[Cite as *In re A.G.*, 2010-Ohio-2230.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 94117 and 94118

IN RE: A.G. & D.A.
Minor Children

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 09910868 and AD 09910870

BEFORE: McMonagle, P.J., Blackmon, J., and Stewart, J.

RELEASED: May 20, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT, MOTHER

Jeffrey Froude
P.O. Box 761
Wickliffe, OH 44092-0761

ATTORNEYS FOR APPELLEE, A.A. (FATHER OF D.A.)

Robert L. Tobik
Chief Public Defender
Cullen Sweeney
Assistant Public Defender
310 Lakeside Avenue, Suite 200
Cleveland, OH 44113

GUARDIAN AD LITEM

Thomas Kozel
P.O. Box 524
North Olmsted, OH 44070-0534

CHRISTINE T. McMONAGLE, P.J.:

{¶ 1} H.S.,[1] Mother, appeals the judgments of the trial court overruling her objections to the magistrate's decision and granting custody of her minor children, A.G. and D.A., to their respective Fathers. We reverse and remand.

{¶ 2} In June 2009, the Cuyahoga County Department of Children and Family Services ("CCDCFS" or "the Agency") filed a neglect complaint with respect to the two minor children, A.G. (nine years old) and D.A. (five years old). The agency sought protective supervision of the children. M.G. is the Father of A.G. and A.A. is the Father of D.A. Attorney Thomas Kozel was appointed as guardian ad litem for the children and the case was assigned to a magistrate.

{¶ 3} A preliminary hearing was held in July 2009. Mother and both Fathers entered denials to the allegations in the complaint. Both Fathers subsequently filed motions for legal custody of their respective children.

{¶ 4} An adjudicatory hearing was held on September 1, 2009, at which Mother and both Fathers admitted the allegations of the amended neglect complaint, the substantive allegations of which were as follows: "1. Mother has a history of substance abuse for which she is not currently participating

[1]The parties are referred to herein by their initials or title in accordance with this court's established policy regarding non-disclosure of identities in juvenile cases.

in treatment. Mother completed a drug assessment in February 2009 with a recommendation of intensive outpatient treatment (IOP). To date there has been no compliance from Mother on her IOP services[;] 2. Mother has left the children in the care of a care giver for 1½ days while she was unreachable and with her whereabouts unknown[;] 3. Mother could not ensure that the child [A.G.] attends school on a regular basis[;] 4. The child [A.G.] has missed 48 day[s] of school during the past school year[;] [and,] 5. Mother has been referred for parenting skills programs but has failed to comply with those recommendations."

{¶ 5} The court accepted the admissions of Mother and both Fathers, and concluded, over Mother's objection, that the children were neglected children under R.C. 2151.03(A)(2) and (3).[2] The case proceeded to a dispositional hearing on September 10.

{¶ 6} The complainant social worker, both Fathers, Mother, and Maternal Grandmother testified at the dispositional hearing. In a decision and findings of fact, the magistrate found that it would be in the best interests of the children to grant legal custody of them to their respective Fathers.[3] Mother filed objections, but the court affirmed, approved, and

[2]As will be discussed below, Mother argued for a dependency determination.

[3]CCDCFS continously maintained that it was in "the best interests of the children to remain together in the care and custody of mother * * * with an order of protective supervision." See the Agency's proposed findings of fact and conclusions of law. The

adopted the magistrate's decision, adjudicated the children neglected, and ordered legal custody to the respective Fathers. Mother raises three assignments of error for our review.

{¶ 7} We reverse and remand upon consideration of the second assignment of error. In doing so, we are mindful that the termination of parental rights is "the family law equivalent of the death penalty." *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14. Thus, a parent is entitled to "fundamentally fair procedures in accordance with due process provisions under the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution." *In re Sheffey*, 167 Ohio App.3d 141, 2006-Ohio-619, 854 N.E.2d 508, ¶ 21. See, also, *In re Murray* (1990), 52 Ohio St.3d 155, 156, 556 N.E.2d 1169 (stating that a parent has a "fundamental liberty interest" in the care, custody, and management of his or her child and an "essential" and "basic civil right" to raise his or her children).

{¶ 8} In her second assignment of error, Mother contends that the trial court failed to comply with Juv.R. 29(B)(2) and (D) in obtaining her admissions. We agree.

{¶ 9} Juv.R. 29(B)(2) provides in part that at the outset of a juvenile adjudicatory hearing, the court shall: "[i]nform the parties of the substance of

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Agency has not participated in this appeal.

the complaint, the purpose of the hearing, and possible consequences of the hearing[.]" Juv.R. 29(D) provides in part that the court "shall not accept an admission without addressing the party personally and determining both of the following: (1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission; (2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing."

{¶ 10} Pursuant to Juv.R. 29(D), therefore, a trial court must carefully inquire as to whether the admission is voluntarily, intelligently and knowingly entered. *In re Beechler* (1996), 115 Ohio App.3d 567, 571-572, 685 N.E.2d 1257. While strict compliance with this rule is not constitutionally mandated, the record must demonstrate that the court substantially complied with the rule's non-constitutional requirements. The trial court's failure to substantially comply with Juv.R. 29(D) constitutes prejudicial error, requiring reversal of the adjudication order. Id.; see, also, *In re Onion* (1998), 128 Ohio App.3d 498, 503, 715 N.E.2d 604, citing *State v. Ballard* (1981), 66 Ohio St.2d 473, 476, 423 N.E.2d 115.

{¶ 11} Although the court advised Mother of the constitutional rights she would be waiving, it did not question her regarding her understanding of

the nature of the allegations and the consequences of her admission, and, in fact, the record suggests that she might not have understood. In particular, after Mother admitted the allegations of the complaint and the court found the children to be neglected, Mother's attorney stated that she wanted "to present arguments on whether it was neglect or dependency." The court heard arguments on the issue from Mother's attorney and the other parties, and again found the children to be neglected. No inquiry was made as to whether Mother understood what an admission was (the first or second time) and as to whether she still desired to so admit.

{¶ 12} Further, the court did not provide any explanation of the consequences of her admissions. The court advised Mother that "[a]s part of this complaint Children & Family Services is requesting protective supervision. If we proceed to a dispositional hearing on today's date or any other date you have the right to have a full hearing for purposes of that hearing." That advisement made no mention of the possibility of any outcome other than protective supervision occurring.

{¶ 13} Moreover, the *court's own* documentation demonstrates Mother's lack of understanding that an outcome other than protective supervision could occur. In particular, an order issued *after* Mother made her admissions states that, "[t]he magistrate further finds that on today's date [September

11, 2009], the Mother is in agreement with legal custody to herself with an Order of Protective Supervision as requested by CCDCFS."[4]

{¶ 14} Finally, under R.C. 2151.353(A)(3), a court may award legal custody of a neglected child to either parent, who, prior to the dispositional hearing, files a motion for legal custody, "only" if the parent "signs a statement of understanding for legal custody that contains at least the following provisions": (1) that it is the intent of the person to become legal custodian and they are able to assume the responsibility; (2) that the person understands that legal custody is permanent and continues until the child is of the age of majority or finishes high school; (3) that the parent(s) has residual parental rights, privileges, and responsibilities; and (4) that the person will be present at the dispositional hearing. Neither Father signed such a statement and, therefore, custody was not properly granted to them.

{¶ 15} Accordingly, Mother admitted that her children were neglected, but she desired a dependency adjudication,[5] and she was not advised that an

[4]See Record at 46, App. No. 94117; Record at 56, App. No. 94118.

[5]The complaint, however, was based on neglect, not dependency. Ohio courts have generally adhered to the requirement that a juvenile complaint specifically state the type of case, i.e., dependency, neglect, unruliness, or delinquency. Thus, for example, a dependency finding based on a neglect complaint and a neglect finding based on a dependency complaint, have been held invalid. See *Matter of Flynn* (Apr. 12, 1983), Franklin App. No. 82AP-750; *In re Reed* (July 25, 1979), Tuscarawas App. No. 1325; and *In re Thomas* (July 19, 1979), Cuyahoga App. Nos.

outcome other than protective supervision, as sought by the complaint, could occur. On the face of this record, Mother's admission was not knowingly made and the second assignment of error is sustained. Mother's admission is vacated and the case is reversed and remanded in order to permit Mother to plead anew or to try her case. See *Beechler*, supra at 571-572. The first and third assignments are rendered moot by our disposition of the second assignment of error and we do not consider them. See App.R. 12(A)(1)(c).

Reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

CHRISTINE T. McMONAGLE, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and
MELODY J. STEWART, J., CONCUR

39494 and 39495. (But, see, *In re Sullivan* (Dec. 16, 1980), Franklin App. Nos. 79 AP-893 and 79 AP-894, where the Tenth Appellate District substituted a finding of dependency for a finding of neglect in a permanent custody case, although dependency had not been alleged in the complaint.)