

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE K.V.	:	
	:	No. 108441
Minor Child	:	
	:	
[Appeal by E.C., Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: December 12, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD17919014

Appearances:

Bartos & Bartos, L.P.A., and David Bartos, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Rachel Eisenberg, Assistant Prosecuting Attorney, *for appellee C.C.D.C.F.S.*

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant E.C. (“Mother”) appeals an order of the Cuyahoga County Juvenile Court (“juvenile court”) that extended temporary custody of her child, K.V., to the Cuyahoga County Department of Child and Family Services (“CCDCFS”). For the reasons that follow, we reverse the judgment and

remand the case to the juvenile court to conduct an independent review of the magistrate's decision.

I. Factual and Procedural History

{¶ 2} E.C. had custody of her daughter, K.V. On December 18, 2017, CCDCFS filed a complaint for neglect, as defined in R.C. 2151.03(A)(2), and sought temporary custody of K.V. to CCDCFS.¹ CCDCFS also filed a motion for emergency temporary custody. On January 9, 2018, the magistrate found K.V.'s continued residence with E.C. was not in the child's best interest and found probable cause, pursuant to R.C. 2151.31, for removal of the child. K.V. was committed to the emergency temporary care and custody of CCDCFS.

{¶ 3} A case plan was filed on January 12, 2018. The complaint was amended on March 12, 2018, to find K.V. dependent, rather than neglected, under R.C. 2151.04(C).² K.V. was adjudicated on March 28, 2018, and the child was placed in the temporary custody of the CCDCFS. On November 28, 2018, CCDCFS filed a motion for extension of temporary custody.

{¶ 4} Trial was held on March 11, 2019, and the magistrate's decision was filed with the juvenile court on March 12, 2019. The magistrate found continued

¹ The complaint also sought legal custody of sibling A.C. to father, T.C. The matters relating to A.C. are addressed in companion case *In re A.C.*, 8th Dist. Cuyahoga No. 108442, and are not discussed in this opinion.

² The complaint was amended and stipulated to by the parties on March 12, 2018. The amended complaint charged K.V. as dependent. However, the magistrate's decision and finding of facts dated March 12, 2018, states "The child is adjudicated to be Neglected." The juvenile court judge's subsequent judgment entry and finding of facts also adjudicated K.V. neglected.

temporary custody with CCDCFS was in the best interests of K.V. The magistrate's decision contained no facts or legal analysis justifying the extension of temporary custody.

{¶ 5} On March 18, 2019, E.C. filed a motion to obtain a copy of the transcript from the January 11, 2019 hearing; on March 25, 2019, the court granted the motion. It appears E.C. mistakenly requested the wrong hearing transcript and, on March 21, 2019, filed an amended motion seeking the March 11, 2019 trial transcript. E.C.'s amended motion requesting the trial transcript was granted on March 26, 2019.

{¶ 6} E.C. objected on March 25, 2019, to the magistrate's decision and requested leave to supplement her objections upon receipt of the trial transcript.

{¶ 7} On March 29, 2019, the court denied E.C.'s request for leave to supplement her objections upon receipt of the trial transcript and overruled her objections to the magistrate's decision. On that same date, the trial court approved and adopted the magistrate's decision previously filed on March 12, 2019, and issued the court's final order.

{¶ 8} E.C. appealed, presenting the following assignments of error for our review:

Assignment of Error 1: The trial court committed prejudicial error in violation of appellant's right to due process by denying appellant's motion of leave of court to file supplemental objections for the p[ur]pose of supporting her timely filed general objection to the magistr[ate]'s decision and overruling the appellant's objections only four (4) days later, in violation of Juv.R. 40(D)(3)([b])(iii).

Assignment of Error 2: The court erred, as it is an abuse of discretion and further is against the manifest weight of the evidence and sufficiency of the evidence in denying mother's motion for legal custody.

Assignment of Error 3: The trial court committed prejudicial error in by granting CCDCF'[s] motion for 1st extension of temporary custody and onerous orders that are vague, unworkable and not in the child's best interest.

II. Law and Argument

{¶ 9} E.C. argues in her first assignment of error that the trial court committed prejudicial error when it denied her motion to supplement her objections with the trial transcript, and subsequently overruled her objections to the magistrate's decision before conducting an independent review of that decision. CCDCFs challenges that E.C. objected to legal determinations — not findings of fact — thereby precluding the application of Juv.R. 40(D)(3)(b)(iii) and, therefore, the court was not required to complete an independent review of the magistrate's recommendation as stated in Juv.R. 40(D)(4)(d).

{¶ 10} A trial court's decision to adopt a magistrate's decision is subject to an abuse of discretion standard of review. *In re S.E.*, 8th Dist. Cuyahoga No. 96031, 2011-Ohio-2042, ¶ 13.

{¶ 11} Juv.R. 40(C)(1)(b) authorizes magistrates to conduct trials except in cases against an alleged serious youthful offender. The magistrate then files a written decision that becomes effective upon adoption by a trial court. Juv.R. 40(D)(4)(a).

{¶ 12} Objections to the magistrate’s decision may be raised within 14 days of the filing of the decision. Juv.R. 40(D)(3)(b)(i); *In re H.R.K.*, 8th Dist. Cuyahoga No. 97780, 2012-Ohio-4054, ¶ 10. When objections are filed, the trial court must conduct an independent review of the case and rule on the objections: “In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.” Juv.R. 40(D)(4)(d); *In re K.D.W.*, 8th Dist. Cuyahoga No. 104273, 2017-Ohio-1280, ¶ 8.

{¶ 13} A court’s independent review encompasses an examination of the record including, but not limited to, the magistrate’s decision, the filed objections, supplemental objections, and the applicable hearing transcript. *In re R.C.*, 8th Dist. Cuyahoga No. 96396, 2011-Ohio-4641, ¶ 12. “The independent review requires the trial court to ‘conduct a de novo review of the facts and an independent analysis of the issues to reach its own conclusions about the issues in the case.’” *In re H.R.K.* at ¶ 10, quoting *Radford v. Radford*, 8th Dist. Cuyahoga Nos. 96267 and 96445, 2011-Ohio-6263, ¶ 13.

{¶ 14} If the objecting party challenged a finding of fact, a copy of the transcript, or affidavit of the evidence if a transcript is not available, must be filed with the court to facilitate the trial court’s independent review. Juv.R. 40(D)(3)(b)(iii); *In re K.D.W.* at ¶ 8-9. Typically, the objecting party has 30 days after filing its objections to file a transcript or affidavit. *In re J.W.*, 8th Dist. Cuyahoga No. 98607, 2013-Ohio-268, ¶ 9. Absent a transcript of the proceedings

or other comparable evidence, the trial court cannot conduct an independent review of the relevant factual issues. *In re H.R.K.* at ¶ 14.

{¶ 15} Where a trial court adopts a magistrate's decision over an objection to a factual finding — and before the objecting party files a timely requested transcript or other materials necessary to complete the independent review — an abuse of discretion takes place. *In re H.R.K.*, 8th Dist. Cuyahoga No. 97780, 2012-Ohio-4054, at ¶ 12. *See In re J.W.* at ¶ 11 (the juvenile court abused its discretion when it failed to conduct a de novo review of the magistrate's decision on child support after father timely filed objections and before a transcript was filed with the court); *In re I.R.Q.*, 8th Dist. Cuyahoga No. 105924, 2018-Ohio-292, ¶ 25 (the trial court abused its discretion when mother objected to magistrate's decision on modified visitation but the trial court adopted the magistrate's decision before a transcript was filed); *In re K.D.W.*, 8th Dist. Cuyahoga No. 104273, 2017-Ohio-1280, at ¶ 12-13 (where a party objected to the magistrate's decision, the trial court abused its discretion when it adopted the magistrate's decision — that did not discuss any facts or provide any legal analysis — before the trial court received the transcript and performed an independent review).

{¶ 16} Here, the magistrate filed her decision concluding it was in the best interest of K.V. to remain in the temporary care and custody of CCDCFS. The magistrate's decision identified the exhibits introduced at trial, but cited no factual basis for her decision. E.C. timely objected to the magistrate's decision citing these objections:

1. The Magistrate's Decision is against the manifest weight of the evidence. Mother completed all services. The child was residing with mother at the time of removal. Reunification should be with mother. Mother was ready, willing, and able to provide for her children. Mother had appropriate housing, basic needs, and has completed case plan services.

2. Decision failed to show a causational nexus showing that any action by Mother was detrimental to the children.

* * *

6. The Magistrate's decision was not in the best interest of the minor child.

{¶ 17} While E.C.'s objections did not reference specific facts argued at the hearing, and E.C. did not file a request for specific findings of fact, the objections raised required the trial court's de novo review of the facts and an independent analysis of the issues leading to the magistrate's decision before the trial court could adopt the magistrate's decision. According to Juv.R. 40(D)(4)(d), a court will rule on timely objections and determine, through an independent review, whether the magistrate's decision properly determined the factual issues and appropriately applied the law. Juv.R. 40 does not mandate an objecting party request findings of fact nor limit objections to factual findings.

{¶ 18} E.C. filed objections as required by Juv.R. 40(D) and requested a copy of the trial transcript.³ Additionally, E.C. requested leave to amend or supplement her objections upon receipt of the trial transcript.

³ E.C.'s objections to the magistrate's decision include an objection to the finding that temporary custody to CCDCFS was in the best interest of K.V. A best-interest determination involves a factual determination on the part of the court.

{¶ 19} The court granted E.C.'s leave to file the transcript, but three days later the trial court approved and adopted the magistrate's decision without reviewing the transcript that had yet to be filed. The trial court's order identified the individuals present for the hearing and stated "[t]he [c]ourt heard testimony and accepted evidence." The trial court identified the exhibits entered at trial and reiterated the decision of the magistrate. On the same date it adopted the magistrate's order, the trial court found, based upon a review of the court file, that E.C.'s request for leave to supplement her objections and her objections to the magistrate's decision were not well taken.

{¶ 20} It was not possible for the trial court to conduct an independent review of the magistrate's decision and E.C.'s objections without reviewing the transcript, especially because the magistrate's decision contained no facts or legal analysis. CCDCFS's contention that the judge utilized the juvenile court's "Court Smart" system during his review — a system that records all proceedings, and thereby extinguishes the need for a transcript of the trial hearing — is unsubstantiated and therefore lacks merit.

{¶ 21} Because the trial court adopted the magistrate's decision before E.C. filed a copy of the trial transcript, we cannot find that the trial court conducted an independent review of the factual issues and an analysis of the law. For the foregoing reasons, we conclude that the trial court's judgment is reversed and this matter remanded to the trial court for further proceedings consistent with Juv.R. 40. We

decline to reach the merits of E.C.'s second, third, and fourth assignments of error because we conclude these errors are not yet ripe for review.

{¶ 22} Judgment reversed and remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee the 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.

RAYMOND C. HEADEN, JUDGE

ANITA LASTER MAYS, P.J., and
EILEEN A. GALLAGHER, J., CONCUR