

[Cite as *In re C.B.*, 2010-Ohio-6563.]

COURT OF APPEALS  
HOLMES COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN RE: C.B.

JUDGES:

Hon. William B. Hoffman, P. J.  
Hon. Sheila G. Farmer, J.  
Hon. John W. Wise, J.

Case No. 10 CA 8

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common  
Pleas, Juvenile Division, Case No. 09 N  
273

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

December 30, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

STEVE KNOWLING  
PROSECUTING ATTORNEY  
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*Wise, J.*

{¶1} Appellant Holmes County Children's Services ("HCCS") appeals the decision of the Holmes County Court of Common Pleas, Juvenile Division, which dismissed the agency's abuse, neglect, and dependency case (trial court case number 09N273), concerning the minor child C.B. The relevant facts leading to this appeal are as follows.

{¶2} The mother of C.B. is Appellee Elizabeth Christian. The putative father is Logan Badger.

{¶3} On October 8, 2009, a private complaint for custody was filed for the legal custody of C.B. by the child's maternal uncle, Terry Christian, under case number 09C207. In the meantime, on December 17, 2009, Appellant HCCS filed a complaint alleging C.B. to be an abused, neglected, and dependent child (case no. 09N273). HCCS's complaint of December 17, 2009 included the following allegations:

{¶4} "On October 8, 2009 this agency received a report alleging that Elizabeth Christian had left her son, [C.B.] with the babysitter for several days with no way to contact her. The sitter was unable to care for [the child] any longer and had no contact information for Elizabeth. It was reported that the sitter had not seen Elizabeth for a month because someone different was always dropping [the child] off and picking him up. A family member ended up picking [the child] up from the sitters to care for him.\*\*\*

{¶5} "[The child] was placed in the temporary custody of maternal uncle, Terry Christian II and then later placed with maternal aunt, Nancy Christian, through a private custody matter. Worker observed [the child] in both Nancy and Terry Christian's home

and he appeared to be comfortable and stable. Nancy reported that [the child] is finally on a regular schedule and he is adjusting well.\*\*\*"

{¶16} Both the private custody case and the HCCS case were assigned to the same trial court judge.

{¶17} Temporary custody of the child was awarded in Case No. 09C207 to the child's maternal aunt, Nancy Christian. On January 25, 2010, legal custody of the child was granted to Nancy Christian in Case No. 09C207.

{¶18} An adjudicatory hearing in Case No. 09N273 was commenced on March 11, 2010, wherein appellee moved to dismiss the complaint on the grounds that the trial court had lost jurisdiction on January 25, 2010 when legal custody of the child was granted to Nancy Christian. The trial court granted the motion and dismissed the complaint, citing three grounds: jurisdiction, proper evidentiary standard vis-à-vis the legal custody case, and the best interest of the child. See Judgment Entry, March 17, 2010, at 1-4.

{¶19} Appellant HCCS thereafter timely filed a notice of appeal. It herein raises the following two Assignments of Error:

{¶110} "I. THE TRIAL COURT ERRED WHEN IT DISMISSED APPELLANT'S COMPLAINT ON MARCH 11, 2010 FOR LACK OF JURISDICTION.

{¶111} "II. THE TRIAL COURT ERRED WHEN IT DID NOT ALLOW APPELLANT TO PROCEED ON ITS COMPLAINT BECAUSE THE COURT DETERMINED IT WAS NOT IN THE BEST INTEREST OF THE CHILD PRIOR TO HE PRESENTATION OF APPELLANT'S CASE."

I, II

{¶12} In its two assigned errors, HCCS contends the trial court erred in dismissing its complaint for lack of jurisdiction, and additionally contends the trial court erred in proceeding to a best interest analysis prior to the presentation of the agency's case. We agree.

{¶13} An appellate court reviews issues of trial court jurisdiction under a de novo standard of review. See *Dazey v. Pollock*, Stark App.No. 2006CA00064, 2006-Ohio-4850, ¶9.

{¶14} R.C. 2151.35(A)(1) states as follows in pertinent part:

{¶15} “ \*\*\* If the court at the adjudicatory hearing finds from clear and convincing evidence that the child is an abused, neglected, or dependent child, the court shall proceed, in accordance with division (B) of this section, to hold a dispositional hearing and hear the evidence as to the proper disposition to be made under section 2151.353 of the Revised Code. \*\*\* If the court does not find the child \*\*\* to be an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, it shall order that the case be dismissed and that the child be discharged from any detention or restriction theretofore ordered.”

{¶16} In the case sub judice, we note the following colloquy took place between the trial court and the prosecutor at the hearing of March 11, 2010:

{¶17} "THE COURT: Mr. uh, Warner, tell me what's in the best-how's it in the best interest of [the child] at this point for Children's Services to pursue the abuse, neglect and dependency charge-or charges? Given-given the fact that he's in a stable

home, he appears to be doing well in that home, what's [the child] gain by this adjudication, if the adjudication were to occur?

{¶18} \*\*\*\*

{¶19} "MR. WARNER: ...I'm taking (inaudible), uh, Children's Services just wanted to make sure, uh, that there wasn't an agreement, you know—people change their mind. Uh, nothing's stopping Nancy Christian from changing her mind tomorrow, and we just—Children's Services was afraid of a scenario where Elizabeth Christian and Nancy Christian come in, both parties tell the Court they want the child to go back to the mother, uh, the change of circumstances being that, you know, she's not incarcerated, she's—has-it's been represented earlier that she has a stable home.

{¶20} \*\*\*\*

{¶21} Tr. at 8-9.

{¶22} The trial court thus appears to have jumped to the best interest question to determine even whether to initially proceed on the agency's abuse/neglect/dependency complaint. However, as the above exchange indicates, counsel for HCCS expressed the agency's continuing concerns that appellee-mother and her alleged behaviors could quickly re-enter C.B.'s life without the structure of a reunification case plan. We have generally recognized that children's services agencies have a duty to protect children. See *State v. Muller* (Nov. 6, 2000) Knox App.No. 99CA18, 2000 WL 1681025. In order to fulfill that duty in this instance, even though C.B. seems to be doing well for now in the home of the aunt, the agency should at least have had its evidentiary day in court to present its abuse/neglect/dependency case without the unwarranted jurisdictional barrier instituted by the trial court.

{¶23} Accordingly, HCCS's Assignments of Error are sustained.

{¶24} For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, Holmes County, Ohio, is hereby reversed, and the matter is remanded for a full adjudicatory hearing in accordance with R.C. 2151.35.

By: Wise, J.

Hoffman, P. J., concurs.

Farmer, J., dissents.

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JUDGES

JWW/d 1216

*Farmer, J., dissenting*

{¶25} I respectfully dissent from the majority's decision. Both cases were brought under the authority of R.C. 2151.23 and both alleged an abandonment of the child. No one ever contested the abandonment issue in either case. R.C. 2151.23(A)(1) states the following:

{¶26} "(A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

{¶27} "(1) Concerning any child who on or about the date specified in the complaint, indictment, or information is alleged to have violated section 2151.87 of the Revised Code or an order issued under that section or to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child and, based on and in relation to the allegation pertaining to the child, concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant."

{¶28} R.C. 2151.353(A)(3) states:

{¶29} "(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

{¶30} "(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings.\*\*\*"

{¶31} The decision to grant or deny a motion for legal custody is within the trial court's sound discretion. *In re Bradford*, Franklin App. No. 01AP-1151, 2002-Ohio-

4013. In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217.

{¶32} The result of the two filings was to place the trial court at the March 17, 2010 adjudication hearing in a position to re-rule on the issue of the best interest of the child. Appellant's counsel was unable to articulate any concrete reason as to why the legal custody order was in error when asked to discuss the best interest issue. T. at 8-11. Appellant's main concern was for the future procedural issues that might arise if the parents chose to regain custody.

{¶33} Although the issue of custody was resolved by the January 25, 2010 judgment entry in Case No. 09C207, appellant argues the issue should have been re-litigated with appellant receiving temporary custody of the child. I note the main issue in a custody case once dependency is uncontested is the best interest of the child not the parents. Procedural difficulties are not a factor nor should they be as the law provides a process for return of custody. During the adjudicatory hearing, the parents also argued that the matter should be dismissed. Although my view may be seen as condoning a race to the courthouse approach, I would disagree as this case presented unique and unusual circumstances. First, appellant was well aware of the issue of dependency prior to the filing of the private custody complaint and could have very easily intervened. Second, appellant did not disagree that the child was in a safe and stable environment. Third, dependency was uncontested. Fourth, the trial court made a best interest evaluation in both cases and dismissed the complaint sub judice on the issue of best interest.

{¶34} From the above stated reasons, I would find the trial court did not abuse its discretion in dismissing the complaint on the best interest standard. I would affirm the trial court's decision.

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HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN RE: C.B.

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JUDGMENT ENTRY

CASE NO. 10 CA 8

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Juvenile Division, Holmes County, Ohio, is reversed and remanded for further proceedings consistent with this opinion.

Costs assessed to appellee.

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JUDGES