

[Cite as *In re D.H.*, 2010-Ohio-422.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: D. H.
 D. F., II
 D. G.

C.A. No. 24879

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. DN 08-12-976
 DN 08-12-977
 DN 08-12-978

DECISION AND JOURNAL ENTRY

Dated: February 10, 2010

WHITMORE, Judge.

{¶1} Cassandra Lewis (“Mother”) appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that adjudicated her three minor children neglected and dependent children. This Court affirms.

I

{¶2} Mother is the natural mother of D.H., born July 17, 2008, D.F., born September 16, 2000, and D.G., born September 4, 1998. The fathers of the children are not parties to this appeal. On December 12, 2008, Summit County Children Services Board (“CSB”) filed complaints, alleging that the children were neglected and dependent for several reasons, including that their home was infested with roaches, which posed a threat to the children’s well-being. Akron police had removed the children pursuant to Juv.R. 6 the previous day.

{¶3} Following the adjudicatory hearing, the magistrate found that the children were neglected pursuant to R.C. 2151.03(A)(2) and (A)(3) and dependent pursuant to R.C. 2151.04(B) and (C). Because Mother had moved to a new home that was found to be suitable, the magistrate later issued a dispositional order that the children be returned to her custody under an order of protective supervision. The trial court separately adopted each of the magistrate's decisions and entered independent judgment, pending the filing of timely written objections.

{¶4} Mother filed objections to the magistrate's adjudicatory decision, claiming that the adjudications of neglect and dependency were not supported by the evidence presented at the hearing. The trial court overruled Mother's objections, finding that there was ample evidence presented at the hearing to support the adjudications. The trial court again entered judgment adjudicating the children neglected and dependent. Mother appeals and raises two assignments of error.

II

Assignment of Error Number One

“THE TRIAL COURT’S JUDGMENT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW; THE DECISION OF THE MAGISTRATE THAT THE CHILDREN WERE NEGLECTED AND DEPENDENT WAS NOT SUPPORTED BY COMPETENT, CREDIBLE EVIDENCE.”

{¶5} Mother challenges the evidence supporting the trial court's adjudication of her children as neglected and dependent children. This Court must emphasize that, although the initial adjudicatory decision was made by a magistrate, Mother appeals from the trial court's judgment that overruled her objections to the magistrate's decision. “Any claim of trial court error must be based on the actions of the trial court, not on the magistrate's findings or proposed decision.” *Mealey v. Mealey* (May 8, 1996), 9th Dist. No. 95CA0093 at *3. Generally, this

Court reviews a trial court's action with respect to a magistrate's decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. No. 24150, 2008-Ohio-5232, at ¶9. Under this standard, we must determine whether the trial court's decision was arbitrary, unreasonable, or unconscionable, and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. In so doing, we consider the trial court's action with reference to the nature of the underlying matter. *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶9. Consequently, we must consider, in this case, whether the trial court abused its discretion by determining that the findings of the magistrate were supported by the evidence presented at the hearing.

{¶6} The trial court adjudicated the children neglected pursuant to R.C. 2151.03(A)(2) and (A)(3), and dependent pursuant to R.C. 2151.04(B) and (C). Although the trial court found alternate grounds for its adjudication of neglect under R.C. 2151.03 and dependency under R.C. 2151.04, it was not necessary that it find more than one statutory basis for each adjudication. R.C. 2151.03 and 2151.04 each state several definitional bases for a finding of neglect and dependency and a trial court can base its adjudication on any one of the subsections of each statute. Because either of the two designated subsections under R.C. 2151.03 and R.C. 2151.04 would have supported the trial court's adjudications of neglect and dependency, this Court will confine its review to the trial court's adjudication of neglect under R.C. 2151.03(A)(3) and dependency under R.C. 2151.04(C).

{¶7} R.C. 2151.03(A)(3) defines a "neglected child" to include any child:

"Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being[.]"

A parent fails to provide care that is necessary for her child's health and well-being by failing to provide her children with a safe and sanitary home. See *In re J.A.*, 9th Dist No. 24332, 2009-Ohio-589, at ¶28.

{¶8} R.C. 2151.04(C) defines a “dependent child” to include any child “[w]hose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship[.]”

{¶9} The trial court found that Mother had failed to provide a safe environment for her children because of the extensive roach infestation in the home. CSB presented considerable evidence at the hearing to support that conclusion. During the late summer of 2008, the Akron Health Department received a complaint from the water department about unsanitary living conditions in Mother’s home on Easter Avenue. A water department employee had been inside the basement of the home to repair the water meter and encountered so much dog feces that he had difficulty breathing.

{¶10} On October 24, 2008, an inspector from the housing division of the health department went to the home to investigate. The inspector did not find dog feces in the basement, because it had apparently been cleaned up, but he did observe extensive roach infestation throughout the home. He saw live roaches all over the walls and ceilings and crawling on most items in the home. Because he did not find roaches inside the refrigerator, he did not condemn the property. The inspector explained that the presence of roaches in the refrigerator is an indicator that the property should be condemned because the infestation is so severe that it poses a health threat to the occupants of the home. Although he did not condemn the property, the inspector did issue a written order to the home’s residents to eliminate the roach

infestation by December 10, 2008. He further testified that he would have made a referral to CSB if he had been aware that there were children living in the home.

{¶11} CSB became involved with this family for different reasons, however, and it likewise became concerned about the roach infestation after a visit to the home. On the afternoon of December 11, 2008, a CSB intake social worker visited the home and observed a roach problem that was “so severe” that she had to watch her feet and her surroundings to make sure she was not stepping on roaches or getting them on her. She testified that she had never seen so many roaches in a home. She observed roaches coming in and out of the woodwork, on the ceiling, and on the sofa. The social worker observed roaches all over the kitchen sink and found a dead roach inside the refrigerator as well as several live roaches crawling on the bottom shelf.

{¶12} The social worker contacted her supervisor because she was concerned about the well-being of the children living under these circumstances. That evening, CSB sent a night crisis worker and a police officer to the home to determine whether the children should be removed. The night crisis worker observed roaches in every room he saw, including roaches crawling on dirty dishes in the sink and on the dirty kitchen countertop. The police officer testified that he had never seen that many “bugs” in a house in his nine years as a police officer. He observed many roaches as well as small, white bugs all over the bathroom. The officer also noted that there were bugs in every room, including the children’s bedroom. The police officer testified that he removed the children pursuant to Juv.R. 6 because the environment was not fit for them.

{¶13} The CSB workers expressed their concerns to Mother, who explained that she and her boyfriend had been trying to rid the home of roaches but had been unsuccessful. Mother

conceded that the infestation was so bad that they had to shake out the bed sheets before going to bed because roaches get in the beds. Mother told the social worker that they did not allow the baby, D.H., to sleep in her crib because they were afraid that she would get roaches on her. Mother told the night crisis worker that the baby slept with her and that Mother stayed awake much of the night trying to keep the roaches off her.

{¶14} Given the evidence before the trial court about the extensive roach infestation in Mother's home at the time of the complaint, the trial court did not abuse its discretion by overruling Mother's objections and adjudicating her children neglected and dependent. Almost two months earlier, the health department had ordered that the roaches be eradicated from the home, but the roach infestation had only gotten worse and had reached the point where the home would be condemned by the health department. This evidence demonstrated that Mother was failing to provide care that was necessary for her children's well being under R.C. 2151.03(A)(3) and that the children were living in an unsafe home environment that warranted intervention by CSB under R.C. 2151.04(C). Mother's first assignment of error is overruled.

Assignment of Error Number Two

“THE TRIAL COURT’S JUDGMENT ENTRY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW; THE DECISION OF THE MAGISTRATE THAT REASONABLE EFFORTS [WERE] MADE TO PREVENT THE CONTINUED REMOVAL OF THE CHILDREN WAS NOT SUPPORTED BY COMPETENT, CREDIBLE EVIDENCE.”

{¶15} Mother's second assignment of error is that the trial court erred in finding that CSB had made reasonable efforts to prevent the continued removal of the children from the home. This Court will not reach the merits of this challenge, however, because Mother failed to preserve it for appellate review. Juv.R. 40(D)(3)(b)(iv) provides that “[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding

or legal conclusion *** unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b).” Although Mother filed objections to the magistrate’s adjudicatory decision, she did not object to the magistrate’s finding that CSB has exerted reasonable efforts to prevent removing the children from her home and to prevent the continued removal of the children. Consequently, she cannot assign this as error on appeal.

{¶16} Moreover, the children were returned to Mother’s custody shortly after she notified the court that she had obtained suitable housing and the dispositional hearing was held. CSB had apparently approved her housing and supported her request for the return of her children. Mother’s second assignment of error is overruled.

III

{¶17} The assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

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.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

MATILDA OLABISI CARRENA, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.