[Cite as *In re A.F.*, 2010-Ohio-932.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of: A.F.,
M.J., K.M., K.M.

Court of Appeals No. L-09-1287

Trial Court No. JC 07169408

DECISION AND JUDGMENT

Decided: March 12, 2010

* * * * *

Stephen D. Long, for appellant.

Bruce McLaughlin, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, T.F., appeals a judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating his parental rights to his daughter, A.F.

{¶ 2} On June 13, 2007, the Lucas County Children Services Board ("LCCSB") filed a complaint asserting that A.F. and her three half-siblings were dependent and neglected children. It is undisputed that at that time the children's mother was a substance abuser and left her children with her brother, who was visiting his family in Lucas County. Although represented by appointed counsel, A.F.'s mother never appeared

in the instant case. T.F. was incarcerated after being convicted for cultivating marijuana and for felonious assault. He was not due to be released from prison until February 2010. Based upon the information provided by LCCSB, the trial court issued an ex parte order awarding shelter care custody to the children services agency.

{¶ 3} LCCSB subsequently filed a complaint in dependency and neglect. In August 2007, the juvenile court found that all four children were neglected and awarded temporary custody to LCCSB. Case plans were formulated for all of the parties involved in this cause. Pursuant to R.C. 2151.414, LCCSB filed a motion for permanent custody of the children on February 13, 2009. T.F. filed a request to convey him from North Central Corrections Center for the permanent custody hearing to be held on June 26, 2009. The trial court granted appellant's motion.

{¶ 4} However, at the outset of the June 26, 2009 hearing, the trial judge noted that the order to convey had not been carried out and, therefore, T.F. was not present for that hearing. The parties and appellant's attorney agreed that the only evidence to be offered at the June 26, 2009 permanent custody hearing would relate solely to A.F.'s three half siblings, their mother, and their fathers. The trial court set July, 28, 2009, as the date for the permanent custody hearing with regard to A.F. and issued an order to convey appellant for the hearing on that date.

{¶ 5} On July 28, 2009, both T.F. and his attorney were present, and the hearing proceeded without any objection by appellant. During the course of that proceeding, appellant's brother testified that A.F. resided with him for approximately six months. The

brother stated that he took A.F. to the prison to visit her father at least four times. According to her uncle, A.F. expressed an interest in residing with her father when he was released from prison. The brother also stated that when T.F. was released from prison, he was going to allow him to stay with him, and he would help T.F. find work so that he could become a productive member of society.

{¶ 6} Rebecca Batchelor, the LCCSB caseworker assigned to this cause, testified that she never met with appellant because he was incarcerated during the entire period that LCCSB had temporary custody of his daughter. At the time of the dispositional hearing, A.F. was living with her three half-siblings, including a set of twins, whose paternal grandmother[1] had expressed an interest in adopting all four children. When asked how long it would be before A.F. could be placed with her father, Batchelor replied that it would be at least a year due to the fact that appellant would have to complete all of the services provided by the agency. A part of T.F.'s services plan was the requirement that he not be charged with any more criminal offenses.

{¶ 7} On cross-examination, Batchelor admitted that T.F. regularly sent letters to his daughter. She also agreed that it might take appellant less than a year to comply with his case plan. On re-direct examination, the caseworker stated that A.F. had both good and bad memories of her father; her worst memory was the time that he beat her mother

[1]There are three different fathers of the four children.

so badly it "exploded her bladder and knocked out her teeth."[2] Batchelor offered an opinion stating it would be in the best interest of A.F. to award permanent custody to LCCSB. The guardian ad litem also recommended that permanent custody be awarded to the children services agency. In addition, the guardian ad litem recommended that it would be in the best interest of all four children that they be placed in the home of the twin's paternal grandmother for adoption.

{¶ 8} T.F. also testified at the hearing. He claimed that prior to the time that his daughter was placed in foster care, they communicated through letters, telephone calls, and monthly/bimonthly visits to the prison. Appellant asserted that after A.F. was placed in foster care, he did not see or hear from her for over a year. It is undisputed that T.F. completed a number of courses while imprisoned. These include a vocational course, a "backup" computer technician course, an anger management class, a "victim's awareness course," a conflict and confrontation course, and a family living skills class.

{¶ 9} Appellant admitted that at the time he was arrested, he was cultivating marijuana in his home, that he and A.F.'s mother were drinking on that day, and that he assaulted the child's mother by kicking her in the bladder. At the time of this incident, which occurred in 2002, A.F. was living with her maternal grandmother. Appellant was initially placed in jail after his arrest. He was, however, released on bail and "ran." It was two years before he "turned himself in" and was tried on the original charges of

[2]This beating was the conduct that lead to appellant's conviction for felonious assault, as well as the conviction on a charge of cultivating marijuana in the couple's apartment.

cultivating marijuana and felonious assault. He claimed that he still had contact with his daughter during that period.

{¶ 10} Finally, the extensive criminal history of each of A.F.'s parents was entered into evidence.

{¶ 11} Based upon the foregoing, the trial court entered a judgment finding that, pursuant to R.C. 2151.414(A)(1)(a) and (d), A.F. and her half-siblings could not or should not be placed with either of their parents within a reasonable time and that it was also in the best interest of these children to award permanent custody to LCCSB. Appellant appeals this judgment and contends that the following error occurred in the proceedings below:

{¶ 12} "T.F. WAS DENIED PROCEDURAL DUE PROCESS AS A RESULT OF HIS ABSENCE FROM THE FIRST DAY OF HEARING, BASED UPON THE JUVENILE COURT'S DECISION TO PROCEED IN HIS ABSENCE, DESPITE ITS DECISION GRANTING AN UN-COMPLIED [sic] WITH ORDER TO CONVEY HIM TO SAID HEARING."

{¶ 13} Appellant asserts that his right to procedural due process under the Fifth and Fourteenth Amendments to the United States Constitution was abridged when the trial court, after granting him that right, proceeded to hold the June 26, 2009 hearing without appellant's presence. We disagree. The fact that the trial court opted to, in the first instance, allow appellant to be present at the June 26, 2009 hearing did not create any constitutional right on the part of appellant to be at that hearing. Rather, the decision

of whether to proceed with a permanent custody hearing with or without an incarcerated parent was still a matter within the trial court's discretion. *In the Matter of Destiny H.K.*, 6th Dist. No.WM-08-021, 2009-Ohio-771, ¶ 55. (Citation omitted.) See, also, *In re: Joseph P.*, 6th Dist. No. L-02-1385, 2003-Ohio-2217, ¶ 51. Thus, the trial judge's decision to go forward without appellant at the June 26, 2009 permanent custody hearing cannot be overturned unless it was unreasonable, arbitrary, or unconscionable.

{¶ 14} As mentioned above, appellant's attorney was present at the June 26, 2009 hearing representing his client, and that hearing never addressed the termination of T.F.'s right to parent A.F. Thus, none of his rights, including his right to due process, were infringed at that hearing. Both appellant and his attorney were present at and were provided with the opportunity to participate in the permanent custody hearing on July 28, 2009. Accordingly, we cannot say that the trial court's decision to hold the June 26, 2009 permanent custody hearing without appellant's presence was unreasonable, arbitrary, or unconscionable. Moreover, upon our independent review of the record of this cause, we find that the trial court did not err in terminating T.F.'s parental rights and awarding permanent custody of A.F. to LCCSB. Appellant's sole assignment of error is found not well-taken.

{¶ 15} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE