

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

IN THE MATTER OF:

:

S.W., et al.

:

CASE NO. CA2011-12-028

:

OPINION

7/16/2012

:

:

APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS  
JUVENILE DIVISION  
Case No. AB20113100

Christine D, Tailer, P.O. Box 14, Georgetown, Ohio 45121, guardian ad litem

R. Aaron Maus, Brown County Public Defender, Julie D. Steddom, 134 North Front Street,  
Ripley, Ohio 45167, for appellant, S.W.

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C.B.

**PIPER, J.**

{¶ 1} Appellant, Shara W. (Mother), appeals a decision of the Brown County Court of Common Pleas, Juvenile Division, finding her two teenage daughters, S.W. and A.W. dependent, and granting temporary custody of the children to their paternal grandmother (Grandmother).

{¶ 2} Mother previously had two children, both of whom were removed from her care. Mother then married Charles W., and the couple had two children born issue of the marriage, S.W. and A.W. Approximately 12 years ago, Charles was killed in a vehicle accident. Mother had two additional children, both sons, with a man whom she never married, but who had impregnated her with the first son while Charles was still alive.

{¶ 3} Grandmother, who resides in New Hampshire with her husband, often assisted Mother with the children, and provided them a place to live when Mother was evicted and homeless. Although Grandmother's husband (Grandfather) is not the biological grandfather to the children, they refer to him as such and have a close and loving relationship with him. Grandmother and Grandfather assisted Mother in moving to New Hampshire in 2005 because of Mother's homelessness, and she and all of the children stayed there until she returned to Ohio in 2007.

{¶ 4} At some point, Grandmother asked to spend time with S.W. and A.W., but Mother denied such. Grandmother then petitioned the court for visitation with the children, and she was granted two camping trips a year, phone calls once a week, and two-hour visits whenever she and Grandfather were in the area.

{¶ 5} As recent as the summer before Grandmother's custody motion, S.W. spent three weeks of her summer vacation in New Hampshire with Grandmother but returned to Ohio to partake in summer extracurricular activities. A.W. spent her entire summer vacation visiting in New Hampshire. One of Mother's younger sons also visited in New Hampshire, although he shares no biological connection with Grandmother or Grandfather.

{¶ 6} During the children's summer visit, Grandmother learned of several circumstances that caused her concern over Mother's ability to parent. Grandmother took the children to a children services agency in New Hampshire, and also made a referral to Brown County Children Services. The following circumstances reported to the agencies

became the basis for Grandmother's dependency complaint and motion for custody: that Mother used drugs, that Mother and her boyfriend were seen sniffing powder off of a small table, that Mother's 22-year-old boyfriend was making sexual overtures toward A.W, that the children are uncomfortable around Mother's boyfriend, that Mother's boyfriend is in a motorcycle "gang," that S.W. was stranded at the airport by Mother, that A.W. saw Mother sell her prescription drugs to other people, that Mother leaves the children alone and in the care of her boyfriend for long periods of time, and that the boyfriend had punched Mother's young son several times.

{¶ 7} A magistrate held an adjudicatory hearing, during which Grandmother, Mother, the children's guardian ad litem, Mother's mother, and a representative of the Brown County Children Services agency testified. The magistrate adjudicated the children dependent, and gave temporary custody to Grandmother. Grandmother agreed to stay in Ohio with the children, giving Mother a chance to file objections to the magistrate's decision. Five days after the adjudication hearing, the magistrate held an in camera interview with A.W. and S.W. Mother filed objections to the magistrate's decision, which were overruled by the juvenile court. The juvenile court adopted the magistrate's decision, and permitted Grandmother to take the children with her to New Hampshire.

{¶ 8} Mother now appeals the decision of the juvenile court, raising the following assignment of error.

{¶ 9} THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FOUND THE CHILDREN TO BE DEPENDENT WITHOUT CLEAR AND CONVINCING EVIDENCE THAT THEY LACKED PROPER CARE.

{¶ 10} Mother argues in her assignment of error that the trial court erred in adjudicating the children dependent.

{¶ 11} According to R.C. 2151.04,

As used in this chapter, "dependent child" means any child:

(A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;

(B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

(D) To whom both of the following apply:

(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

{¶ 12} "The determination that a child is dependent requires no showing of fault on the parent's part." *In re Bolser*, 12th Dist. Nos. CA99-02-038 and CA99-03-048, 2000 WL 146026, \*4 (Jan. 31, 2000). Instead, the focus is solely on the child's condition or environment, and whether the child was without adequate care or support. *In re Ament*, 142 Ohio App.3d 302,307 (12th Dist.2001). However, a court may consider a parent's conduct insofar as it forms part of the child's environment. *In re Alexander C.*, 164 Ohio App.3d 540, 2005-Ohio-6134, ¶ 51 (6th Dist.), citing *In re Burrell*, 58 Ohio St.2d 37, 39 (1979). A parent's conduct is significant if it has an adverse impact on the child sufficient to warrant intervention. *In re Ohm*, 4th Dist. No. 05CA1, 2005-Ohio-3500, ¶ 21, citing *Burrell* at 39.

{¶ 13} A trial court's decision finding abuse or dependency must be supported by clear and convincing evidence. *In re T.G.*, 12th Dist. Nos. CA2007-07-158, CA2007-07-171, 2008-

Ohio-1795. "Clear and convincing evidence is that which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *Id.* at ¶ 29.

{¶ 14} Mother essentially argues that the juvenile court's decision was not supported by clear and convincing evidence because the juvenile court relied too heavily upon the guardian ad litem's (GAL) report and testimony of interested parties. Regarding the GAL, Mother argues that the report contained impermissible hearsay. The purpose of a GAL's report is to give the court information in addition to that elicited at the hearing to guide the juvenile court in making its decision. *In re Robinson/Brooks Children*, 5th Dist. No. 2004-CA-00094, 2004-Ohio-6142, at ¶ 13. Under normal circumstances, a GAL's report is not considered evidence, and is submitted as additional information, such as a presentence investigation report in a criminal proceeding. Therefore, Ohio courts have held that a juvenile court may consider the GAL's report despite hearsay within it, so long as the trial court provides due process protection for the parent by making the GAL available for cross-examination. *In re Sherman*, 3rd Dist. Nos. 05-04-47, 05-04-48, and 05-04-49, 2005-Ohio-5888.

{¶ 15} Here, the GAL was an active participant at the hearing, testifying on direct and cross-examination. Moreover, in this proceeding the juvenile court was the trier of fact and is therefore presumed to be able to disregard any inadmissible hearsay contained in the report. *In re Sypher*, 7th Dist. No. 01-BA-36, 2002-Ohio-1026. Additionally, the hearsay in the GAL's report is based on the GAL's discussions with Grandmother's neighbors and friends who spoke about the positive relationship the girls had with Grandmother and Grandfather. However, that issue was irrelevant to the adjudication phase, and would only have an impact on the best interest factors of the dispositional decision of custody. In this instance, the case did not proceed to disposition, and instead, Mother directly appealed the juvenile court's

adjudication finding. As such, hearsay in the GAL's report from people who did not otherwise testify at the trial or were not interviewed by the court was not applicable.

{¶ 16} Besides the GAL's written report, the court heard testimony from Grandmother, Mother, Mother's mother, the children's GAL, and a representative from the Brown County Children Services agency, all of whom were subject to full questioning and cross-examination. The juvenile court also heard from both children during an in camera interview, during which the trial court and guardian ad litem posed multiple questions regarding their environment and condition.

{¶ 17} The fact that Mother claims some of the witnesses were interested in the outcome of the case or that the juvenile court found certain witnesses more credible than others does not equate to the court improperly relying on such evidence. "As is well-established, the juvenile court, rather than this court, had the opportunity 'to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.'" *In re C.B., et al.*, 12th Dist. Nos. CA2008-01-002, CA2008-01-003, 2008-Ohio-5543, ¶ 18, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984).

{¶ 18} The court heard testimony that S.W. and A.W. were subjected to deplorable conditions while living in Mother's home. The juvenile court viewed photos of the conditions that included animal feces on the floor, some of which had been stepped in and smeared, as well as maggots in and among the dirty dishes in the kitchen sink. The juvenile court also heard testimony that the house was "trashed" and that the children's food intake was limited to cereal and hotdogs.

{¶ 19} The juvenile court heard testimony that Mother's conduct had an adverse impact on the children, which directly impacted their environment. For example, Mother gave the children no curfew, and allowed them to be out until the early-morning hours without first

telling Mother where they were going. Mother also swore profusely, used "fu\*k" in almost every sentence, and often yelled and screamed at the children. Mother also handcuffed the children together as punishment for not getting along.

{¶ 20} Moreover, the juvenile court heard ample testimony that Mother's conduct regarding her boyfriends had an adverse impact on the children's environment. Mother had several relationships with men, some of whom lived with her and the children. Mother purchased alcohol for one of her underage boyfriends, and engaged in drug use with some.

{¶ 21} Further, Mother and her boyfriends would engage in sexual intercourse while making no attempts to conceal their behavior. The children stated that they heard the intercourse and were aware of the sexual activities of Mother and her boyfriends. One child stated that being subjected to such obvious indications of sexual activity made her feel "violated." The juvenile court also heard testimony that one of Mother's boyfriends was in a motorcycle gang and had made sexual overtures toward S.W. and that such advances made her feel "uncomfortable."

{¶ 22} The record contains clear and convincing evidence that the children lacked appropriate care as a result of Mother's conduct. As such, the juvenile court properly adjudicated the children dependent. Mother's single assignment of error is therefore overruled.

{¶ 23} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.