

COURT OF APPEALS OF OHIO, SECOND APPELLATE DISTRICT

In re G.C. & O.R.

2022-Ohio-633 (Ohio Ct. App. 2022) · No. 2021-CA-26 · Decided March 4, 2022

SUMMARY

The Second District Court of Appeals of Ohio affirmed a juvenile court judgment granting Miami County Child Protective Services permanent custody of O.R. The court held that the father failed to rebut the statutory presumption of abandonment after having no contact with the child for more than 90 days and that no due process violation was established. The court also concluded that the permanent-custody determination was supported by clear and convincing evidence and was in O.R.'s best interest.

CASE DETAILS

COURT	Court of Appeals of Ohio, Second Appellate District
WRITING FOR THE COURT	Donovan, J.; Tucker, P.J.; Lewis, J.
JURISDICTION	Ohio
DECIDED	March 4, 2022
DOCKET	2021-CA-26
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the juvenile court's judgment terminating his parental rights to O.R. and granting permanent custody of O.R. to Miami County Child Protective Services. Because Father did not object to the magistrate's decision, the appellate court reviewed his claims for plain error.
STANDARD OF REVIEW	Plain-error review because Father failed to object to the magistrate's decision. The court reviewed the permanent-custody findings for clear and convincing evidentiary support and would not reverse if competent, credible evidence supported the trial court's firm belief or conviction that the statutory elements were established.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	J.R. (Father) v. Miami County Child Protective Services

TOPICS

termination of parental rights

parental rights

family law procedure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the juvenile court plainly erred in finding that Father abandoned O.R. under R.C. 2151.011(C) when he failed to visit or maintain contact with her for more than ninety days.
2. Whether alleged communications or fraud by Mother, or CPS's suspension of visitation, deprived Father of procedural due process.
3. Whether the juvenile court's finding that permanent custody to CPS was in O.R.'s best interest was supported by clear and convincing evidence and was not against the manifest weight or sufficiency of the evidence.

HOLDINGS

1. When a party fails to object to a magistrate's decision, appellate review is generally waived except for plain error, and relief is unavailable absent plain error.
2. The juvenile court did not plainly err in finding that Father abandoned O.R. because he failed to visit or maintain contact with her for more than ninety days, and the record did not show that the lack of contact was caused by CPS, Mother, or a due process violation.
3. The juvenile court did not plainly err in granting permanent custody of O.R. to CPS because clear and convincing evidence supported the statutory permanent-custody and best-interest findings.

KEY QUOTATIONS

“For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.” (§ 15)

“The ‘fundamental requirement of [procedural] due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ ” (§ 17)

“In light of the foregoing, it is clear that O.R. required a legally secure placement and that such security could not be achieved without a grant of permanent custody to CPS.” (§ 30)

FACTUAL BACKGROUND

CPS removed O.R. and her half-sibling from the home after Father was arrested for firing a gun several times inside the residence while the children were present and while police believed he was under the influence of drugs or alcohol. The children were adjudicated dependent, and CPS received temporary custody. Father was given a case plan and supervised visitation, but he had no contact with O.R. after September 29, 2020, and he

was incarcerated beginning January 4, 2021. O.R. was living with her half-sibling in a foster home that planned to adopt both children.

PROCEDURAL HISTORY

CPS filed a dependency complaint after Father was arrested following an incident involving the discharge of a firearm inside the family home while the children were present. The juvenile court adjudicated the children dependent, awarded CPS temporary custody, and approved a case plan for Father. After CPS moved for permanent custody, a magistrate terminated Father's parental rights to O.R. and granted permanent custody to CPS; the juvenile court adopted the decision, and Father appealed without filing objections.

DISPOSITION

affirmed

CASES CITED

- In re M.G. and C.G., 2d Dist. Miami No. 07-CA-6, 2007-Ohio-3589, ¶ 15
- In re A.P., 2d Dist. Montgomery No. 28023, 2019-Ohio-139, ¶ 10
- In re A.J.S., 2d Dist. Miami No. 2007-CA-2, 2007-Ohio-3433, ¶ 16
- Goldfuss v. Davidson, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997)
- Troxel v. Granville, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000)
- State ex rel. Allen Cty. Children Servs. Bd. v. Mercer Cty. Common Pleas Court, Prob. Div., 150 Ohio St.3d 230, 2016-Ohio-7382, 81 N.E.3d 380, ¶ 58
- In re J.N., 2d Dist. Clark No. 2019-CA-82, 2020-Ohio-4157, ¶ 26
- Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)
- Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)
- Barton v. Barton, 2d Dist. Greene No. 2015-CA-53, 2016-Ohio-5264
- Bank of Am., N.A. v. Kuchta, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶¶ 14-16
- In re M.S., 2d Dist. Clark No. 2008-CA-70, 2009-Ohio-3123, ¶ 15
- In re R.L., 2d Dist. Greene Nos. 2012-CA-32, 2012-CA-33, 2012-Ohio-6049, ¶ 17
- In re A.U., 2d Dist. Montgomery No. 22287, 2008-Ohio-187, ¶ 9
- In re J.E., 2d Dist. Clark No. 07-CA-68, 2008-Ohio-1308, ¶¶ 8-9
- In re S.J., 2d Dist. Montgomery No. 25550, 2013-Ohio-2935, ¶ 15