

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

J.I., A.W., A.W. and C.W.

Dependent Children

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Earle E. Wise, Jr., J.

Case Nos. 20 CAF 02 0010, 0012,
0013, and 0014

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Juvenile Division, Case Nos. 17072008, 9,
10 and 11 AB

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

November 13, 2020

APPEARANCES:

For Appellee DJFS

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For Guardian Ad Litem

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Wise, John, J.

{¶ 1} Appellant Diane C. appeals from the judgment entered in Delaware County Court of Common Pleas, Juvenile Court Division, which terminated all parental rights, privileges and responsibilities of the parents with regard to the minor children J.I., A.W., A.W., and C.W. and ordered that permanent custody of the minor children be granted to Delaware County Department of Job and Family Services (SCJFS).

{¶ 2} This appeal is expedited, and is being considered pursuant to App.R.11.2(C). The relevant facts leading to this appeal are as follows:

STATEMENT OF THE FACTS AND CASE

{¶ 3} This appeal pertains to the permanent custody disposition of the four minor children J.I., A.W., A.W. and C.W.

{¶ 4} On July 12, 2017, Delaware County Department of Job and Family Services (DCDJFS) filed a complaint alleging that J.I., A.W., A.W., and C.W. were neglected and dependent children.

{¶ 5} At the time of filing, the children were in the custody of their mother, Kayla R., and the children were living with Kayla's grandmother, Appellant Diane C., at 61 Wilder Street, Delaware, Ohio.

{¶ 6} DCDJFS initially put a safety plan in place, but that plan was violated, leading to the formal complaint being filed with the court. (T. at 48). During these early stages of the process, the assigned caseworker was concerned that Appellant Diane C. was taking action to protect Kayla from DCDJFS scrutiny rather than ensure the safety of the children. (T. at 50-51, 53).

{¶ 7} The children were adjudicated dependent and stayed in Kayla's custody and in Appellant's home. (T. at 123-124).

{¶ 8} On March 16, 2018, the children's situation deteriorated to the point that DCDJFS had to take temporary custody of them. Given that the children needed to be removed from under Appellant's roof, Appellant was not explored as a placement for the children. (T. at 124). Moreover, DCDJFS looks to the parents of the children to suggest potential kinship placements, and Kayla did not suggest Appellant as a placement. (T. at 145-146). Instead, the children were placed in foster homes. (T. at 144). The two boys were placed together and the two girls were placed together. *Id*

{¶ 9} Appellant Diane C. was not considered an appropriate placement for the children for a number of reasons. (T. at 137-138, 142-144). The caseworker was concerned that Appellant was enabling Kayla's drug usage. (T. at 142). There were also concerns that her poor health would make it difficult to care for four young, active children. (T. at 143-144).

{¶ 10} The special advocate (CASA) appointed by the trial court agreed that Appellant would be unable to care for the children. (T. at 402). There was also the problematic issue that the children lived in Appellant's home while their situation declined to the point that it required a safety plan, a formalized case, and then removal. (T. at 192-193, 237-238, 251).

{¶ 11} Eventually the children changed foster homes, and they have thrived in their new placements. (T. at 148-151).

{¶ 12} In August of 2018, Appellant Diane C., the great-grandmother of the children, filed for legal custody of the children.

{¶ 13} By Judgment Entry filed January 21, 2019, the motion was denied following an evidentiary hearing. The trial court's findings of fact denying the motion note that Appellant discussed her various medical issues in depth while under oath. (JE at 2-4). More significantly, the trial court noted that Appellant stated both that "she has been the sole provide[r] (sic), and she cared for the children," and also "that she always helped Kayla with the children, with getting them dressed, bathed, fed and everything that is required in raising children." (JE at 2-3; see *a/so* T. at 555-556).

{¶ 14} Ultimately, the children's parents did not make progress on their case plans, and on July 10, 2019, DCDJFS filed for permanent custody of the children.

{¶ 15} After the permanent custody motion was filed, Appellant Diane C. again filed for legal custody of the children.

{¶ 16} The two motions were heard simultaneously on November 25 and November 27, 2019, and January 24, 2020.

{¶ 17} The above noted facts were developed by a variety of witnesses. After that testimony was presented, Appellant Diane C. presented three witnesses: herself, her chosen babysitter for the children, and the pastor's wife from the church where she previously sent the children.

{¶ 18} Appellant testified that she was going to have A.W. and A.W. sleep in a bedroom in the upstairs of her house, but that she herself is unable to take stairs. (T. at 485, 576). In total, Appellant testified to having "a ruptured eye", poor eyesight that prevents her from driving, diabetes, a single kidney that functions at around 10 or 20 percent, a "problem" with her arm that necessitates she sleep sitting up, a previously broken kneecap, an ankle problem, foot surgery that rendered her immobile for "a long

period of time" and at the time of trial necessitated the use of a walker. (T. at 543, 544, 545, 546, 548, 549, 550, 576-577). When questioned about her knowledge of Kayla's drug usage, Appellant was evasive and inconsistent. (T. at 565-569).

{¶ 19} The trial court denied Appellant's motion for legal custody and granted permanent custody of J.I., A.W., A.W. and C.W. to DCDJFS.

{¶ 20} Appellant Diane C. now appeals, raising the following assignments of error:

ASSIGNMENTS OF ERROR

{¶ 21} "I. THE TRIAL COURT ERRED IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD BE IN THE BEST INTERESTS OF [J.I., A.W., A.W. AND C.W.] TO PERMANENTLY GRANT PERMANENT CUSTODY TO THE DELAWARE COUNTY DEPARTMENT OF JOBS AND FAMILY SERVICES.

{¶ 22} "II. THE TRIAL COURT ERRED BY REFUSING TO GRANT APPELLANT'S MOTION FOR CUSTODY OF [J.I., A.W., A.W. AND C.W]."

{¶ 23} On September 16, 2020, counsel for Appellant Diane C. filed a Suggestion of Death notifying this Court that Diane C. passed away on July 4, 2020.

I., II.

{¶ 24} Before addressing the merits of Appellants' arguments, we must address the effect of Appellant's death on the viability of this appeal.

{¶ 25} Actions are moot when they involve no actual genuine controversy which can definitely affect the parties' existing legal relationship. *Lingo v. Ohio Central Railroad, Inc.*, Franklin App. No. 05AP2006, 2006–Ohio–2268, at paragraph 20, citations deleted. Ohio courts have long recognized a court should not entertain jurisdiction over cases

without actual controversies. *Tschantz v. Ferguson* (1991), 57 Ohio St.3d 131, 566 N.E.2d 655.

{¶ 26} We find that the case *sub judice* became moot when Diane C. died on July 4, 2020. In her appeal, Diane C. specifically asked this Court to find that the trial court erred in denying her motion for custody of the minor children.

{¶ 27} Here, Diane C.'s death makes it impossible for her to gain custody of the children.

{¶ 28} If while an action is pending, an event occurs that renders it impossible for a court to grant any effectual relief, the court will generally dismiss the action. *Tschantz* at 133, 566 N.E.2d 655, quoting *Miner v. Witt* (1910), 82 Ohio St. 237, 92 N.E. 21, syllabus.

{¶ 29} Accordingly, based upon the foregoing, we find Appellant's appeal moot.

{¶ 30} For the foregoing reasons, this appeal is dismissed.

By: Wise, John, J.

Hoffman, P. J., and

Wise, Earle, J., concur.

JWW/kw