

[Cite as *In re A.P.*, 2011-Ohio-5998.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF MEDINA    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

IN RE A.P.

C.A. No.       11CA0049-M

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF MEDINA, OHIO  
CASE Nos.    2010 06 NE 0022  
                  2010 06 DE 0023

DECISION AND JOURNAL ENTRY

Dated: November 21, 2011

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DICKINSON, Judge.

INTRODUCTION

{¶1} Tammy Twyford, A.P.’s maternal grandmother, had legal custody of A.P. from 2009 until the trial court removed her from the case plan after she violated the terms of protective supervision. In the same order, the trial court denied Ms. Twyford’s motion for expanded visitation and/or legal custody. Ms. Twyford has attempted to appeal that order. This Court dismisses the attempted appeal because the trial court’s order is not appealable under Section 2505.02 of the Ohio Revised Code.

BACKGROUND

{¶2} A.P. was born in December 2006. In December 2008, she was taken from her mother’s care and placed in the temporary custody of the Medina County Job and Family Services. In October 2009, the child was placed in the legal custody of her maternal grandmother, Ms. Twyford. In June 2010, Medina County Job and Family Services filed a

complaint alleging that A.P. was a dependent child under Section 2151.04(C) of the Ohio Revised Code because Ms. Twyford had left the child in the care of her natural mother, Andrea P.

{¶3} In July 2010, the juvenile court journalized an order indicating that A.P.'s mother and grandmother had agreed to an adjudication of dependency and a disposition placing A.P. in the protective supervision of Medina County Job and Family Services. The trial court required Ms. Twyford to "ensure that all contact between the child and her mother, Andrea . . . , is approved by [the agency]." In August 2010, Job and Family Services accused Ms. Twyford of violating the court's orders by leaving A.P. in Andrea's care without the agency's approval. Job and Family Services moved the trial court to change the disposition to give the agency temporary custody of A.P., and, after a hearing, the trial court granted the motion.

{¶4} In October, the agency moved the trial court to amend the case plan to allow for more flexibility in A.P.'s visits with Ms. Twyford. The guardian ad litem, Jennifer Matyac, objected to the proposed change and moved to terminate Ms. Twyford from the case plan. Ms. Matyac based her motion on allegations that A.P. had been talking about spending time with Ms. Twyford's boyfriend, who Ms. Matyac discovered is registered as a sexually oriented offender. In 2004, Floyd Phalsgraff pleaded guilty to a fourth-degree felony charge of gross sexual imposition involving his then ten-year-old daughter.

{¶5} Job and Family Services withdrew its motion, and Ms. Twyford moved the court for legal custody and/or expanded visitation. On March 24, 2011, following a hearing, the trial court determined that Ms. Twyford was not a suitable custodian for A.P. It granted Ms. Matyac's motion to terminate Ms. Twyford from the case plan and denied Ms. Twyford's motion for custody and/or expanded visitation. Ms. Twyford has attempted to appeal that order. Just

before she filed her notice of appeal, the agency moved the trial court to modify A.P.'s disposition to give it permanent custody and terminate her natural parents' rights. The trial court granted Ms. Twyford's motion to stay execution of its March 24 order until this Court has ruled on her appeal.

{¶6} This Court ordered the parties to show cause why this appeal should not be dismissed for lack of an appealable order. Ms. Twyford responded, citing *In re C.S.*, 9th Dist. No. 25344, 2010-Ohio-4463, for the proposition that, if she cannot immediately appeal the March 24 order, she will be denied effective relief in the future because she will be denied a meaningful opportunity to reunite with the child and "there [will be] an inadequate record from which to affirm the subsequent granting of permanent custody by the trial court."

#### JURISDICTION

{¶7} Under the Ohio Constitution, Ohio's courts of appeals "have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district." Ohio Const. Art. IV § 3(B)(2). Certain interlocutory orders are appealable under Section 2505.02. See *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St. 3d 86, at syllabus (1989). Under Section 2505.02(B)(2), an order may be reviewed if it is an order in a "special proceeding" and it "affects a substantial right." Juvenile court proceedings under Chapter 2151 of the Ohio Revised Code, are special statutory proceedings. *In re D.C.*, 9th Dist. No. 21008, 2003-Ohio-97, at ¶8 (citing *State ex rel. Fowler v. Smith*, 68 Ohio St. 3d 357, 360 (1994); *Polikoff v. Adam*, 67 Ohio St. 3d 100, 104 (1993)). Therefore, the order in this case is appealable if it "affects a substantial right."

{¶8} Ms. Twyford has argued that the trial court's March 24 order falls under the provisional remedy subsection of the statute, but she has not explained how the order granted or

denied a provisional remedy under Section 2505.02(B)(4). Her argument focuses on whether the order affects a substantial right. She has correctly pointed out that an order affects a substantial right only if, in the absence of an immediate appeal, appropriate relief would be foreclosed in the future. *Southside Cmty. Dev. Corp. v. Levin*, 116 Ohio St. 3d 1209, 2007-Ohio-6665, at ¶7.

{¶9} The order does not foreclose Ms. Twyford's opportunity to obtain appropriate relief in the future. The trial court's March 24 order modified the case plan to remove Ms. Twyford and denied her motion for custody and/or increased visitation. It did not change A.P.'s disposition. Job and Family Services had temporary custody of the child for six months before the court's modification of the case plan. Ms. Twyford did not appeal the initial adjudication of dependency or the subsequent dispositional orders. Shortly after the trial court entered the March 24 order, the agency filed a motion for permanent custody. Ms. Twyford has the option of contesting that motion and filing her own opposing motion for legal custody. Thus, the March 24 order does not foreclose her opportunity to obtain appropriate relief in the future.

{¶10} Ms. Twyford has cited this Court's decision in *In re C.S.*, 9th Dist. No. 25344, 2010-Ohio-4463, in support of her argument that she will be unable to obtain relief in the future if she is prevented from visiting with the child for a substantial period of time before a permanent custody hearing. She has specifically argued that, without visitation, she will be left with an inadequate record for the trial court's review of a future permanent custody decision.

{¶11} In *In re C.S.*, this Court reversed the trial court's decision granting permanent custody of a child to the Summit County Children Services Board and terminating the mother's parental rights because the decision was against the manifest weight of the evidence. *In re C.S.*, 9th Dist. No. 25344, 2010-Ohio-4463, at ¶55. This Court reasoned that, due to the fact that the mother was not permitted to visit with her child for nearly eighteen months before the permanent

custody hearing, evidence of the relationship between the mother and child was distorted and could not be meaningfully measured. *Id.* at ¶44, 55. Contrary to Ms. Twyford's apparent implication, *In re C.S.* does not stand for the proposition that every change in visitation or modification of a case plan is an appealable order because it might affect the outcome of a future motion for permanent custody. In *In re C.S.*, this Court did not analyze the appealability of any order modifying the case plan. The only issue was whether the order terminating the mother's parental rights and granting permanent custody to the agency was against the manifest weight of the evidence. This Court determined that it was, and the mother who had been denied visitation for eighteen months obtained relief via appeal at that time. *Id.* at ¶55.

{¶12} This case bears little resemblance to the situation in *In re C.S.* This is not an appeal of a permanent custody decision. The trial court's order merely modified the goal of the case plan and denied a former custodian's motion for additional, less restrictive visitation and/or legal custody. The decision did not change the child's disposition and it is not a final dispositional order. The trial court stayed execution of its order for this attempted appeal so, presumably, Ms. Twyford has been visiting with A.P. for the last eight months. Job and Family Services has filed a motion for permanent custody, and there is no reason to believe there will be a delay in the trial court hearing that motion. There is no indication that Ms. Twyford will be denied visitation for an extended period of time before the permanent custody motion is heard. Furthermore, if the trial court grants the agency permanent custody, as a party to the case, Ms. Twyford can seek relief by appealing that decision, just as the mother did in *In re C.S.*

{¶13} This situation is closer to that considered by the Twelfth District Court of Appeals in *In re T.M.*, 12th Dist. Nos. 2006-01-001, 2006-01-004, 2006-Ohio-6548. In that case, the parents and the maternal grandmother appealed an order modifying a case plan to provide for a

goal other than reunification with the parents or the maternal grandmother. The child had been adjudicated dependent earlier that year and the trial court had granted temporary custody to Children Services. At a dispositional review hearing, the trial court heard evidence and determined that reunification with either the parents or the maternal grandmother would not be in the child's best interest. *Id.* at ¶5. The trial court did not change the child's disposition, but ordered that Children Services should change the case plan goal to reflect the court's decision regarding reunification. The Twelfth District held that the order changing the case plan goal was not appealable because it did not decide the case and prevent a judgment and the appellants would not be denied effective relief in the future. *Id.* at ¶23-25.

{¶14} There is no indication that Ms. Twyford will be foreclosed from obtaining appropriate relief in the future if she is not permitted to immediately appeal the trial court's March 24 order modifying the case plan. Therefore, the order is not one affecting a substantial right and is not appealable under Section 2505.02 of the Ohio Revised Code. Thus, we lack jurisdiction to consider Ms. Twyford's assignments of error.

#### CONCLUSION

{¶15} Ms. Twyford will not be foreclosed from obtaining appropriate relief in the future if she is not permitted to immediately appeal the trial court's order. The order did not affect a substantial right and, therefore, is not appealable under Section 2505.02 of the Ohio Revised Code. The attempted appeal must be dismissed.

Appeal dismissed.

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Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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CLAIR E. DICKINSON  
FOR THE COURT

BELFANCE, P. J.  
CARR, J.  
CONCUR

APPEARANCES:

DANIEL F. GIGIANO, Attorney at Law, for Appellant.

JENNIFER MATYAC, Attorney at Law, for Appellee.

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