

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

IN THE MATTER OF:	:	Case Nos. 17CA2
	:	17CA3
L.B.J., K.R.A., R.A.J., B.A.H. and A.L.A.,	:	
	:	<u>DECISION AND</u>
ADJUDICATED DEPENDENT CHILDREN.	:	<u>JUDGMENT ENTRY</u>
	:	
	:	RELEASED 06/12/2017

APPEARANCES:

Warren N. Morford, Jr., Ironton, Ohio, for Appellant Mother.

Scott D. Evans, Ironton, Ohio for Appellant Father.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and Kevin J. Waldo, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for Appellee.

Harsha, J.

{¶1} The children’s mother and the father of two of the children appeal the trial court’s decision granting permanent custody of the five children to the Lawrence County Department of Job and Family Service, Child Services Division (“the agency”).

{¶2} Both parents argue that the agency and/or the trial court violated their rights under the Americans with Disabilities Act. However, noncompliance with the ADA is not a basis for invalidating an award of permanent custody and the ADA cannot be raised as a defense to termination of parental rights. Appellants’ ADA-based assignments of error are meritless.

{¶3} The mother also argues that the trial court’s dependency decision was against the manifest weight of the evidence. However, the mother did not timely appeal

the trial court's dependency decision, which was issued in 2015. Therefore, we lack jurisdiction to consider her assignments of error challenging the dependency findings.

{¶4} We affirm the trial court's judgment.

I. FACTS & PROCEDURAL HISTORY

{¶5} In June 2015, the agency filed dependency complaints and requested temporary custody of five children: B.A.H. (10 years old), A.L.A. (9 years old), R.A.J. (6 years old); L.B.J. (3 years old), and K.R.A. (1 year old).¹ The trial court held a shelter care hearing and granted the agency's request for temporary custody.

{¶6} The trial court held an adjudicatory hearing on the dependency complaints in September 2015 and heard testimony of several agency caseworkers. The court found the children to be dependent in accordance with R.C. 2151.04 and on September 16, 2015 entered its judgment entry, which adjudicated the children dependent and stated that all prior orders, including the temporary custody order, remained in effect. No party appealed the trial court's dependency decision. The trial court held a dispositional hearing in October 2015 and adopted the agency's case plan for reunification, which the appellants had signed.

{¶7} The case plan required the mother and father to complete parenting classes and exhibit learned behaviors and skills in their daily routine with their children. Because both parents were developmentally delayed, the plan also required the parents to continue working with the Board of Mental Retardation and Developmental Disabilities (MRDD) and a representative payee to help them with their finances.

¹ DNA testing results filed in the case show that appellant father is the biological father of the two youngest children, L.B.J. and K.R.A. Two other men were identified as fathers to the remaining children, but their relationship and history are not relevant to the issues presented in this appeal.

{¶8} In May 2016, the agency filed a motion for permanent custody as the one-year sunset date approached but withdrew the motion and consented to an extension to give the mother and father additional time to complete their case plans.

{¶9} In October 2016, the agency renewed its motion for permanent custody. At the permanent custody hearing the agency presented mental health assessments that indicated the mother and father operated at the mental functioning level of six- and seven-year-olds. A number of caseworkers testified about their involvement with the family over the past three years. They each testified that the parents have been unable to improve their parenting skills, could not adequately supervise the children, and would be unable to gain the skills to be able to take care of the children because of their limited mental capacities.

{¶10} The trial court granted the agency's motion for permanent custody and terminated the parental rights of the mother and the father(s). This appeal followed.

II. ASSIGNMENTS OF ERROR

{¶11} The mother raises three assignments of error:

I. THE LAWRENCE COUNTY DEPARTMENT OF JOB & FAMILY SERVICES DIVISION ILLEGALLY DISCRIMINATED AGAINST THE APPELLANT, [MOTHER], IN THE PROVISION OF SOCIAL SERVICES TO HER BY FAILING TO PROVIDE REASONABLE ACCOMMODATIONS TO APPELLANT IN THE PROVISION OF SOCIAL SERVICES, PARTICULARLY IN THE LACK OF PROPER PARENTING SKILLS CLASSES.

II. THE DECISION OF THE LAWRENCE COUNTY PROBATE-JUVENILE COURT IS NOT SUPPORTED BY THE SUFFICIENT WEIGHT OF THE EVIDENCE.

III. THE DECISION OF THE LAWRENCE COUNTY PROBATE-JUVENILE COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶12} The father raises two assignments of error:

I. THE TRIAL COURT ERRED IN TERMINATING THE PARENTAL RIGHTS OF [FATHER] WHEN THE SERVICES PROVIDED BY THE STATE FAILED TO PROVIDE SERVICES WHICH ADDRESSED THE UNIQUE NEEDS OF THE FAMILY.

II. THE TRIAL COURT FAILED TO COMPLY WITH THE REQUIREMENTS OF SECTION 504 OF THE REHABILITATION ACT OF 1973 AND TITLE II OF THE AMERICANS WITH DISABILITIES ACT OF 1990 BY NOT ENSURING THAT REASONABLE ACCOMMODATIONS WERE MADE FOR PARENTS WITH DISABILITIES.

III. ANALYSIS

A. DISABILITY DISCRIMINATION

{¶13} The mother's first assignment of error and both of the father's assignments of error contend that the trial court and/or the Lawrence County Department of Jobs and Family Services ("the agency") violated the American with Disabilities Act and the Rehabilitation Act (ADA)² by discriminating against them because of their disabilities. We address these three assignments of error together.

{¶14} The mother contends that she has significant cognitive disabilities and that the agency discriminated against her when it failed to make accommodations for her, particularly in the parenting classes.

{¶15} The father also contends that he has cognitive disabilities and that the agency did not consider his mental capabilities or make accommodations for them in its reunification plan. He contends that the agency discriminated against him because of his diminished intellectual abilities by admitting that it was a "major concern." The father also contends that the trial court violated the requirements of the ADA by not ensuring that the agency made reasonable accommodations for his disabilities.

² The Americans with Disabilities Act of 1990, Section 12101, et seq., Title 42, U.S.C., and the Rehabilitation Act of 1973, Sections 794 and 504, Title 29, U.S.C.

{¶16} Title II of the ADA prohibits public entities from discriminating based on disability. The relevant section states: “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. 12132. Similarly, 29 U.S.C. 794(a) of the Rehabilitation Act provides that no otherwise qualified individual with a disability shall be excluded from, denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

{¶17} Neither parent opposed the case plan or raised ADA-based objections at the trial court level and therefore forfeited all but plain error on appeal. *Snyder v. Stevens*, 4th Dist. Scioto No.12CA3465, 2012-Ohio-4120, ¶ 15. “In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.” *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus. “Moreover, plain error does not exist unless the court’s obvious deviation from a legal rule affected the outcome of the proceeding.” *In re S.M.*, 4th Dist. Highland No. 14CA4, 2014-Ohio-2961, ¶34, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002).

{¶18} We find no plain error because the failure to comply with the ADA does not serve as a basis for invalidating an award of permanent custody and it cannot be raised as a defense to termination of parental rights. *In re Harmon*, 4th Dist. Scioto No.

00CA2693, 2000 WL 1424822, *8 (Sept. 25, 2000) (“We do not believe that a failure to comply with the ADA serves as a basis for invalidating an award of permanent custody. Rather, the ADA appears to contemplate a separate procedure for its enforcement.”) citing *In re Rodriguez*, 9th Dist. Wayne No. 98 CA007073, 1999 WL 568115, *7-8 (Aug. 4, 1999); see also *In re B.A.*, 8th Dist. Cuyahoga No. 104496, 2016-Ohio-7786, ¶¶9-11 (“Ohio courts of appeals are generally in agreement that an alleged violation of the ADA does not provide a defense in an action brought to terminate parental rights * * * based on the numerous holdings across the country, this court takes the position that a violation of the ADA is not a valid defense to a permanent custody action”); *In re J.C. and D.P.*, 2nd Dist. Montgomery No. 25608, 2013-Ohio-3937, ¶ 7 (“First and foremost, an alleged violation of the ADA is not a defense to a permanent-custody motion * * *

The procedure for enforcing the ADA begins with the filing of a complaint with a designated agency.”); *In re C.W., J.W., and H.W.*, 1st Dist. Hamilton No. C-110342, 2011-Ohio-4756, ¶¶ 40-41 (“We are persuaded by the Ninth Appellate District’s analysis [*In re Rodriguez*], as well as that of other Ohio appellate districts that have addressed the issue, in holding that an alleged violation of the ADA by a public children-services agency may not be asserted as a defense in a permanent-custody action brought by that agency.”); *In re D.J.*, 12th Dist. Butler No. CA2008-06-142, 2008-Ohio-5424, ¶¶9-11 (“again we ‘decline the invitation to create a new means of enforcement that was not adopted by Congress or included by the attorney general in the regulations adopted to implement the ADA.’ ”).

{¶19} We overrule the mother’s first assignment of error and the father’s assignments of error.

B. DEPENDENCY DECISION

{¶20} In her second assignment of error the mother contends that the trial court's decision "is not supported by the sufficient weight of the evidence" and in her third assignment of error she contends that the decision "is against the manifest weight of the evidence."

{¶21} Before we address the merits of these arguments, we must sua sponte address whether we have jurisdiction to review the trial court's dependency adjudication.

{¶22} The Supreme Court of Ohio has held that:

An adjudication by a juvenile court that a child is "neglected" or "dependent" as defined in R.C. Chapter 2151 followed by a disposition awarding temporary custody to a public children services agency pursuant to R.C. 2151.353(A)(2) constitutes a "final order" within the meaning of R.C. 2505.02 and is appealable to the court of appeals pursuant to R.C. 2501.02.

In re Murray, 52 Ohio St.3d 155, 556 N.E.2d 1169 (1990), syllabus. Moreover, the Supreme Court of Ohio has held that "an appeal of an adjudication order of abuse, dependency, or neglect of a child and the award of temporary custody to a children services agency pursuant to R.C. 2151.353(A)(2) must be filed within 30 days from the judgment entry pursuant to App.R. 4." *In re H.F.*, 120 Ohio St.3d 499, 2008–Ohio–6810, 900 N.E.2d 607, ¶ 18.

{¶23} Here, the trial court found the children dependent and filed its dispositional order continuing temporary custody with the agency on September 16, 2015. Under *In re Murray*, *supra*, and R.C. 2505.02, the court's entry was a final order that had to be appealed within 30 days. See *In re H.F.* at ¶ 18. However, neither parent timely appealed. Therefore, the court's decision on dependency became the law of the case.

And in the absence of a timely appeal, we lack jurisdiction to consider mother's second and third assignments of error challenging that decision. See *In re S.C.*, 189 Ohio App.3d 308, 2010-Ohio-3394, ¶ 35 (4th Dist.); *In re J.K.*, 4th Dist. Athens No. 09CA20, 2009-Ohio-5391, ¶ 19-20.

{¶24} Here, mother's argument contests the trial court's dependency decision, which is not timely; we lack jurisdiction to review it. The mother makes no argument contesting the trial court's permanent custody disposition. We dismiss the mother's second and third assignments of error contesting the dependency decision as untimely.

{¶25} Having overruled the father's two assignments of error and the mother's first assignment of error, and dismissed her remaining assignments of error, we affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Juvenile Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

McFarland, J. & Hoover, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, 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.