

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE A.C.	:	
	:	No. 108442
A Minor Child	:	
	:	
[Appeal by Mother]	:	

JOURNAL ENTRY AND OPINION

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

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-17919015

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 Cuyahoga County Division of Children and Family Services.*

Laubacher & Company, Eric R. Laubacher, and Lauren M. Strandbergh, *for appellee Father.*

EILEEN A. GALLAGHER, J.:

{¶ 1} Appellant-mother E.C. (“Mother”) appeals from an order of the Cuyahoga County Court of Common Pleas, Juvenile Division (the “juvenile court”)

awarding legal custody of her daughter, A.C., to A.C.'s father, appellee T.C. ("Father").

{¶ 2} For the reasons that follow, we find merit to the appeal, reverse the juvenile court's judgment and remand the case for the juvenile court to conduct an independent review of the magistrate's decision in accordance with Juv.R. 40.

Factual Background and Procedural History

{¶ 3} On December 18, 2017, appellee Cuyahoga County Division of Children and Family Services ("CCDCFS" or "the agency") filed a complaint for neglect seeking temporary custody of K.V.¹ be awarded to CCDCFS and legal custody of A.C. be awarded to Father. On January 9, 2018, Father was granted predispositional emergency custody of A.C.

{¶ 4} In February 2018, Father filed a motion for legal custody of A.C. and Mother filed a motion for legal custody or, alternatively, temporary custody to CCDCFS with placement with Father or alternatively, temporary custody to A.C.'s maternal grandmother. In March 2018, Mother stipulated to the allegations of an

¹ K.V. is the subject of a companion case, *In re K. V.*, 8th Dist. Cuyahoga No. 108441.

amended complaint² and the juvenile court adjudicated A.C. to be neglected.³ Mother and Father stipulated to a disposition of temporary custody to Father and, on March 29, 2019, the juvenile court granted temporary custody of A.C. to Father.

{¶ 5} In November 2018, Father filed another motion for legal custody of A.C., Mother filed a motion for legal custody of A.C. or, alternatively, to adopt a shared parenting plan and CCDCFS filed a motion to modify temporary custody to legal custody of A.C. to Father.

{¶ 6} On March 11, 2019, the magistrate held an evidentiary hearing on the pending motions.⁴ The parties presented testimony from five witnesses and over 20

² The amended complaint alleged:

1. Mother, E.C., has a substance abuse problem, specifically alcohol, for which she is in need of treatment. Mother needs to acknowledge her drinking impacted her children.
2. Mother's alcohol use caused conflict with her two children as well as her parental separation.
3. K.V. suffers academically as a result of mother and [father's] separation in July 2017.
* * *
5. Father of A.C. * * * is willing and able to provide a safe home for the child.

Reasonable efforts were made by Cuyahoga County Division of Children and Family Services to prevent the removal of the child from the home and removal is in the best interest of the child.

³ Although the parties stipulated that A.C. was dependent, the juvenile court adjudicated her to be neglected.

⁴ Both the magistrate's decision and the juvenile court's subsequent entries approving and adopting the magistrate's decision identify the pending motions addressed at the hearing as (1) Mother's motion for legal custody or, alternatively, temporary custody to CCDCFS with placement with Father or, alternatively, temporary custody to A.C.'s maternal grandmother; (2) Father's motion for legal custody; (3) a motion for first extension of temporary custody filed by CCDCFS and (4) a motion for attorney fees filed

exhibits were admitted into evidence. The magistrate also heard from the guardian ad litem regarding her report and recommendation.

{¶ 7} At the conclusion of the hearing, the magistrate announced her decision to grant legal custody of A.C. to Father, setting forth her findings and explaining her decision as follows:

As to [A.C.], I will find that the Agency has made reasonable efforts to finalize the permanency plan for this child, and I do find that it is in this child's best interest to be committed to the legal custody of her father.

She is doing well in placement. Permanency is what we all strive for in the best interests of the children. I do find that it is in her best interest at this point to be placed in the legal custody of her father.

Mother needs to maintain sobriety * * * [.]

Mother's own testimony before this Court was that she's an alcohol[ic] and I understand that there's difficulties in dealing with that, but you've got to get that under control. It's not in the children's best interest.

{¶ 8} On March 12, 2019, the magistrate issued her written decision terminating temporary custody, denying Mother's motion for legal custody and granting legal custody of A.C. to Father. In her written decision, the magistrate set forth a finding that "the child's continued residence in or return to the home of [E.C.], the mother, will be contrary to the child's best interest." The magistrate's written decision contains no other findings or reasoning for her decision.

by Father. At the hearing, Mother made an oral motion to withdraw her alternate motion for custody to A.C.'s maternal grandmother, which the court granted. Upon our review of the record, we do not find a motion for first extension of temporary custody filed by CCDCFS as it relates to A.C. However, as stated above, CCDCFS did file a motion to modify temporary custody to legal custody of A.C. to Father.

{¶ 9} On March 18, 2019, Mother filed a motion for a transcript at Mother's expense. The motion contained a typographical error and referenced two different hearing dates. On March 21, 2019, Mother filed an amended motion for transcript, clarifying that she was seeking a transcript of the March 11, 2019 hearing. On March 25, 2019, Mother filed her objections to the magistrate's decision as follows:

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 causal nexus showing that any action by Mother was detrimental to the child.
3. Mother was denied admission of the testimony and evidence regarding Father[']s historical patterns of behavior and nefarious conduct. Further the evidence would show father had reason and motive to fabricate the extent of concerns claimed upon mother.
4. CCDCFS failed to exercise its due diligence in investigating claims made by mother regarding father.
5. CCDCFS failed to adequately investigate father's behaviors in laying hands on one of the children in his care, prior to an award of custody.
6. The Magistrate's decision was not in the best interest of the minor child.

Mother also requested leave to supplement her objections after she received the transcript of the hearing.

{¶ 10} On March 26, 2019, the juvenile court granted Mother's request for a transcript of the March 11, 2019 hearing. Three days later, without waiting for the

transcript to be completed, the juvenile court overruled Mother's objections and approved and adopted the magistrate's decision. In its March 29, 2019 judgment entry, the juvenile court stated: "Pursuant to Juv.R. 40(D)(4)(e) and Civ.R. 53(D)(4)(e), upon an independent review of the matter, the Court hereby affirms, approves and adopts the Magistrate's Decision that was filed on March 12, 2019." In a subsequent journal entry dated March 29, 2019 and journalized on April 1, 2019, the juvenile court stated: "Upon review of the Court file, the Magistrate's Decision and the Objections, the Court finds the Objections are not well-taken. The Court affirms, approves and adopts said Decision and overrules said Objections."

{¶ 11} In approving and adopting the magistrate's decision and overruling Mother's objections, the juvenile court did not make any additional findings or provide any explanation for its decision to grant legal custody to Father, but simply reiterated the magistrate's finding that "the child's continued residence in or return to the home of [E.C.], the mother, will be contrary to the child's best interest."

{¶ 12} On April 3, 2019, the juvenile court denied Mother's request to file supplemental objections. The juvenile court did not explain its decision to deny Mother's request other than to state: "Upon review of the Court file and the Request, the Court finds the Request is not well taken. It is therefore ordered that said Request is denied."

{¶ 13} Mother appealed the juvenile court's decision, raising the following five assignments of error for 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 purpose of supporting her timely filed general objection to the magistrate'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 trial court abused its discretion and committed reversible error and prejudicial error by denying appellant's motion for legal custody and granting legal custody of the child to her father, T.C. without making a determination that the preponderance of the evidence supported the award of legal custody to the father nor any finding that legal custody to the father was in fact in the child's best interest.

Assignment of Error 3: The trial court abused its discretion and committed reversible and prejudicial error by denying Mother[s] motion for legal custody and granting legal custody of A.C. to Father, T.C. in finding that the child's continued residence in or return to the home of Mother, E.C. will be contrary to the child's [best] interest. As such the trial court's judgment was against the manifest weight of the evidence.

Assignment of Error 4: The trial court committed prejudicial error in excluding probative and relevant evidence and testimony of appellant which related to the retaliatory motive and bias of the appellee Father, T.C.

Assignment of Error 5: The trial court committed prejud[icial] error by entering a final order which evidence presented at trial was insufficient to determine parenting and for a proper determination of best interest of the child.

Law and Analysis

Standard for Determining Legal Custody

{¶ 14} "Legal custody" is

a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and

medical care, all subject to any residual parental rights, privileges, and responsibilities.

R.C. 2151.011(B)(21).

{¶ 15} When a juvenile court awards legal custody following an adjudication of abuse, neglect or dependency, “it does so by examining what would be in the best interest of the child based on a preponderance of the evidence.” *In re T.R.*, 8th Dist. Cuyahoga No. 102071, 2015-Ohio-4177, ¶ 44, quoting *In re M.J.M.*, 8th Dist. Cuyahoga No. 94130, 2010-Ohio-1674, ¶ 11, 14. A “preponderance of the evidence” means evidence that is “more probable, more persuasive, or of greater probative value.” *In re C.V.M.*, 8th Dist. Cuyahoga No. 98340, 2012-Ohio-5514, ¶ 7, quoting *In re D.P.*, 10th Dist. Franklin No. 05AP-117, 2005-Ohio-5097, ¶ 52. There is no “specific test or set of criteria” that must be applied or considered in determining what is in a child’s best interest in a legal custody case. *In re T.R.* at ¶ 48.

{¶ 16} The decision whether to grant or deny a request for legal custody is within the sound discretion of the juvenile court. Accordingly, when reviewing a juvenile court’s “ultimate decision on whether the facts as determined would make it in the child’s best interests to be placed in legal custody,” we apply an abuse of discretion standard. *In re W.A.J.*, 8th Dist. Cuyahoga No. 99813, 2014-Ohio-604, ¶ 2, quoting *In re G.M.*, 8th Dist. Cuyahoga No. 95410, 2011-Ohio-4090, ¶ 14. We likewise review a trial court’s decision to accept or reject a magistrate’s decision for abuse of discretion. *In re D.G.B.*, 8th Dist. Cuyahoga No. 107921, 2019-Ohio-3571, ¶ 24, citing *In re S.E.*, 8th Dist. Cuyahoga No. 96031, 2011-Ohio-2042, ¶ 13. An

abuse of discretion occurs where a juvenile court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). A decision is unreasonable if there is “no sound reasoning process that would support that decision.” *In re C.D.Y.*, 8th Dist. Cuyahoga No. 108355, 2019-Ohio-4262, ¶ 8, quoting *Baxter v. Thomas*, 8th Dist. Cuyahoga No. 101186, 2015-Ohio-2148, ¶ 21. A decision is arbitrary if it is made “without consideration of or regard for facts [or] circumstances.” *In re C.D.Y.* at ¶ 8, quoting *Black's Law Dictionary* 125 (10th Ed.2014).

Ruling on Objections and Adopting Magistrate's Decision before Receiving Transcript

{¶ 17} In her first assignment of error, Mother contends that the juvenile court erred in adopting the magistrate's decision before receiving the transcript of the March 11, 2019 hearing. She contends that (1) her objections sufficiently raised a manifest-weight-of-the-evidence challenge to the magistrate's determination that “the child's continued residence in or return to the home of [E.C.], the mother, will be contrary to the child's best interest” and decision to award legal custody to Father and (2) pursuant to Juv.R. 40(D)(3)(b)(iii), she should been afforded at least 30 days from the time she filed her objections to file the transcript before the juvenile court ruled on her objections and approved and adopted the magistrate's decision. We agree.

{¶ 18} Juv.R. 40 governs magistrate's decisions and the procedure for filing and ruling on objections to a magistrate's decision in juvenile cases. *See also* Civ.R.

53. A party may object to a magistrate’s decision within 14 days of its filing. Juv.R. 40(D)(3)(b)(i); Civ.R. 53(D)(3)(b)(i). Where a party timely objects to a magistrate’s decision, the juvenile court must conduct 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); *see also* Civ.R. 53(D)(4)(d). This “independent review” requires the juvenile 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 I.R.Q.*, 8th Dist. Cuyahoga No. 105924, 2018-Ohio-292, ¶ 23, quoting *Radford v. Radford*, 8th Dist. Cuyahoga Nos. 96267 and 96445, 2011-Ohio-6263, ¶ 13.

{¶ 19} To aid in the juvenile court’s “independent review,” if the objecting party challenges a magistrate’s finding of fact, the party must provide the juvenile court with “a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.” Juv.R. 40(D)(3)(b)(iii); Civ.R. 53(D)(3)(b)(iii). Unless extended by the juvenile court, the objecting party has 30 days after filing objections to file the transcript or affidavit. Juv.R. 40(D)(3)(b)(iii); Civ.R. 53(D)(3)(b)(iii).

{¶ 20} Juv.R. 40(D)(3)(b)(iii) provides:

An objection to a factual finding, whether or not specifically designated as a finding of fact under Juv.R. 40(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty

days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

{¶ 21} As this court has previously held, “it is an abuse of discretion to adopt a magistrate’s decision over an objection to factual findings prior to its receipt of a timely requested transcript or other materials necessary to conduct an independent review of the matter.” *In re H.R.K.*, 8th Dist. Cuyahoga No. 97780, 2012-Ohio-4054, ¶ 12; *see also In re I.R.Q.*, 2018-Ohio-292, at ¶ 24-25 (trial court abused its discretion in adopting magistrate’s decision without conducting the independent review required by Juv.R. 40(D)(4)(d) where mother timely filed objections to magistrate’s decision and trial court granted mother leave to file the transcript of proceedings but adopted magistrate’s decision two days later and then overruled mother’s objections without reviewing the transcript, which had yet to be filed); *In re K.D.W.*, 8th Dist. Cuyahoga No. 104273, 2017-Ohio-1280, ¶ 6-13 (trial court abused its discretion in adopting magistrate’s decision where it granted appellant leave to file the transcript but then adopted magistrate’s decision the following day without reviewing the transcript); *In re R.C.*, 8th Dist. Cuyahoga No. 94885, 2010-Ohio-4690, ¶ 7, fn. 1 (“court erred by adopting the magistrate’s decision on the same day that it ordered the preparation of a transcript of the proceedings before the magistrate”), citing *Savioli v. Savioli*, 99 Ohio App.3d 69, 71, 649 N.E.2d 1295 (8th Dist.1994) (“appellate courts have found that a trial court abuses its discretion when it rules on objections to a referee’s report without the benefit of a transcript”).

{¶ 22} As this court explained in *In re R.C.*, 8th Dist. Cuyahoga No. 96396, 2011-Ohio-4641:

[T]he court must conduct “a de novo review of any issue of fact or law that a magistrate has determined when an appropriate objection is timely filed. The trial court may not properly defer to the magistrate in the exercise of the trial court’s de novo review. The magistrate is a subordinate officer of the trial court, not an independent officer performing a separate function.”

Id. at ¶ 11, quoting *Knauer v. Keener*, 143 Ohio App.3d 789, 793-794, 758 N.E.2d 1234 (2d Dist.2001).

{¶ 23} In this case, Mother timely filed her objections to the magistrate’s decision, challenging the magistrate’s determination that granting legal custody of A.C. to Father was in A.C.’s best interest based on various alleged facts that were not referenced in the magistrate’s decision. The juvenile court granted Mother’s request for the transcript but then adopted the magistrate’s decision three days later without waiting for Mother to file the transcript.

{¶ 24} Because the trial court was alerted that Mother intended to obtain the transcript to support her objections (and granted her motion to obtain the transcript), it should not have ruled on the objections until the expiration of the 30 days. The juvenile court “could not purport to conduct an independent review of the evidence when it knew that there was a transcript of the trial being prepared.” *In re R.C.*, 2010-Ohio-4690, at ¶ 7, fn. 1.

{¶ 25} Appellees contend that Mother’s objections “relate to legal determinations made in the case, rather than disputing findings of fact” and,

therefore, “Juv.R. 40(D)(3)(b)(iii) does not apply.” We disagree. Mother objected to the magistrate’s determination that granting legal custody of A.C. to Father was in the best interest of A.C. Whether legal custody is in the best interest of a child can only be determined by considering the relevant facts. Virtually no facts were included in the magistrate’s written decision. Accordingly, the only way the juvenile court could have conducted an independent review of the facts necessary to ascertain whether the magistrate has properly determined the factual issues and appropriately applied the law would be by reviewing the transcript. *In re I.R.Q.*, 2018-Ohio-292, at ¶ 25 (observing that it was “impossible” for the juvenile court to independently review the magistrate’s decision and rule on appellant’s objections without reviewing the transcript where the magistrate’s decision did not “discuss any facts or provide any legal analysis”).

{¶ 26} CCDCFS also asserts that a transcript was “unnecessary” for the juvenile court to conduct an independent review of the record in this case because the court has access to the “Court Smart” system that “records each and every case” and “can be utilized by the court at any time” to listen to and review proceedings even without a transcript.

{¶ 27} Although Juv.R. 40(D)(3)(b)(iii) states that “[w]ith leave of court, alternative technology or manner of reviewing the relevant evidence may be considered,” there is nothing in the record to indicate that such leave was given in this case. In its April 1, 2019 journal entry, the juvenile court states that it reviewed the “Court file, the Magistrate’s Decision and [Mother’s] Objections” in determining

that the objections were “not well-taken.” The juvenile court makes no mention of having had early access to the transcript or having undertaken some alternative means of reviewing the March 11, 2019 proceedings before the magistrate. There is nothing else in the “[c]ourt file” as it exists in the record before us that indicates that the juvenile court had in some alternative manner reviewed the proceedings before the transcript had been prepared and filed. To the contrary, the record reflects that Mother filed a motion for a transcript at her expense and the juvenile court granted that motion. In the order granting Mother’s motion for a transcript, the juvenile court stated “[t]he transcript is to be ready for delivery as soon as possible.” The transcript that was ultimately filed with the juvenile court reflects that it was completed and signed by the court reporter on April 14, 2019.

{¶ 28} Accordingly, the juvenile court abused its discretion in adopting the magistrate’s decision and overruling Mother’s objections without reviewing the transcript and conducting the independent review required by Juv.R. 40(D)(4)(d).⁵

{¶ 29} Mother’s first assignment of error is sustained. The juvenile court’s judgment is reversed and this matter is remanded to the juvenile court to conduct the independent review required by Juv.R. 40(D)(4)(d). Based on our resolution of

⁵ We also note that although the juvenile court stated, in its March 29, 2019 judgment entry and April 1, 2019 journal entry, that it found that “the child’s continued residence in or return to the home of [E.C.], the mother, will be contrary to the child’s best interest,” there is no indication that the juvenile court determined that an award of legal custody to Father was in A.C.’s best interest. On remand, the juvenile court should consider and make its own independent determination of whether an award of legal custody to Father in is A.C.’s best interest, not simply whether return of A.C. to Mother’s care and custody is contrary to A.C.’s best interest.

Mother's first assignment of error, Mother's remaining assignments of error are premature.

{¶ 30} Judgment reversed; remanded.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the Cuyahoga County 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.

EILEEN A. GALLAGHER, JUDGE

ANITA LASTER MAYS, P.J., and
RAYMOND C. HEADEN, J., CONCUR