[Cite as *In re A.C.*, 2024-Ohio-1327.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

IN THE MATTER OF:

A.C., ALLEGED DEPENDENT CHILD.

OPINION AND JUDGMENT ENTRY
Case No. 23 MA 0120

Civil Appeal from the
Court of Common Pleas, Juvenile Division, of Mahoning County, Ohio
Case No. 2021 JC 00148 JUV

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. Rhonda G. Santha, 6401 State Route 534, West Farmington, Ohio 44491, for Appellant

Atty. Kristie M. Weibling, Mahoning County Children Services, 222 W. Federal St., 4th Floor, Youngstown, Ohio 44503, for Appellee

Dated: March 19, 2024

WAITE, J.

{¶1} Appellant B.C. ("Mother") appeals an October 24, 2023 judgment entry of the Mahoning County Court of Common Pleas, Juvenile Division, granting permanent custody of minor child A.C. (D.O.B. July 20, 2020) to Appellee Mahoning County Children Services ("Agency"). Mother challenges only venue and does not otherwise attack the trial court's decision to grant permanent custody to the Agency. For the reasons provided, Mother's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} While this matter ultimately involved a determination of permanent custody of the minor child, A.C., the issue on appeal is limited to venue as it is described within Juv.R.11. Specifically, the issue pertains to whether the matter was adjudicated in the correct county. Resolution of this issue involves some background information in order to provide the framework for the ultimate analysis.

{¶3} Mother has given birth to eight children. This appeal is limited to only one of those children, A.C., who is Mother's sixth child. The Agency has had an open file in regard to the oldest five children and had obtained temporary custody of those children at one time, which ended in September of 2020 when Mother regained temporary custody with protective supervision. A.C. was born while the Agency had custody of the oldest children, but the Agency took no action with regard to A.C. when she was born.

{¶4} The relevant incident occurred on February 2, 2021. At some point after reunification, Mother and the children moved from Mahoning County and had lived in Trumbull County for two years prior to the instant proceeding. The conduct that led to the instant proceeding occurred in Warren. Warren police were called to Mother's residence

and found the six children, A.C. and her five siblings, alone and without supervision. Despite the fact that the Agency (again in Mahoning County) had prior involvement with the family, the children were not immediately removed from the home. However, on February 23, 2021, the oldest child (aged six at the time) called the police, who again found that the children were alone, and without supervision. Police attempted to contact Mother but were able to speak with her only after she called a cell phone that was apparently in the possession of the six-year-old. When police joined the call, Mother hung up. Police were unable to reach her again. Police observed injuries on the children that raised concerns regarding physical abuse, and at least two of the children confirmed that abuse had occurred.

{¶5} On being informed police were at the residence, Mother’s sister arrived. Ultimately, Mother's sister was permitted to take the children on a temporary basis. Warren police contacted Trumbull County Children Services, but the Trumbull Agency advised the officers that the Agency in Mahoning County was familiar with and had some involvement with the family, and to contact them instead. We note that the record does not reflect whether the oldest five children were still under the protective supervision of the Agency in Mahoning County.

{¶6} Thereafter, on February 24, 2021, the Agency filed a verified dependency complaint and an ex parte verified complaint. Both filings alerted the juvenile court in Mahoning County that Mother and A.C. were now residents of Trumbull County and that the acts precipitating A.C.’s dependency request had occurred in Trumbull County. These facts led the magistrate to order a hearing as to venue.

{¶7} Although the transcripts for this hearing are not in the record, the trial court described the hearing in detail within a judgment entry. Counsel for Mother informed the magistrate that "the Prosecutor for Trumbull County Children Services, and their Administrator, had decided that the case should remain in Mahoning County, except that they would file on [A.C.] if the Agency did not." (5/7/21 Magistrate's Order.) The magistrate informed the Agency that only the court could decide issues relating to venue, and that this decision was not in the province of either agency. The magistrate took issue with the fact that Mother and A.C. were residents of Trumbull County, A.C. had not been under any Agency supervision and was not named in any case file with the Agency, and that the underlying incident occurred in Trumbull County. The magistrate noted the Agency had not taken any steps to update court records to reflect that the family had been living in Trumbull County for the past two years. Despite voicing these concerns, the magistrate stated that it "accepted the case, although it should have been transferred to Trumbull County some time ago. Going forward, the Agency will promptly and completely identify any out of county placements to the Court." (5/7/21 Magistrate's Order.) The magistrate did appear, however, to equivocate, stating: "[t]he Court hereby accepts Venue in this case, although the proper venue is in Trumbull County." (5/7/21 Magistrate's Order.)

{¶8} On May 19, 2021, the magistrate granted the Agency's motion to adjudicate A.C. as dependent. The court did question why no actions were taken by the Agency to protect A.C. when A.C. was born, despite the fact that the Agency had knowledge of the family situation and the other five children were in the Agency's temporary custody at the time of A.C.'s birth. The court was disturbed by the lack of follow up to protect the children:

> The Agency failed to make reasonable and diligent efforts in this instance. The agency knowingly allowed the Minor Children to remain in the home, after Mother was charged with Child Endangering for allegedly leaving all of the Minor Children home alone, without supervision on February 2, 2021. * * * While the Court finds that the agency made attempts to prevent removal of the Minor Children, it is abundantly clear that this did not serve their best interests, and jeopardized their safety.

(5/19/21 Magistrate's Order.)

{¶9} The matter was continued for the Agency to conduct case plans for A.C., which had not been previously completed. However, Mother continued to have problems and several extensions for temporary custody were requested and granted. The Agency ultimately filed a motion seeking permanent custody on November 28, 2022. The court conducted a hearing on May 16, 2023. On July 11, 2023, the trial court granted the Agency's motion and awarded the Agency permanent custody of A.C. Mother filed an objection to the magistrate's decision, but on October 24, 2023, the trial court adopted this decision. It is from this entry that Mother timely appeals.

General Law

{¶10} "A parent's right to raise a child has long been established as an essential and basic civil right." *Matter of A.D.*, 7th Dist. Jefferson No. 22 JE 0016, 2023-Ohio-276, ¶ 42, citing *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997). For this reason, Ohio courts have viewed the permanent termination of parental rights as the family law equivalent of the death penalty in a criminal law case. *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14. However, statutory laws exist to permit an

agency to intervene for the purpose of protecting children. *Matter of J.C.*, 7th Dist. Monroe No. 20 MO 0012, 2021-Ohio-1476, ¶ 2, citing *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816.

ASSIGNMENT OF ERROR

THE MAHONING COUNTY JUVENILE COURT VIOLATED OHIO JUV.R. 11(B) WHICH MANDATES REMOVAL OF A CASE TO THE COUNTY OF THE CHILD'S RESIDENCE WHEN OTHER PROCEEDINGS INVOLVING THE CHILD ARE PENDING IN THAT COUNTY.

{¶11} Mother argues that Juv.R. 11(B) applies in this matter, and that the trial court was required to transfer this case to Trumbull County. She explains that the Mahoning County court was notified during pretrial proceedings that Mother, A.C., and A.C.'s siblings had been living in Trumbull County since March of 2022, approximately two years before the complaint regarding A.C. was filed. In addition, the criminal offense which formed the basis for the instant proceedings was committed in Trumbull County. Mother contends that there is a case currently pending in the Eleventh District Court of Appeals involving two of A.C.'s younger siblings. Mother believes this fact, alone, should have required a transfer of the present matter to Trumbull County.

{¶12} The Agency first argues in response that it had an active order of supervision concerning five of A.C.'s half-siblings at the time the complaint was filed. Thus, the Agency maintains that whether to accept venue was discretionary with the trial court, and the court's decision to accept venue was not an abuse of discretion. The Agency contends that Juv.R. 11(B) does not apply because, although Mother had

additional children after the complaint regarding A.C. was filed, if there was some action taken by the Trumbull County Agency relative to one or both of these children, any such action did not involve A.C. and thus, Juv.R. 11(B) does not apply. Regardless, the Agency urges this Court to apply the doctrine of laches based on its belief that Mother waited too long to raise this issue.

{¶13} Juv.R. 11 sets forth the law pertaining to mandatory and discretionary transfers to another county in matters involving minors:

> (A) Residence in Another County; Transfer Optional. If the child resides in a county of this state and the proceeding is commenced in a court of another county, that court, on its own motion or a motion of a party, may transfer the proceeding to the county of the child's residence upon the filing of the complaint or after the adjudicatory or dispositional hearing for such further proceeding as required. The court of the child's residence shall then proceed as if the original complaint had been filed in that court. Transfer may also be made if the residence of the child changes.
>
> (B) Proceedings in Another County; Transfer Required. The proceedings, other than a removal action, shall be so transferred if other proceedings involving the child are pending in the juvenile court of the county of the child's residence.
>
> (C) Adjudicatory Hearing in County Where Complaint Filed. Where either the transferring or receiving court finds that the interests of justice and the convenience of the parties so require, the adjudicatory hearing shall be held

> in the county wherein the complaint was filed. Thereafter the proceeding may be transferred to the county of the child's residence for disposition.

{¶14} The standard of review as it pertains to Juv.R. 11 has been addressed by the Twelfth District:

> "[T]he decision to transfer venue is generally within the juvenile court's broad discretion." *In re Z.R.*, 2015-Ohio-3306 at ¶ 25, 144 Ohio St.3d 380, 44 N.E.3d 239. However, as the present appeal involves the interpretation of juvenile rules of procedure, we find that the proper standard of review is a mixed question of law and fact. See *In re A.T.*, 12th Dist. Butler Nos. CA2018-06-115 and Butler Nos. CA2018-06-116, 2018-Ohio-5295, ¶ 34; *In re S.M.*, 4th Dist. Lawrence No. 09CA5, 2009-Ohio-3118 ; ¶ 22. Under this standard, we defer to the juvenile court's factual findings if they are supported by competent, credible evidence. *In re A.T.*, at ¶ 34. However, we decide the legal questions de novo, without deference to the juvenile court. *Id.*

In re H.D., 12th Dist. Warren No. CA2022-10-069, 2023-Ohio-1849, ¶ 15.

{¶15} Although the parties, particularly the Agency, focus their arguments on A.C.'s siblings, this focus is misdirected. The critical factor in applying Juv.R. 11 is whether proceedings directly involving A.C. were pending in Trumbull County, not her siblings. There is scant evidence of record, however, the parties apparently agree that there is some matter involving A.C.'s younger siblings pending in our sister district's court of appeal. Because the matter currently before the Eleventh District allegedly involves

only A.C.'s two younger siblings and in no way pertains to A.C., a plain reading of Juv.R. 11(B) reveals that it is inapplicable to this matter. The Rule requires transfer if there are pending matters involving "the child" in the juvenile court in "the child's" county of residence. There is no evidence, or even any allegation, that at the time Mahoning County exercised jurisdiction in this matter and filed its complaint, there was any matter regarding A.C. pending in any Trumbull County court. Hence, no transfer of this matter was required by statute.

{¶16} Turning to Juv.R. 11(A) and (C) which discuss discretionary transfer to the child's county of residence, our focus on review is whether it was practical and convenient to continue hearing the case in Mahoning County, taking into consideration all relevant factors. In determining whether the court abused its discretion in failing to immediately transfer the case to Trumbull County, we must look at the facts of the case as a whole.

{¶17} This case paints a somewhat disturbing picture because it appears that agencies for both Mahoning and Trumbull County fell short in their duty to adequately protect these children. Despite the Agency having intervened on behalf of A.C.'s siblings once before, it did nothing when A.C. was born, even though it had the child's older siblings in its custody. No agency acted to remove the children after the first instance where the children were left unsupervised. Neither informed the juvenile court of critical information concerning the open file on the older children with the Agency. In addition, the agencies were attempting to decide venue on their own, a decision that is reserved for the juvenile court. While the magistrate appropriately questioned venue *sua sponte*, it held the proper parties responsible for their duties, and made efforts to direct the Agency's future dealings with the court, the "findings" made by the trier of fact in this

regard are muddied, at best. While ultimately deciding that Mahoning County should retain jurisdiction, the magistrate also stated the matter “should have been transferred to Trumbull County some time ago” and that “the proper Venue is in Trumbull County.” (5/7/21 Magistrate’s Order.) It is also alleged the more recent proceedings concerning the younger two children, born after A.C., were handled by the Trumbull County court system.

{¶18} Regardless, the Mahoning County Court did not abuse its discretion in ultimately retaining jurisdiction, here. The statute provides that transfer to the child’s county of residence is optional, not mandatory. The record shows that the Agency in Mahoning County was familiar with Mother, and in fact, had custody of A.C.’s siblings at the time of the child’s birth and for a period thereafter, and retained protective supervision of the older children. While the Trumbull Agency may have at some time encountered the family after it moved into Warren, as the record contains information that there is at least one matter pending in that county involving two of A.C.’s younger siblings, the Agency in Trumbull ceded its jurisdiction to Mahoning County for the incident at issue, here, due to the Agency’s familiarity and involvement with the family when the incident occurred. Hence, there is support in the record for the court’s decision not to transfer the matter to Trumbull County.

{¶19} Additionally, the record shows that Mother waived venue by virtue of her conduct in this matter. “Venue signifies the geographic division either by county or district of where a case should be tried. Because it is a procedural matter primarily concerned with choosing a convenient forum, venue raises no jurisdictional implications.” (Internal citations omitted.) *Wilson v. Brown*, 7th Dist. Belmont No. 01 BA 35, 2002-Ohio-2410,

¶ 14. "Venue provisions come into play only after jurisdiction has been established and concern the place where judicial authority may be exercised; rather than relating to the power of a court, venue relates to the convenience of litigants and as such is subject to their disposition." *Id.*, citing *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 168, 60 S.Ct. 153, 84 L.Ed. 167 (1939). While venue must be established, a party can waive it. "[W]hen a defendant fails to assert an objection to venue at the earliest possible moment, he waives such objection." *Id. at* ¶ 14, citing *Nicholson v. Landis*, 27 Ohio App.3d 107, 109, 499 N.E.2d 1260 (10th Dist.1985).

{¶20} Although neither party cites R.C. 2151.414, it is important to this matter. R.C. 2151.414(A)(1) provides in relevant part, "[t]he adjudication that the child is an abused, neglected, or dependent child and any dispositional order that has been issued in the case under section 2151.353 of the Revised Code pursuant to the adjudication shall not be readjudicated at the hearing and shall not be affected by a denial of the motion for permanent custody." Thus, the court's order as to A.C.'s dependency in this matter, filed on May 19, 2021, resulted in a final appealable order. Mother took no appeal of that decision, and her actions amount to waiver. We also note that Mother raised no objection to venue prior to issuance of the permanent custody order. It was the trial court which raised the issue *sua sponte*.

{¶21} While Mother did not file a motion to dismiss on the grounds of improper venue, when the magistrate raised the issue *sua sponte* it ordered a hearing. Once the magistrate clearly ruled, announced its intent to retain venue, and then acted on the dependency complaint, Mother's actions (or inaction) can only be viewed as an acquiescence of the court's decision to continue venue in Mahoning County. Hence,

Mother failed to file an objection to the magistrate's order, and also failed to raise the issue after the court rendered a final decision as to dependency. The matter proceeded in Mahoning County for more than two years after dependency was determined and resulted in a final decision granting permanent custody to the Agency. It was not until after this decision that Mother chose to contest venue for the first time. Assuming arguendo that the trial court's decision to retain jurisdiction could be seen as questionable, Mother's failure to contest this at any relevant time amounts to waiver of this issue.

{¶22} For these reasons, Mother's sole assignment of error is without merit and is overruled.

Conclusion

{¶23} In this permanent custody action, Mother challenges only venue and does not otherwise attack the trial court's decision to grant permanent custody to the Agency. For the reasons provided, Mother's arguments are without merit and the judgment of the trial court is affirmed.

Robb, P.J. concurs.

Hanni, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Juvenile Division, of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.