

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA IN
THE INTEREST OF C.M.**

*** NO. 2003-CA-0395
* COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA

* * * * *

**APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. NA-A-20020171, SECTION "A"
Honorable Ernestine S. Gray, Judge**

*** * * * ***

Judge David S. Gorbaty

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(Court composed of Judge Joan Bernard Armstrong, Judge David S. Gorbaty, Judge Edwin A. Lombard)

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AFFIRMED

This is an appeal from the Juvenile Court for the Parish of Orleans. The court determined that C.M., a twelve-year-old girl, was a child in need of care and ordered the child to remain in the custody of the Office of Community Services. An appeal was filed on behalf of the mother and father of C.M. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

For approximately two years prior to the initiation of these proceedings, C.M.'s mother, Pedrina Martinez, engaged in a relationship with Anthony Spano. The two had a son together. C.M.'s father, Curt Northrope, has been incarcerated during these proceedings on a thirty-month sentence.

On October 16, 2002, C.M., then eleven years old, was home alone babysitting her four-month-old half-brother, while Martinez and Spano were at work. Police responded to a 911 call made by C.M. to find that the infant had died. Sudden Infant Death Syndrome was later determined to be the cause of death. C.M. was very upset and was afraid that she would be

blamed for the baby's death.

Child Protective Investigator Charles Dobbins from the Office of Community Services ("O.C.S.") met with Martinez, Spano and C.M. on the day of the infant's death. Grief counseling was offered to the family. The mother was directed to make an appointment for C.M. with a mental health professional when it was learned that C.M. had been diagnosed with depression in May 2000, and Martinez had not followed up on the recommended treatment. Martinez was also served with a summons to appear in court because C.M. was not enrolled in school. Martinez was given the names of two schools in which C.M. could be enrolled.

After October 16, 2002, O.C.S. could not locate the family again until November 22, 2002, when Dobbins received a call from the Crescent Home for Battered Women. Dobbins was informed by the shelter that Martinez and C.M. had been residing there due to alleged abuse by Spano. It was also explained that Martinez and C.M. were made to leave the shelter because Martinez had violated the program's policies by not enrolling the child in school, not looking for a job, verbally abusing C.M. and allegedly striking her. With this information, and upon learning that Martinez had not followed up with grief counseling and a mental health evaluation for C.M., Dobbins obtained a court order to take C.M. into the State's custody.

On November 22, 2002, an instant order was signed by Judge Ernestine Gray, placing C.M. in temporary custody of the State of Louisiana through the Department of Social Services. On November 25, 2002, Martinez and Northrope appeared in court for a continued custody hearing. Both parents were represented by a court-appointed attorney and stipulated that probable cause existed for the issuance of a hold order pending a full hearing. The State filed a petition alleging that C.M. was a child in need of care. On the same date, the parents appeared in court to answer the petition and deny the allegations.

Shortly thereafter, a hearing was held in juvenile court, with both parents present and represented by counsel. Testimony and evidence were presented. Upon completion of the State's case, counsel for Martinez and Northrope moved for an involuntary dismissal, and the motion was denied. After taking the matter under advisement, the court rendered judgment, finding C.M. to be in need of care and ordering the child to remain in the custody of the Office of Community Services.

Martinez and Northrope appealed. The court-appointed attorney for C.M. filed an answer to the appeal, but sought no modification from this court. After the appeal was filed, it became apparent that the interests of Martinez and Northrope were in conflict. Northrope was then assigned a

separate court-appointed attorney to represent his interests. Northrope subsequently filed a motion to dismiss in order to have his name stricken from the pending appeal of Martinez, which was granted. Accordingly, the assignment of error pertaining to the violation of Northrope's constitutional rights will not be addressed herein. We therefore proceed with the appeal as to Martinez.

DISCUSSION

Martinez argues that the trial court violated her fifth and fourteenth amendment rights by not considering the motion for involuntary dismissal and not allowing argument on the motion. Martinez contends that the purpose of the motion for involuntary dismissal under La. C.C.P. art. 1672 (B) is to test the sufficiency of the evidence presented by the plaintiff. Further, Martinez submits that when deciding a motion for involuntary dismissal, the court must evaluate the evidence presented by the plaintiff, without applying any special inferences in favor of the plaintiff, to determine whether he proved his case. Kemper v. Don Coleman, Jr., Builder, Inc., 31-576 (La. App. 2 Cir. 7/29/99), 746 So. 2d 11. Martinez argues that the trial court erred by denying the defense motion without allowing argument. Further, Martinez contends that if she had been allowed to argue the motion, she would have presented evidence to refute the allegations of abuse.

"It is well-settled that an appellate court cannot set aside a juvenile court's findings of fact in the absence of manifest error or unless those findings are clearly wrong." In re A.J.F., 00-0948 (La. 6/30/00), 764 So.2d 47, 61; See also, State ex. rel. S.M.W., 2000-3277 (La. 2/21/01), 781 So. 2d 1223. "Where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable." Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989). "[I]f the trial court or jury findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." Id.

With respect to Martinez's argument that the trial court erred by not considering her motion for involuntary dismissal, we look to La. C.C.P. art. 1672, which states in part:

B. In an action tried by the court without a jury, after the plaintiff has completed the presentation of his evidence, any party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal of the action as to him on the ground that upon the facts and law, the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff and in favor of the moving party or may decline to render any judgment until the close of all the evidence.

Pursuant to the above language, the trial judge may elect to grant the motion or he may decline to render judgment until after all the evidence has been presented. Because this option is given to the trial judge, when he declines to grant an involuntary dismissal, as here, there is nothing for the appellate court to review. Blount v. Peabody Shoreline Geophysical, 439 So.2d 565 (La. App. 1 Cir.1983); Townsend v. Delchamps, Inc., 94-1511 (La. App. 1 Cir. 10/6/95), 671 So. 2d 513; Riser v. American Medical Intern., Inc., 620 So. 2d 373 (La. App. 5 Cir. 1993).

After a review of the record, particularly the statements made by the trial judge, we note that the motion for involuntary dismissal was considered, but was denied without argument. The transcript of the hearing reflects that the court stated, "I think that I have heard enough that the State has met its burden, now it's up to you to prove that there is some reason for me to rule otherwise." Thus, the trial court complied with La. C.C.P. art. 1672 and evaluated the State's case after it rested.

We also find that the evidence reveals that O.C.S. showed a right of relief pursuant to C.C.P. art.1672, specifically:

- 1) In May 2000, C.M. was diagnosed with depression for which she was prescribed Prozac. Martinez did not administer the medication and did not return the child for follow-up care. Martinez's explanations for failing to

seek further mental health care for C.M. consisted of various excuses why she could not get or keep appointments. She also testified that she was against giving C.M. the prescribed medication but the records from the New Orleans Adolescent Hospital show that Martinez called to get another prescription because she stated that her purse had been stolen with the first prescription. Martinez denied this statement.

2) At age eleven, C.M. was forced to baby-sit her infant half-brother while Martinez and Spano were at work.

3) C.M. was not enrolled in school. Martinez testified that she was in the process of having C.M. approved for home schooling but that the process had not been completed. Martinez testified that she took C.M. out of school because she could not get her out of bed in the morning and because C.M. was subjected to teasing at school for being overweight. Martinez also stated that she felt that she was qualified to home school C.M. because she had completed two years of college.

4) Although grief counseling was offered to C.M. for the death of the infant while in her care, Martinez did not obtain that service for her daughter.

5) C.M. was exposed to domestic violence during her mother's relationship with Spano. In particular, Martinez testified that Spano was physically abusive toward her and locked her and C.M. in the apartment so that

Martinez would not leave him. Martinez further testified that at the time of the hearing that she was no longer involved with Spano, but that she was three months pregnant with his child.

CONCLUSION

After a thorough review of the evidence presented by O.C.S., we find that the motion for involuntary dismissal was considered and correctly denied. For the reasons stated herein, we find no manifest error on the part of the trial court in denying the motion for involuntary dismissal and declining to render judgment until after the close of all the evidence. Accordingly, we affirm.

AFFIRMED