

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

IN THE MATTER OF: :

C.M. : CASE NO. CA2014-10-204

: OPINION

: 5/4/2015

: :

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JN2013-0218

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for appellee, Butler County Children Services

Amy R. Ashcraft, 240 East State Street, Trenton, Ohio 45067, for appellant, A.W.

Tracy A. Washington, 10 Journal Square, 3rd Floor, Hamilton, Ohio 45011, guardian ad litem

RINGLAND, J.

{¶ 1} Appellant, the biological mother of C.M., appeals a decision of the Butler County Court of Common Pleas, Juvenile Division, granting permanent custody of C.M. to appellee, the Butler County Department of Job and Family Services (BCDJFS). For the reasons set forth below, we reverse the decision of the juvenile court and remand this matter for further proceedings.

{¶ 2} Appellant gave birth to her son, C.M., on April 10, 2013. Following his birth, C.M. began experiencing symptoms of withdrawal from heroin, which appellant admitted to abusing during her pregnancy. As a result, on April 16, 2013, BCDJFS filed a complaint alleging C.M. was an abused and dependent child. As part of the complaint, BCDJFS noted its concerns with appellant's substance abuse, mental health, anger management, and parenting. The complaint also noted that C.M.'s alleged father has an extensive criminal history and his current whereabouts were unknown.

{¶ 3} After BCDJFS filed its complaint, the juvenile court granted an emergency order of temporary custody to BCDJFS. Thereafter, on April 17, 2013, the juvenile court held a shelter care hearing, which appellant attended with the assistance of counsel. The juvenile court then modified its emergency order and continued temporary custody to BCDJFS, with C.M. being placed with a foster family upon his release from the hospital.

{¶ 4} In the ensuing months, appellant failed to attend various court hearings and was sporadic in her visitation with C.M.¹ Appellant failed to attend a May 28, 2013 settlement conference and also failed to appear for a pretrial hearing on July 9, 2013. At the July 9, 2013 hearing, the juvenile court granted BCDJFS request for default and found C.M. to be an abused and dependent child based on the fact that he tested positive for drugs at birth. Appellant then failed to appear for the disposition hearing and the juvenile court adopted a case plan. The juvenile court also entered a finding of abandonment, as appellant had not visited C.M. in 110 days, since her release from the hospital.²

{¶ 5} On April 22, 2014, BCDJFS moved for permanent custody of C.M. The juvenile

1. Although appellant did not personally appear at the hearings, the record reflects that she was represented by counsel who did attend each hearing.

2. After the finding of abandonment, the record reflects that appellant did reconnect with C.M. for a total of six visits beginning on October 29, 2013. However, appellant failed to appear at two subsequent review hearings held on November 7, 2013 and February 13, 2014.

court then scheduled a pretrial review hearing on the permanent custody motion for May 24, 2014. However, when appellant failed to appear, the juvenile court found appellant in default and granted BCDJFS's motion for permanent custody. Appellant filed objections to the magistrate's decision, which were overruled.

{¶ 6} Appellant now appeals the juvenile court's decision granting permanent custody of C.M. to BCDJFS, raising one assignment of error for review.

{¶ 7} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT MOTHER IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION SIXTEEN OF THE OHIO CONSTITUTION WHEN GRANTED [sic] BCCS'S MOTION FOR PERMANENT CUSTODY AT PRE-TRIAL AND FOUND MOTHER IN DEFAULT.

{¶ 8} At the outset, we begin with the recognition that "a parent's right to raise a child is an essential and basic civil right." *In re Hayes*, 79 Ohio St.3d 46, 48 (1997). "[T]he permanent termination of parental rights has been described as the family law equivalent of the death penalty in a criminal case." *In re S.F.T.*, 12th Dist. Butler Nos. CA2010-02-043 thru CA2010-02-046, 2010-Ohio-3706, ¶ 10. As relevant here, R.C. 2151.414 provides guidelines a juvenile court must follow in deciding a motion for permanent custody. R.C. 2151.414(A) mandates that the juvenile court schedule a hearing and provide notice to all the parties to the action and to the child's guardian ad litem upon the filing of a motion for permanent custody of a child by a public children services agency.

{¶ 9} In the present case, appellant was properly served with notice that BCDJFS had filed a motion for permanent custody and advised her of the pretrial review hearing. However, when appellant failed to appear at the review hearing, the juvenile court found appellant in default and awarded permanent custody to BCDJFS.

{¶ 10} Based on the facts of this case, we find the juvenile court erred by entering

default judgment at the review hearing against appellant and granting permanent custody in favor of BCDJFS. While appellant's lengthy absence from C.M.'s life, inability to follow the case plan, and failure to participate in these proceedings may be considered in the ultimate resolution of this matter, we find it was inappropriate to convert the pretrial review hearing and award permanent custody to BCDJFS. Neither the Rules of Juvenile Procedure nor the Rules of Civil Procedure allow for default judgment under these circumstances. See, e.g., *In re W.C.*, 12th Dist. Preble No. CA2012-05-007, 2013-Ohio-153, ¶ 30.

{¶ 11} Simply stated, while we acknowledge that appellant has had little involvement in the child's life and these proceedings, the juvenile court's decision to unilaterally convert the scheduled review hearing into a permanent custody hearing, thereby awarding permanent custody to BCDJFS, violated appellant's due process rights. The additional burden of following the case schedule and resolving the permanent custody matter after providing appellant with notice of the evidentiary hearing is necessary in light of the paramount rights involved in a permanent custody case. *In re G.N.*, 170 Ohio App. 3d 76, 2007-Ohio-126, ¶ 43 (12th Dist.), quoting *In re Hayes*, 79 Ohio St.3d at 48 ("parents 'must be afforded every procedural and substantive protection the law allows'"). Therefore, based on the facts of this case, we find the juvenile court erred by entering default judgment against appellant and awarding permanent custody of C.M. to BCDJFS at the May 26, 2013 review hearing. Accordingly, appellant's sole assignment of error is sustained and we remand for further proceedings consistent with this opinion.

{¶ 12} Judgment reversed and the matter is remanded for further proceedings.

S. POWELL, P.J., and HENDRICKSON, J., concur.