

[Cite as *In re N.V.*, 2017-Ohio-975.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104738

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**IN RE: N.V.  
Minor Child**

[Appeal by Cuyahoga County Department  
of Children and Family Services]

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**JUDGMENT:  
REVERSED AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. AD 16905623

**BEFORE:** Kilbane, J., Keough, A.J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** March 9, 2017

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MARY EILEEN KILBANE, J.:

{¶1} This accelerated appeal is brought pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶2} Appellant, the Cuyahoga County Department of Children and Family Services (“CCDCFS”) appeals from the juvenile court order dismissing its complaint for permanent custody, vacating temporary custody, and committing the infant child, N.V. (d.o.b. 4/7/16), to the legal custody of his mother, S.D. (“Mother”).

{¶3} This court asked the parties to submit supplemental briefing on the issues of whether there is a final appealable order before the court and the court’s intention to take judicial notice of the docket and orders in the proceedings related to N.V.’s sister, A.V. (d.o.b. 11/5/14). For the reasons set forth below, we reverse the juvenile court’s order and remand for a hearing in light of the court’s recent order in *In re A.V.*, Case No. AD 15900266.

{¶4} A review of the record reveals that N.V. was born on April 7, 2016. CCDCFS immediately sought emergency temporary custody of him, alleging that he is a dependent child under R.C. 2151.04(D) because N.V.’s one-year-old sister, A.V., was adjudicated abused in connection with an unexplained spiral fracture when she was two months old, Mother has posttraumatic stress disorder and is not in compliance with her treatment requirements, and the alleged father, J.V. (“Father”), has anger and substance abuse issues. On April 11, 2016, the trial court granted CCDCFS emergency temporary

custody of N.V. The trial court found probable cause for his removal from the home, and that his “continued residence in or return to the home of [Mother] is contrary to the child’s best interest.”

{¶5} On April 20, 2016, a case plan was implemented for N.V., Mother, Father, and A.V. In relevant part, the case plan stated:

Mother states that she has been experiencing depression since the birth of her child. She was connected with a counseling service by the hospital and did not follow through to receive services. Mother has been diagnosed with depression in March 2015 and has had recommendations of counseling and medication. Mother refused to engage in these services consistently. Mother received a psychological evaluation [that states:] “multiple significant concerns about Mother’s ability to parent now and in the future.”

[A.V.] was admitted to Cleveland Clinic on 1/7/15 with an oblique fracture to her left humerus. She was in the care of both parents prior to her admit. Neither parent had any explanation for the injury. \* \* \* Mother and Father are still in a relationship. Mother has made some progress on her case plan but has failed to consistently meet her mental health needs. Father has refused to participate or complete any services.

{¶6} The case plan also instructed Father to participate in anger management, parenting classes, and drug screens, and instructed Mother to participate in psychological counseling and parenting classes. A guardian ad litem (“GAL”) was appointed for N.V. on May 6, 2016.

{¶7} At a follow-up hearing on May 6, 2016, the trial court continued the emergency temporary custody order, noting that the parents had not benefitted from the services provided and that the case plan objectives were not met. Approximately two weeks later, Father was charged with domestic violence against the Mother.

{¶8} At a subsequent follow-up hearing on May 26, 2016, the trial court again continued the emergency temporary custody order because the parents had not benefitted from parenting classes and other case plan objectives remained outstanding.

{¶9} On June 9, 2016, the trial court held the adjudicatory hearing on CCDCFS's dependency complaint with a prayer for permanent custody. At the start of the hearing, CCDCFS amended its dependency allegations regarding N.V., and Mother stipulated only to the following amended allegations:

1) Mother has been diagnosed with PTSD and is in need of continued counseling.

\* \* \*

3) The child's sibling [A.V.] has been in the temporary custody of CCDCFS since January 2015 after being adjudicated abused due to having an unexplained spiral fracture sustained while in the care of Mother. The alleged perpetrator remains unknown. A motion for permanent custody is currently pending. See case number AD 15900286.

{¶10} Mother then admitted the facts alleged in the stipulated amended complaint, and the court accepted the admission. Father did not appear for the hearing, and the parties were not permitted to enter into stipulations regarding him.

{¶11} Social worker Holly Rushton ("Rushton") testified that she was not certain if Father had established paternity. She testified that he has a cannabis dependency but refused to attend treatment. Rushton also testified that mother did not have food, formula, or other items for an infant.

{¶12} At the close of the hearing, the trial court noted that there was no evidence regarding who had caused A.V. to suffer a broken arm, and no evidence that Mother and Father were currently together. The court concluded that, although A.V. had been adjudicated abused, there was no evidence that N.V. was also in danger of abuse or neglect. The court found that

the allegations of the complaint as amended have not yet been proved by clear and convincing evidence.

\* \* \*

The child is not adjudicated to be Dependent.

\* \* \*

that the child's continued residence in or return to the home of [Mother] will not be contrary to the child's best interest.

Upon due consideration, it is ordered that the Complaint is dismissed without prejudice pursuant to [R.C. 2151.35(B)(1)], the previous order of the Court committing the child to the pre-dispositional temporary custody of [CCDCFS] pursuant to [Juv.R. 13] is terminated and stay of execution is now vacated and held for naught.

The child is to be immediately returned home.

The child is committed to the legal custody of [Mother].

{¶13} Following this order, CCDCFS appealed to this court, which issued a stay of the trial court's judgment.

{¶14} CCDCFS assigns the following error for review:

Assignment of Error

The trial court's order dismissing [CCDCFS's] complaint for dependency was against the manifest weight of the evidence.

{¶15} While this court asked the parties to submit supplemental briefing on the issue of whether there is a final appealable order, our focus and CCDCFS’s argument is based on the juvenile court’s legal custody determination, after holding a full adjudicatory hearing on the matter. The Ohio Supreme Court, in *In re C.B.*, 129 Ohio St.3d 231, 2011-Ohio-2899, 951 N.E.2d 398, found this type of court order to be final and appealable. The *In re C.B.* court held that: “[w]hen a trial court denies a children-services agency’s motion to modify temporary custody to permanent custody, terminates the placement of temporary custody with the agency, and awards legal custody to a parent, the order is final and appealable under R.C. 2505.02.” *Id.* at the syllabus.<sup>1</sup> The Supreme Court held that the juvenile court’s order determined the action and prevented any further judgment under R.C. 2505.02(B)(1) because the disposition of legal custody was permanent and ended the existing proceeding under R.C. 2151.42. *Id.* at ¶ 12. We likewise conclude, based on the facts in this case, that the part of the trial court’s awarding legal custody of N.V. to Mother qualifies as a final appealable order. The trial court did not retain jurisdiction because it terminated the “previous order of the Court committing the child to the pre-dispositional temporary custody of [CCDCFS] pursuant to [Juv.R. 13.]”

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<sup>1</sup>We recognize this court’s decision in *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, where we acknowledged that CCDCFS has the ability to appeal an order that terminates the agency’s temporary custody and awards legal custody of a child to an individual.

{¶16} Having concluded that the juvenile court's order is final and appealable, we now address our intention to take judicial notice of the docket and orders in the proceedings related to N.V.'s sister, A.V. We note that the parties do not dispute the facts of A.V.'s case.

{¶17} A predominant factor throughout the proceedings in N.V.'s case was the fact that his older sister by approximately one year, A.V., was in temporary custody after being adjudicated abused because of an unexplained spiral fracture while in the care of Mother. In fact, when CCDCFS immediately sought emergency temporary custody of N.V., it listed A.V.'s abuse adjudication in connection with an unexplained spiral fracture as one of the factors warranting custody. A.V.'s custody case was referenced throughout the entire proceedings involving N.V. Other than in CCDCFS's motion for emergency custody, A.V.'s situation was referenced in N.V.'s case plan, the June 2016 adjudicatory hearing, and in the juvenile court's order awarding legal custody to Mother. The court also acknowledged in its order that a motion for permanent custody was pending in A.V.'s case.

{¶18} At appellate oral argument, the parties acknowledged that the juvenile court held a hearing in December 2016 on CCDCFS's motion to modify temporary custody of A.V. to permanent custody. The juvenile court issued an order in that case on January 17, 2017. In this order, the court continued CCDCFS's temporary custody of A.V. with a plan for reunification with Mother, pending Mother's updated psychological evaluation. The court found that residence in Mother's home will be contrary to A.V.'s best interest



because Mother's chronic mental illness is so severe that "it makes the parent unable to provide an adequate permanent home for the child at the present time." *In re A.V.*, Case No. AD 15900266.

{¶19} In light of the foregoing, this court has the obligation to take judicial notice of the juvenile court's adjudication in *In re A.V.*, Case No. AD 15900266. This court has taken judicial notice of a judgment rendered in an underlying criminal case related to the civil case brought forth by the plaintiff. *Sultaana v. Horseshoe Casino*, 8th Dist. Cuyahoga No. 102501, 2015-Ohio-4083, ¶ 4, fn. 3, citing *Hutz v. Gray*, 11th Dist. Trumbull No. 2008-T-0100, 2009-Ohio-3410, ¶ 40 (where the court of appeals took judicial notice of the trial court's docket in a different case); *Morgan v. Cincinnati*, 25 Ohio St.3d 285, 496 N.E.2d 468 (1986).

{¶20} We note that "the act of an appellate court taking judicial notice is not unprecedented, as the Tenth Appellate District has taken judicial notice of pleadings from another trial court case." *Hutz* at ¶ 40, citing *Stancourt v. Worthington City School Dist. Bd. of Edn.*, 164 Ohio App.3d 184, 2005-Ohio-5702, 841 N.E.2d 812, ¶ 14, fn. 3 (10th Dist.), citing *In re Adoption of Lassiter*, 101 Ohio App.3d 367, 374, 655 N.E.2d 781 (2d Dist.1995). See *In re Estate of Vaughan*, 90 Ohio St.3d 544, 2001-Ohio-222, 740 N.E.2d 259 (Lundberg Stratton, J., dissenting) ("I believe that the probate court had the authority and the obligation to take judicial notice of the juvenile court adjudication of paternity." *Id.* at 550.)

{¶21} Taking into account the juvenile court's most recent order continuing temporary custody in A.V.'s case and finding residence in Mother's home contrary to A.V.'s best interest, we reverse the juvenile court's July 15, 2016 order awarding legal custody of N.V. to Mother and terminating temporary custody of CCDCFS, and we remand the matter for further proceedings. Less than one month ago, the juvenile court determined that Mother is not able to directly care for A.V. The court further ordered that A.V. remain in temporary custody. We have an obligation to defer to the trial court's most recent order pertaining to a sibling who is only one year older than N.V.

{¶22} Accordingly, judgment is reversed and remanded. N.V. is returned to the temporary custody of CCDCFS, and the matter is remanded for an adjudicatory hearing in light of *In re A.V.*, Case No. AD 15900266.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, 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.

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MARY EILEEN KILBANE, JUDGE

KATHLEEN ANN KEOUGH, A.J., and  
ANITA LASTER MAYS, J., CONCUR

