

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: ANDRE CAMPBELL	:	APPEAL NO. C-080310
		TRIAL NO. F03-669Z
HAMILTON COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES,	:	<i>JUDGMENT ENTRY.</i>
	:	
Plaintiff-Appellee,	:	
	:	
vs.	:	
	:	
MARGARET CAMPBELL,	:	
Respondent-Appellant.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Respondent-appellant Margaret Campbell appeals the trial court’s judgment overruling her objections to a magistrate’s decision terminating her parental rights and granting permanent custody of her son, Andre, to plaintiff-appellee, the Hamilton County Department of Job and Family Services (“HCJFS”). We affirm.

Campbell is the mother of Andre, who was born on October 1, 2005. She suffers from mild mental retardation. In 2003, before Andre was born, Campbell had a daughter who was adjudicated dependent after allegations that Campbell (1) had not been caring for her by improperly feeding her; (2) had failed to engage the services offered to her by the Hamilton County Board of Mental Health and Retardation (MRDD); (3) had been combative with service personnel; and (4) had

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

been inconsistently taking her psychiatric medications. Ultimately, by agreement between the parties, the daughter was permanently placed with a paternal relative, but HCJFS remained involved due to problems during visitation between Campbell and the relative caring for the daughter.

Due to these circumstances and a call to a child-advocacy service by a hospital worker, HCJFS moved for “interim custody” of Andre five days after he was born. The trial court denied the motion, but interim protective orders were put into place, requiring Campbell to maintain compliance with all appointments with and recommendations by CORE Behavioral, the organization that managed her medications, and to follow all recommendations of her MRDD case manager and any other service providers.

In January 2006, Andre was adjudicated dependent, but allowed to remain with Campbell. HCJFS provided a wide array of services to help Campbell care for Andre, including a payee to help Campbell manage her money, transportation services, in-home parenting instruction, intensive intervention through the Young Child Institute to assist Campbell in understanding Andre’s cues, and psychiatric case-management services. At first, Campbell used these services, though she did miss some Core meetings. But in March 2006, Genesis, an in-home service provider that also transported Campbell and Andre to their appointments, terminated its services with Campbell after Campbell had become combative with a worker and removed Andre from a car seat while the car was in motion. Campbell then refused help when offered an alternative in-home service provider.

On August 29, 2006, Campbell arrived at the Young Child Institute with Andre. She was very upset because the apartment she was moving into had flooded and she had no place to stay. Because Campbell was approaching hysteria, Kate

O'Donnell, the therapist at the institute, called the HCFJS caseworker and Andre's guardian ad litem ("GAL") to intervene. After the caseworker and the GAL had arrived, Campbell stated that "she couldn't do this anymore," grabbed her medicine, made a suicidal threat, and ran out of the building, leaving Andre. The GAL attempted to follow Campbell, but eventually called the police to help her locate Campbell.

The next day, HCJFS was awarded "interim" custody of Andre, who was placed in foster care. For the next year, case plans were filed for Andre, and services were offered to Campbell, which she refused. During this year, Campbell lived in various shelters, was admitted to the psychiatric unit of Christ Hospital in Cincinnati to regulate her medication, and was convicted of telecommunication harassment.

HCJFS moved for permanent custody of Andre in October 2006. At the permanent-custody hearing, the HCJFS caseworker testified that there were no relatives available to assume the care of Andre and that Campbell had refused in-home services that she needed to assist her with daily living. The caseworker also testified that Andre's alleged father, Eric Collier, had been contacted by HCJFS, but that the father had no interest in parenting. The father did not appear for any of the custody hearings despite notice, and he had been convicted of corruption of a minor.

Mara Daly, the case manager at MRDD, testified that Campbell had discontinued the services provided to her in April 2006. She stated that Campbell had alternated between being cooperative and verbally abusive, and had been unable to control her emotional outbursts. Kate O'Donnell, the therapist working with Campbell at the Young Child Institute, testified that Campbell, despite intensive parenting training, had kept misreading Andre's cues. (For example, when Andre cried, Campbell would feed him without determining whether that was why he was

crying.) O'Donnell was doubtful that any provider could help Campbell learn to parent. She testified that Campbell, after parenting courses, had scored in the "deficient" range on a caregiver assessment in the following areas: "self-regulation and interest in the world; forming relationships, attachment, and engagement; and two-way purposeful communication." Finally, O'Donnell testified that Campbell had difficulty managing her anger and trying to parent Andre at the same time.

Kelly Gries, Andre's GAL, testified that she had been working with Campbell for over two years—first as a GAL for Campbell's older daughter and then for Andre. Gries testified that things had begun to fall apart for Campbell when she discontinued services with Genesis and refused other in-home care to help her manage her daily life. Without an in-home service provider, Campbell was unable to manage her money and began running out of food, diapers, and formula, and would call Gries at least three times a week for assistance. Campbell also began having problems with her landlord and neighbors, culminating in an incident where Campbell had left Andre in the apartment and confronted her neighbors in the hallway with a knife.

Gries also testified that granting permanent custody was in Andre's best interest. She testified that an in-home service provider was crucial for Campbell to succeed in parenting Andre and that Campbell had refused to engage those services when offered to her.

Campbell did not testify, as she had failed to appear in court on the days that she was scheduled to present her case.

The magistrate adjudicated Andre dependent and awarded permanent custody to HCJFS in October 2007. Objections to the magistrate's decision were filed, and they were subsequently overruled in March 2008. This appeal followed.

In the first of her two assignments of error, Campbell asserts that there was insufficient evidence to support the trial court's legal conclusion that Andre was "dependent." We overrule this assignment of error because she has failed to preserve this argument for appeal.

Juv.R. 40(D)(3)(b)(ii) provides that an objection to a magistrate's decision "shall be specific and state with particularity all grounds for objection." "Except 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, whether or not specifically designated as a finding of fact or conclusion of law * * * unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b)."² We note that here, as required by Juv.R. 40(D)(3)(iii), the magistrate's decision stated conspicuously that a party could not assign as error on appeal the trial court's adoption of any finding of fact or conclusion of law unless the party timely and specifically objected to that finding or conclusion under Juv.R. 40.

Campbell did not object to the trial court's conclusion that Andre was "dependent." The record demonstrates that Campbell conceded that Andre was dependent, but argued that that did not justify an award of permanent custody to HCJFS. Instead, Campbell maintained that HCJFS should have been awarded temporary custody, giving her time to find and maintain housing and to re-engage in services that she needed to appropriately parent Andre. Because Campbell agreed that Andre was dependent and, thus, did not object to that conclusion as it was contained in the magistrate's decision, Campbell has failed to preserve this issue for appeal.³

² Juv.R. 40(D)(3)(b)(iv).

³ See *Antoine v. Lannom*, 2nd Dist. No. 04-CA-0086, 2006-Ohio-2354; *DePaul v. Phillips*, 7th Dist. No. 04 MA 271, 2005-Ohio-6784.

We are aware that the waiver provisions of Juv.R. 40(E)(3)(d) do not apply when errors of law are apparent on the face of the magistrate's decision.⁴ Upon this limited review, we hold that there was no error apparent on the face of the magistrate's decision that the trial court ignored. There was clear and convincing evidence that Andre was dependent: he lacked parental care due to Campbell's volatile mental condition as demonstrated by the incident where she had left Andre at the Young Child Institute and run off, threatening to kill herself.⁵ Further, Campbell had consistently refused to use services that would have helped her to parent Andre. Accordingly, the first assignment of error is overruled.

In her second assignment of error, Campbell asserts that the trial court's judgment awarding permanent custody of Andre to HCJFS was contrary to the manifest weight of the evidence.

To terminate Campbell's parental rights, HCJFS had to prove by clear and convincing evidence that Andre could not be placed with either parent within a reasonable time or that he should not be placed with either parent, and that his best interests would be served by a grant of permanent custody to HCJFS.⁶

Here, the trial court determined that Andre could not be placed with either parent within a reasonable time and should not be placed with either parent. The record demonstrated that Andre's alleged father had a criminal history and had no interest in parenting Andre. With respect to Campbell, evidence was introduced that she suffered from a mental illness and was unable to learn and apply parenting skills.⁷ Further, despite efforts from HCJFS, Campbell refused to engage with service

⁴ *Champton v. Dunns Tire & Auto*, 7th Dist. No. 00-CA-42, 2001-Ohio-3305.

⁵ See R.C. 2151.04(B).

⁶ See R.C. 2151.353(A)(4).

⁷ See R.C. 2151.414(E)(2).

providers that could have helped her in her daily living and in her parenting of Andre.⁸ Campbell argues that no one had concerns about her parenting ability until the incident at the institute. But both the GAL and the therapist from the institute had expressed concerns over Campbell's anger issues and her inability to read Andre's cues. Further, the HCJFS caseworker, as well as the GAL, had expressed concern that Campbell had stopped accepting services from MRDD. They were afraid that, without that help with her daily living, she would be unable to manage Andre and her daily life. And that appears to be exactly what happened. Accordingly, based upon the evidence presented, the juvenile court properly concluded that Andre could not be placed with either parent within a reasonable time and should not be placed with either parent.

In determining whether a grant of permanent custody is in the best interests of the child, the court must consider all relevant factors including, but not limited to, those set forth in R.C. 2151.414(D): “(1) the interaction and interrelationship of the child with the child’s parents * * * [and] foster caregivers * * *; (2) [t]he wishes of the child, as expressed directly by the child or through the child’s guardian ad litem * * *; (3) [t]he custodial history of the child * * *; [and] (4) “[t]he child’s need for a legally secure placement and whether that type of placement can be achieved without a grant of permanent custody.”

Although the juvenile court referred to each factor listed in R.C. 2151.414(D) and determined that permanent commitment was in Andre's best interest, Campbell argues that none of these factors was supported by the evidence. The record belies this assertion.

⁸ See R.C. 2151.414(E)(3).

OHIO FIRST DISTRICT COURT OF APPEALS

Evidence was presented that Andre was thriving in foster care and that his foster parents wanted to adopt him. Andre, now almost three years old, has not lived with Campbell or interacted with her on a daily basis since he was nine months old.⁹ At the time of the permanent-custody determination, Andre had not lived with his mother for a year. Next, Andre's GAL testified that she thought it was in Andre's best interest to be placed in the permanent custody of HCJFS because Campbell had refused to use the service providers that were crucial to her ability to manage her daily life and to parent Andre. Finally, the court noted and the evidence showed that there were no relatives available to assume custody and that Andre needed a permanent home, which could not be provided by Campbell despite intensive efforts by HCJFS to help her parent Andre.

For these reasons, we overrule Campbell's second assignment of error and affirm the trial court's judgment.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 20, 2008
per order of the Court _____.
Presiding Judge

⁹ See R.C. 25143.414(D)(1).