AND 93474

IN THE MATTER OF
R.M., A MINOR

JUDGMENT:
NO. 93471 AFFIRMED
NOS. 93473 AND 93474 DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Court Division
Case Nos. 07901295, 07901238, and 07901237

BEFORE: Rocco, P.J., Dyke, J., and Boyle, J.

RELEASED: January 21, 2010

JOURNALIZED:

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KENNETH A. ROCCO, P.J.:

J.M. appeals from juvenile court orders awarding permanent custody of R.M., C.W., and M.W. to the Cuyahoga County Department of Children and Family Services ("CCDCFS"). He claims this decision was erroneous because CCDCFS failed to make diligent efforts to remedy the problems that initially caused the child to be removed from the home.

We find appellant has no standing to challenge the juvenile court's custody decisions regarding C.W. and M.W. We further find that clear and convincing evidence supported the juvenile court's determination that R.M. could not be placed with either parent within a reasonable time or should not be placed with them. Therefore, we affirm.

Initially, we note that appellant has no standing to challenge the juvenile court's decision regarding the custody of C.W. or M.W. "Juv.R. 2(Y) defines which persons are parties to an action in juvenile court. The child's natural parents are parties to the proceedings, but the rule is silent as to putative parents. Some Ohio courts have held that putative parents may have standing in cases where the person was named as a party to the motion for permanent custody. *In re Phillips,* Butler App. No. CA2003-03-062, 2003-Ohio-5107." *In re A.D.*, Cuyahoga App. No. 85648, 2005-Ohio-5441, ¶4. In this case, J.M. does not claim to be the father of either C.W. or M.W.

He was not named as a party in the proceedings concerning them. Therefore, J.M. has no standing to challenge the trial court's decision as to C.W. or M.W. See *In Re B.S.*, Cuyahoga App. Nos. 92868, 92872, 92870, 92880, 92871, 2009-Ohio-5947, ¶61; *In re A.D.*, supra. He also makes no argument challenging the court's decision to award permanent custody of C.W. and M.W. to CCDCFS. Accordingly, Appeal Nos. 93473 and 93474 are dismissed. We will address the merits of J.M.'s appeal regarding R.M., his biological child. *In re A.D.*, Cuyahoga App. No. 85648, 2005-Ohio-5441, ¶4.

R.M. was born November 21, 2007, while her mother, K.L., was incarcerated. CCDCFS was granted temporary custody of the child on November 29, 2007. J.M. submitted to genetic testing which established that he was the father of R.M.

On October 24, 2008, CCDCFS moved the court to modify the temporary custody award to an award of permanent custody. After hearing, the magistrate determined that the mother, K.L., had not substantially complied with the case plan because she failed to complete her drug treatment.[1] However, J.M. had not been consulted about assuming legal custody, so the magistrate continued the matter.

[1]She was discharged from her drug treatment program because she tested positive for drug use and failed to attend classes.

The court held another hearing on CCDCFS's motion for permanent custody on May 13, 2009. Neither J.M. nor his counsel appeared at the hearing, although the court found he was properly notified. At that hearing, the court heard the testimony of social worker Eric Woodard. Woodard testified that J.M.'s case plan required only that he establish paternity of the child, and he had done so. J.M. had previously declined to seek custody of R.M. in order to allow R.M. to stay with her half-siblings, C.W. and M.W. Shortly before the hearing, however, he had expressed an interest in obtaining permanent custody of R.M. Woodard had looked at J.M.'s home to make sure he had the facilities to provide for a child, and except for the absence of fire detectors, Woodard found J.M.'s home to be appropriate. Both J.M. and K.L. had visited the child, but neither had visited for several weeks before the hearing.

The court found that R.M. could not be placed with either parent within a reasonable period of time or should not be placed with them because (1) the parents failed to substantially remedy the conditions causing the child to be placed outside the home, and (2) the parents demonstrated a lack of commitment to the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home. The court also found it was in the child's best interests to award permanent custody to CCDCFS.

Therefore, the court granted permanent custody of R.M. to CCDCFS and terminated the parental rights of J.M. and K.L.

In this appeal, J.M. argues that CCDCFS failed to demonstrate that it made diligent efforts to remedy the problems that initially caused the child to be placed outside the home. He complains that CCDCFS knew that he wanted custody of R.M., but did not attempt to contact him when he failed to appear for the court hearing, and failed to request a continuance.

Under R.C. 2151.414(E)(1), the court must find that the child cannot or should not be placed with the parents if it finds, by clear and convincing evidence, that"[f]ollowing the placement of the child outside the child's home and *notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents* to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home." The agency's obligation under this provision is to assist the parents to remedy the problems, not to remedy the problems itself, as appellant seems to imply.

In any event, the court's judgment is separately supported by another finding. The court separately found that the child could not or should not be placed with the parents because "the parents have demonstrated a lack of commitment toward the child by failing to regularly support, visit, or

communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child." Under R.C. 2151.414(E)(4), this finding independently supports a determination that the child could not or should not be placed with the parents. Appellant does not challenge this finding, and the record amply supports it. J.M. failed to take any actions indicating to the court that he was ready and willing to take custody of R.M. J.M. previously told the court that he was not interested in obtaining custody of the child, and he never submitted anything to the court indicating that he had changed his mind and now desired custody. He failed to appear for the hearing, personally or through counsel. If J.M. did install fire detectors in his home, as directed by the social worker, he failed to notify anyone of this fact. He stopped visiting the child some six weeks before the court hearing. He did not provide any support for her. We cannot say that the court abused its discretion by concluding that J.M. had demonstrated a lack of commitment to the child. Therefore, we overrule appellant's sole assignment of error and affirm the juvenile court's judgment.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

ANN DYKE, J., and
MARY J. BOYLE, J., CONCUR