

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 CJ 0851

STATE OF LOUISIANA
IN THE INTEREST OF
C.P.C. AND A.G.C.

Judgment Rendered: JAN 29 2013

JCW
JDH by
JCW

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 8510JJ

Honorable William J. Burris, Judge

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BEFORE: PARRQ, HUGHES, AND WELCH, JJ.

Parrq, J. concurs without reasons.

WELCH, J.

The grandmother of two minor children, who were previously adjudicated children in need of care, appeals a judgment of the juvenile court¹ that denied the grandmother's petition for custody and visitation, continued the custody of the children with the State of Louisiana, Department of Children and Family Services ("DCFS"), and the placement of the children in a certified foster home, and changed the case plan goal to adoption. For reasons that follow, we affirm the judgment of the juvenile court in part, and we remand this matter for a hearing on visitation between the grandmother and the children.

FACTUAL AND PROCEDURAL HISTORY

On January 13, 2011, DCFS obtained an instanter order removing C.P.C. and A.G.C. from the custody of their parents and placing them in the custody of DCFS, based on allegations of neglect and lack of supervision.² Apparently, the children's grandmother, P.P., reported her daughter, A.P., and her daughter's boyfriend, C.C. (the biological parents of both children), to DCFS because of their history of domestic violence and substance abuse. The children were continued in the custody of DCFS until a hearing on March 2, 2011. At that time, the children were adjudicated as children in need of care and placed with their grandmother, P.P., with a case plan goal of reunification with the parents. A six-month case review hearing was scheduled for July 7, 2011.

At the six-month review hearing on July 7, 2011, DCFS proposed that the case plan goal be changed to adoption with continued placement with P.P., but that P.P.'s brother, J.W., who resided in Florida, be considered for the placement (and

¹ The Twenty-Second Judicial District Court exercises original juvenile jurisdiction for its territorial jurisdiction pursuant to La. Ch.C. art. 302(2). As a court exercising juvenile jurisdiction, it has exclusive original juvenile jurisdiction, in conformity with any special rules prescribed by law, over any child alleged to be in need of care and the parents of any such child. La. Ch.C. art. 604.

² The children, their parents and their grandparent are referred to by their initials to preserve their anonymity in this confidential proceeding.

subsequent adoption) of A.G.C. Apparently, this proposed change in the case plan was made by DCFS because the parents had failed to comply with the case plan, and P.P. was having commitment issues and felt overwhelmed with raising both children. Before the hearing commenced, a pre-trial conference was held with the juvenile court and the attorneys involved in this matter. Apparently, the juvenile court disapproved of the proposed change in the case plan, ordered DCFS to explore other placements so that C.P.C. and A.G.C. would not be separated and would not be with the grandmother, determined that the case plan goal would remain reunification, and ordered A.P. and C.C. to cooperate with DCFS and to submit to random drug testing. Although the pre-trial conference discussions were not made on the record, A.P. and C.C. subsequently stipulated to the juvenile court's order. P.P. was present during the juvenile court's ruling on the matter and A.P. and C.C.'s stipulation to that ruling; however, she made no objection. Approximately one week later, the children were removed from P.P.'s home and placed in a certified foster home. A twelve-month case review was scheduled for January 5, 2012. A judgment in accordance with the juvenile court's ruling and the parties' stipulation was signed on August 5, 2011.

On November 23, 2011, P.P. filed a petition to intervene and for custody and visitation with the children. In this petition, P.P. sought to intervene in the child in need of care proceeding in order to facilitate the permanent plan for the children and to ensure that their best interests were protected. She also sought custody of the children, and alternatively, that the court reconsider placing the children in her care while in the custody of DCFS, or that she be granted liberal and regular visitation with the children. A hearing on these issues was scheduled for hearing on January 4, 2012, and on that date, P.P.'s petition of intervention was granted

and all other matters, including the previously scheduled twelve-month case review, were continued to March 2, 2012.³

At the twelve-month case review hearing on March 2, 2012, DCFS proposed that the case plan goal be changed to adoption, with continued placement of the children in the foster home where they had been since July 2011. After receiving evidence as to all the pending issues, the juvenile court⁴ issued written reasons for judgment, which provided as follows:

This matter was heard on July 7, 2011 At this hearing, [the juvenile court], at the request of [A.P.] and the other parties (after a pre-trial conference) refused to change the goal to adoption, and continued custody with [DCFS]. The placement of the children was changed from the maternal grandmother to certified foster parents. It appears that there had been some equivocation before the hearing by the grandmother as to her ability to maintain the placement of both girls with her, although at the hearing she no longer had such equivocation. The mother [(A.P.)] acknowledges that it was her position that placement should not be with her mother [(P.P.)] but claims such was based on faulty information and understanding. The court does not believe that to be the case. At the hearing, the maternal grandmother [(P.P.)] was present but did not testify and was not called upon to be heard. It likewise appears that she did not request an opportunity to be heard. The [c]ourt understands and believes that she did not feel she could interrupt the proceedings by a request to be heard. Quite frankly, if she had presented the evidence the [c]ourt now has before it on July 7, 2011, the [c]ourt believes that the result would have been different in view of the relative placement preference of the law.

The maternal grandmother [(P.P.)] was not a party on July 7, 2011 ... [but] she had a right to notice, the right to attend and to be heard. ... The maternal grandmother's noted appearance shows she was notified. She knew of the [c]ourt's ruling. ... [T]he grandmother, by [her] pleadings, wants the [juvenile c]ourt to sit as a [c]ourt of [a]ppeal on a matter [she] had a right to appeal but didn't. Therefore, the [c]ourt is of the opinion that it is to look at the best interests of these children on March [2], 2012 instead of July 7, 2011.

As to the dispositional hearing and the permanency hearing, the [c]ourt finds that the parents have not substantially complied with the case plan. ... The [c]ourt changes the case goal to adoption. Custody

³ On March 2, 2012, A.P. filed a motion proposing that P.P. be granted guardianship of the children, pursuant to La. Ch.C. art. 681 and 720. This motion was denied at the hearing on March 2, 2012, and no issues have been raised on appeal with regard to the denial of this motion.

⁴ The juvenile court judge who presided over the July 7, 2011 case review hearing was a different juvenile court judge from the one who presided over the March 2, 2012 hearing.

shall remain with [DCFS]. The current placement with the certified foster home ... has proven very successful. The children have adjusted totally to the very safe and stable environment. As of March [2], 2012 this is the least restrictive and most appropriate placement, even over the prior relative placement.

A judgment in accordance with the juvenile court's ruling was signed on March 22, 2012, and it is from this judgment that P.P. has appealed.

ASSIGNMENTS OF ERROR

On appeal, P.P. asserts that the juvenile court erred by (1) not allowing her "to revisit the removal of her grandchildren from her home when she was never informed by the court" of its order for the removal; (2) relying on previous placement decisions and ignoring the procedural errors made in the course of those previous placement decisions; (3) not following federal and state guidelines that give preferential placement to a biological relative who sought custody approximately four and a half months after the removal of the children from that placement and finding that the current placement was in the best interest of the children; and (4) denying further visitation with the grandmother without testimony or evidence that such visitation would be detrimental to the children and with testimony from two experts that the supervised visits with the grandmother went well.

LAW AND DISCUSSION

*Revisiting the Removal of the Children and
the Placement Decision from the July 7, 2011 Hearing
(Assignments of Error Nos. 1 and 2)*

Essentially, P.P. contends that the juvenile court erred in not allowing her to revisit the removal of her grandchildren, because she was not given the opportunity to be heard at the July 7, 2011 case review hearing (even though she was the caregiver for the children) and was never informed, either verbally or in writing, that the court had ordered the removal of the children from her care. Additionally,

she contends that because of these procedural errors, the juvenile court should not have relied on that placement decision at the March 2, 2012 hearing.

In a child in need of care proceeding, DCFS is required to give notice of the right to appear and to be heard at a case review hearing to foster parents, adoptive parents, or relatives providing care for the child. La. Ch. C. art. 695(A) and (B). But, only “parties” have the right to testify, to confront and cross-examine adverse witnesses, and to present evidence and witnesses. La. Ch.C. art. 696(A). At the conclusion of the case review hearing, the juvenile court may approve the case plan proposed by DCFS and order the compliance by all parties or find that that case plan is not appropriate and order the department to revise the case plan. La. C.Ch. art. 700(A). However, any person directly affected by such ruling of the juvenile court may appeal those findings or orders. La. Ch. C. art. 700(B).

The transcript from the July 7, 2011 hearing reveals that during the pre-trial conference, the juvenile court found that the case plan proposed by DCFS was not appropriate and, thereafter, A.P. and C.C. stipulated that the case plan goal would remain reunification and that the placement of the children would be changed. P.P. was present in the courtroom during this stipulation, but remained silent. Thus, P.P. was aware that the children were going to be removed from her care. Although the juvenile court did not specifically address P.P. or call upon her to be heard, P.P. did not request the opportunity to be heard, even though she had the right to do so. Furthermore, as the children’s caretaker, P.P. was a “person directly affected” by the juvenile court’s ruling. Thus, P.P. was entitled to appeal that ruling, but she did not do so. Therefore, we find that the juvenile court properly refused to revisit the ruling made at the July 7, 2011 hearing to remove the children from P.P.’s care and properly evaluated the best interest of the children at the time of the March 2, 2012 hearing.

Placement Decision at the March 2, 2012 Hearing
(Assignment of Error No. 3)

In this assignment of error, P.P. contends that the juvenile court erred by failing to follow federal and state guidelines that give preferential placement of children to relatives over foster care and in finding that the current placement of the children in foster care was in the children's best interest.

Throughout child in need of care proceedings, the placement of the children with relatives is generally preferred. See La. Ch.C. arts. 622, 627, 681, 683, and 702. While relatives may be in a favored class to receive placement or custody of a child in need of care, the law provides an exception when the court has made a specific finding that such placement or custody is not in the best interest of the child. **State, in the interest of T.M.**, 2003-0929 (La. App. 3rd Cir. 3/24/04), 869 So.2d 339, 346. The best interest of the child trumps all other considerations in child in need of care proceedings. *Id.*

As of the time of the March 2, 2012 hearing, eight months had elapsed since the children had been removed from the home of P.P. and placed in their current certified foster home. By all accounts, the children had adjusted well to that home, were comfortable, and were receiving love and affection from their foster parents, who were committed to the children and desired to adopt them.

Charlotte Duncan, the DCFS case worker for the children, testified that P.P., with whom the children had first been placed, was overwhelmed the entire time that she had the children. According to Ms. Duncan, P.P. often complained of the financial burden of the children and that she needed a break from the children. Additionally, Ms. Duncan testified that there were discussions between P.P. and her brother, J.W., who resided in Florida, concerning the possibility of J.W. and his wife adopting one of the children. Ms. Duncan explained that the children were no longer placed with P.P., because the then-presiding juvenile court judge was

concerned about P.P.'s lack of commitment and the possible separation of the children, and thus required that DCFS explore other placement options for the children.

P.P. admitted that initially, she had been overwhelmed when she cared for the children, because she did not have any nights off. Additionally, P.P. testified that her daughter, A.P., had been harassing her, because she would not let A.P. visit the children whenever she wanted to. P.P. testified that as of March 2, 2012, her situation was different, she knew what she needed to do mentally to care for the children, and that she was emotionally stronger than before. P.P. also testified that money was no longer an issue and that she and her boyfriend had plans to marry.

Bobette Laurendine, a Licensed Clinical Social Worker, testified that she had engaged in therapy with C.P.C. to address anxiety and to observe some visits between C.P.C. A.G.C., and P.P. Ms. Laurendine opined that although the children's visits with P.P. were pleasant, the children should remain in their foster home, because the children had developed a strong bond with their foster parents and have identified their home as the foster family's home. Ms. Laurendine explained that the children had a heightened sense of joy when talking about or interacting with their foster parents and had developed a sense of security because of the foster family. Specifically, Ms. Laurendine explained that because of the sense of security that had been established, the children were able to successfully separate from their caregivers (the foster parents), because the children knew that at the end of the day, they were going home with their foster family. Ms. Laurendine testified that removing the children from the foster home would increase their chance of developing difficulty with bonding and attachment.

The children's foster parents also testified at the hearing. The foster father testified that A.G.C., who was eighteen months old at the time she was placed with

them, was still taking a bottle at that time, but he also stated that at that time, she could only speak one word—mommy—and that her sole means of communication was to use hand gestures or to grunt. The foster mother testified that when the children visited with P.P., C.P.C. needed constant reassurance that she was not leaving the foster family, and A.G.C. would have nightmares and wake up screaming.

After hearing all of the testimony, the juvenile court determined that custody would remain with DCFS, that the placement of the children in their current certified foster home had proven very successful, and that the children had totally adjusted to that safe and stable environment. Thus, the juvenile court determined that continued custody with DCFS and placement in the foster home was the least restrictive and most appropriate placement, even over the prior relative placement, and was thus in the best interest of the children. After reviewing the record, we find that the juvenile court's judgment in this regard is supported by the record.

Denial of Visitation
(Assignment of Error No. 4)

In P.P.'s last assignment of error, she contends that the juvenile court erred in denying her visitation without testimony or evidence that such visitation would be detrimental to the children and when the testimony revealed that the supervised visits that she did have with the children went well.

According to the record, once the children were removed from P.P.'s home, her visitation was reduced to once a month, although P.P. had some additional visits prior to the March 2, 2012 hearing for evaluation purposes. Although the children's foster mother testified that after the children visited with P.P., C.P.C. needed constant reassurance that she was not leaving the foster family and A.G.C. would have bad dreams for two nights, the uncontradicted testimony at the hearing established that the visits between the children and P.P. went well and that the

children and P.P. had a significant relationship. In fact, this significant relationship between the children and their grandmother was one of the reasons that DCFS initially placed the children with P.P. Additionally, Ms. Duncan, the DCFS case worker, specifically testified that the older child liked seeing her grandmother.

Given the evidence in the record before us, we see no reason why P.P.'s visitation should not have been continued after the March 2, 2012 hearing. While the juvenile court did not provide any specific reasons for not continuing visitation between P.P. and the children, we must conclude that the juvenile court's apparent conclusion that further visitation with P.P. was not in the children's best interest was an abuse of the discretion afforded it. Therefore, we remand this matter to the juvenile court for a hearing to determine what visitation with P.P. would be in the children's best interest.

CONCLUSION

For the above and foregoing reasons, the March 22, 2012 judgment of the juvenile court is affirmed in part, and this matter is remanded for a hearing on visitation between the children and P.P.

All costs of this appeal in the amount of \$634.50 are assessed equally between P.P. and the State of Louisiana, Department of Children and Family Services.

AFFIRMED IN PART AND REMANDED WITH INSTRUCTIONS.