

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

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| IN RE: S. M. and T. T. | : | APPEAL NO. C-100687 |
| | : | TRIAL NO. F-080209X |
| | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| | : | |

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

Appellant Sharon Maupin appeals from the judgment of the Hamilton County Juvenile Court terminating her parental rights and granting permanent custody of her daughters S.M. and T.T. to the Hamilton County Department of Job and Family Services (HCJFS).

Maupin’s appointed counsel initially filed a no-error brief pursuant to *Anders v. California*.² After independently reviewing the record, this court determined that there remained legal points arguable on their merits to be resolved before we could fulfill our constitutional duty.³ Consequently, we granted appellate counsel’s motion to withdraw and struck Maupin’s appellate brief. We appointed new counsel for

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

² (1967), 386 U.S. 738, 87 S.Ct. 1396; see, also, *In re D.C.*, 1st Dist. No. C-090466, 2009-Ohio-5575.

³ *In re Maupin Children*, 1st Dist. No. C-100687, 2011-Ohio-317, at ¶3-4.

Maupin and ordered her to present an assignment of error on whether the juvenile court's failure to rule on Maupin's objections had violated Juv.R. 40(D)(4)(d) and Civ.R. 53(E)(4)(d) and resulted in prejudicial error, as well as on any other matter that counsel discovered in a diligent review of the record.⁴ We also ordered counsel for HCJFS and the children to file responsive briefs.⁵ Counsel for Maupin, HCJFS, and the children have complied with this court's order and the case is now before this court for decision.

In her first assignment of error, Maupin argues that the trial court erred to her prejudice by failing to rule upon her objections in violation of Juv.R. 40(D)(4)(d) and Civ.R.53(E)(4)(d).

During the rebriefing of this case, HCJFS filed a supplemental transcript of the juvenile court's September 14, 2010, hearing on Sharon and Clayton Maupin's objections to the magistrate's decision. It also moved the juvenile court for an order correcting its record pursuant to App.R. 9(E) to reflect that the juvenile court had overruled Sharon Maupin's objections at the September 14, 2010, hearing and adopted the magistrate's decision terminating her parental rights as the judgment of the court, but that it had inadvertently filed the entry under a companion case number.

On March 30, 2011, the juvenile court journalized an entry that corrected its entry of September 14, 2010, to reflect that it had heard oral argument on Sharon Maupin's objections to the magistrate's decision, had overruled those objections, and had adopted the magistrate's decision terminating her parental rights, but that it had

⁴ Id. at ¶5.

⁵ Id.

inadvertently filed the entry overruling the objections and adopting the magistrate's decision under an incorrect companion case number. Because the record now reflects that Sharon Maupin was afforded oral argument on her objections, and that the juvenile court complied with Juv.R. 40 and Civ.R. 53 when it overruled her objections and adopted the magistrate's decision terminating her parental rights, we overrule her first assignment of error.

In her second assignment of error, Maupin argues that the trial court erred as a matter of law by granting HCJFS's motion to modify temporary custody to permanent custody. We disagree.

In January 2008, S.M. and T.T. were removed from Maupin's home based on allegations that Maupin's ex-husband, Clayton Maupin, Sr., a Tier III registered sex offender who had been living with Sharon and the girls, had sexually abused S.M. Clayton Maupin, Sr., had previously been convicted of three counts of sexual battery involving one of the children's older siblings. He had never received sex-offender training and his risk of reoffending was high. Clayton Maupin, Sr., was subsequently convicted of three counts of rape and three counts of gross sexual imposition involving S.M., T.T., and another sibling.

In March 2008, HCJFS was granted temporary custody of the children. In May 2009, the agency moved for permanent custody of the girls. After several hearings, a magistrate granted HCFJS's motion for permanent custody in June 2010.

During the entire time that S.M. and T.T. were in foster care, Sharon Maupin denied that any sexual abuse had occurred. Instead, she blamed S.M. for the agency's involvement with the family and refused to visit S.M. because she felt that S.M. had lied. Maupin also requested that the agency reduce her two-hour visitation

with T.T. to one hour. Maupin's one-hour visitation with T.T. ended in September 2008, when she showed T.T. photographs of Clayton Maupin, Sr., in his underwear and made inappropriate remarks. T.T. told her therapist that the photographs had upset her because she was afraid of Clayton Maupin, Sr.

While T.T. and a sibling were in foster care, they also reported that they had been sexually abused by Clayton Maupin, Sr., but Sharon Maupin refused to believe the allegations. She insisted that S.M. had convinced her younger sisters to make up the allegations. Although Maupin herself had been a victim of sexual abuse, she had never sought counseling and stated that she expected S.M. and T.T. simply to get over it like she had done. While Maupin did complete some of the case-plan services, she failed to complete individual counseling and only minimally engaged in Women Helping Women.

Three HCJFS case workers, S.M. and T.T.'s therapist, and their guardian ad litem (GAL) all recommended that permanent custody should be granted to HCJFS. S.M. and T.T.'s therapist testified about the trauma S.M. and T.T. had experienced as a result of the sexual abuse and detailed the further trauma they had suffered as a result of Maupin's refusal to believe them. S.M., for example, had repeatedly gone absent without leave (AWOL), had engaged in cutting behaviors, and had been psychiatrically hospitalized, while T.T. suffered from depression and anxiety. The therapist further opined that it would be difficult to see Maupin supporting S.M. and T.T. in the therapeutic process necessary for their recovery, when Maupin refused to believe that they had been sexually abused.

Based upon our review of the record, Maupin's arguments, and the applicable law, we cannot conclude that the trial court abused its discretion by adopting the

magistrate's decision, which found by clear and convincing evidence that the children could not be placed with Maupin within a reasonable time and should not be placed with Maupin, and which also found that awarding permanent custody to HCJFS was in the best interest of the children.⁶ As a result, we overrule Maupin's second assignment of error.

In her third assignment of error, Maupin argues that the magistrate erred as a matter of law by failing to appoint independent counsel for S.M. and by discharging independent counsel for T.T. when both girls had expressed the desire to live with her against the wishes of their GAL.⁷

In July 2009, the magistrate appointed independent counsel for T.T. because she was interested in living at home or with a relative, while the GAL wanted permanent custody to be granted to HCJFS. The magistrate did not appoint independent counsel for S.M. because the parties had agreed that S.M. did not require an attorney and that Maupin wanted no contact with S.M. On February 1, 2010, the first day of the permanent-custody trial, the magistrate permitted T.T.'s independent counsel to withdraw because T.T. was consistent in her desire to remain in placement and be adopted by her foster mother. S.M. had also expressed through the GAL a desire to be adopted by her foster mother. Maupin did not object to the discharge of T.T.'s independent counsel. Nor did she raise the discharge of T.T.'s independent counsel or the magistrate's failure to appoint independent counsel for S.M. in her objections to the magistrate's decision.

⁶ R.C. 2151.414(B)(1); *In re William S.*, 75 Ohio St.3d 95, 97-99, 1996-Ohio-182, 661 N.E.2d 738; *In re Graham*, 167 Ohio App.3d 284, 2006-Ohio-3170, 854 N.E.2d 1126, at ¶18-21.

⁷ See *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, 805 N.E.2d 1110, syllabus.

During the permanent-custody trial, S.M. recanted the sexual-abuse allegations against Clayton Maupin, Sr., and expressed to her therapist her desire to live with Sharon Maupin. S.M. then went AWOL and remained AWOL throughout the remainder of the permanent-custody trial. S.M. remains AWOL and will be emancipated in June 2011.

On the state of this record, we cannot say the magistrate committed plain error by permitting T.T.'s independent counsel to withdraw and by failing to sua sponte appoint independent counsel for S.M., in the absence of consistent evidence indicating that S.M. and T.T.'s wishes contradicted those of their GAL.⁸ As a result, we overrule Maupin's third assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

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

To the Clerk:

Enter upon the Journal of the Court on April 27, 2011

per order of the Court _____
Presiding Judge

⁸ See Juv.R. 40(D)(3)(b)(iv); *Graham*, supra, at ¶30-38.