

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

IN THE MATTER OF J.H.,
A minor child

:
: Case No. 09CA4
:
: **DECISION AND**
: **JUDGMENT ENTRY**
: File-stamped date: 12-24-09

APPEARANCES:

Joseph H. Brockwell, Marietta, Ohio, for Appellant.

James E. Schneider, Washington County Prosecutor, and Susan L. Vessels,
Washington County Assistant Prosecutor, Marietta, Ohio, for Appellee.

Kline, P.J.:

{¶1} Karenetta Hoover appeals the judgment of the juvenile court, which granted legal custody of her child, J.H., to Washington County Children Services (hereinafter “CS”). On appeal, Hoover contends that the court abused its discretion when it found that granting legal custody of J.H. to CS was in J.H.’s best interest. Because the trial court failed to comply with the clear mandate of R.C. 2151.415(C)(2)(a), we find that the trial court abused its discretion. Accordingly, we reverse the judgment of the trial court and remand this cause to the trial court with the instruction to comply with R.C. 2151.415(C)(2)(a).

I.

{¶2} On March 16, 2007, the State of Ohio filed a complaint in the juvenile court, alleging J.H. was a delinquent child because he engaged in conduct that if committed

by an adult would have been a crime. Specifically, the complaint alleged that J.H. engaged in conduct that violated the Ohio criminal statutes against domestic violence and criminal damaging.

{¶3} At a hearing on October 2, 2007, J.H. withdrew his denial to the allegations in the complaint and admitted to the same. The trial court found J.H. to be a delinquent child and ordered that J.H. be placed in the temporary custody of CS.

{¶4} Later, CS filed a motion for legal custody of J.H. in juvenile court. In that motion, CS asked the court for an order that J.H. be placed in a planned permanent living arrangement (hereinafter “PPLA”). See R.C. 2151.415(A)(5). A PPLA is a disposition that places the legal custody of a child in a children services agency without terminating parental rights. R.C. 2151.011(B)(37). Hoover also filed a motion seeking the return of J.H. to her legal custody.

{¶5} The trial court held a hearing and, after that hearing, granted CS’s motion and denied Hoover’s motion. The court found by clear and convincing evidence that CS established the two requirements of R.C. 2151.415(C)(1). That is, (1) a PPLA was in the best interest of J.H. and (2) that R.C. 2151.415(C)(1)(c), which provides in part that “[t]he child is sixteen years of age or older,” applied to the present case.

{¶6} The trial court then filed a written “DECISION AND ORDER,” which set forth the trial court’s reasons for the above two findings. That is, the court made the above two findings “[b]ased on the evidence presented and the child’s wishes[.]” Apparently the court was attempting to comply with R.C. 2151.415(C)(2)(a), which states, “[i]f the court issues an order placing a child in a [PPLA], * * * [t]he court shall issue a finding of fact setting forth the reasons for its finding[.]”

{¶7} Hoover appeals the court's decision and asserts the following assignment of error: "THE JUVENILE COURT ABUSED ITS DISCRETION WHEN IT FOUND THAT IT WAS NOT IN THE CHILD'S BEST INTEREST TO RETURN CUSTODY TO HIS MOTHER."

II.

{¶8} Hoover contends that the trial court abused its discretion when it found that returning J.H. to her legal custody was not in J.H.'s best interest.

{¶9} Likewise, CS agrees with Hoover that we must reverse the trial court, but for a different reason. CS claims that the trial court's decision does not address the series of factors listed in R.C. 2151.414(D) that a trial court must consider before making a determination of the best interest of a child.

{¶10} A trial court enjoys broad discretion in custody proceedings. See, e.g., *In re D.B.E.*, Holmes App. No. 08CA8, 2009-Ohio-1396, at ¶15. This is due, in part, to the fact that "custody issues are some of the most difficult and agonizing decisions a trial judge must make[.]" *Id.* We will not disturb a trial court's custody determination unless the court abused its discretion. *Id.* An "abuse of discretion" connotes that the court's attitude is "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219; *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144.

{¶11} R.C. 2151.415(A)(5) permits a public or private child-placement agency to file a motion for legal custody of a child so that the agency may place the child in a PPLA. The agency must establish by clear and convincing evidence the two elements contained in R.C. 2151.415(C)(1). One of the R.C. 2151.415(C)(1) elements is that a PPLA is in the best interest of the child.

{¶12} When the trial court considers the best interest of the child, it must follow R.C. 2151.414(D)(1), which states in relevant part, “[i]n determining the best interest of a child at a hearing held pursuant to division * * * (C) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

- (a) The interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child, including whether 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;
- (d) The child’s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.”

{¶13} The trial court is further required to follow R.C. 2151.415(C)(2)(a), which requires a court placing a child in a PPLA to issue a finding of fact setting forth the reasons for its finding.

{¶14} Here, we find that the trial court abused its discretion when it did not follow the clear mandate of R.C. 2151.415(C)(2)(a). The court found by clear and convincing evidence that it was in J.H.’s best interest to be placed in a PPLA. The court based its

reasons for this finding on “the evidence presented and the child’s wishes[.]” The “child’s wishes” is a reason contained in R.C. 2151.414(D)(1)(b). However, the trial court’s decision did not address the other factors in R.C. 2151.414(D)(1). Therefore, we find that the court abused its discretion when it did not follow the clear mandate of R.C. 2151.415(C)(2)(a).

{¶15} Accordingly, we sustain Hoover’s sole assignment of error and reverse the judgment of the trial court. We remand this cause to the trial court with the instruction to comply with R.C. 2151.415(C)(2)(a).

**JUDGMENT REVERSED AND
CAUSE REMANDED.**

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED and this cause BE REMANDED to the trial court for further proceedings consistent with this opinion. Appellee shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court, Juvenile Division, 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. Exceptions.

Abele, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.