

SUPREME COURT OF OHIO

In re K.K. et al.

In re K.K., 2022-Ohio-3888 (Ohio 2022) · No. Nos. 2021-0822 and 2021-0857 · Decided November 3, 2022

SUMMARY

The Supreme Court of Ohio held that former R.C. 2151.35(B)(1) did not deprive a juvenile court of subject-matter jurisdiction when a dispositional hearing in an abuse, neglect, or dependency case occurred more than 90 days after the complaint was filed. The resulting judgment was voidable rather than void, and res judicata barred the parents from raising the issue after failing to object or directly appeal the temporary-custody orders. The court reversed the Twelfth District Court of Appeals and remanded for consideration of the remaining assignments of error.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Kennedy, J.; DeWine, J.; Donnelly, J.; Stewart, J.; Brunner, J.; O'Connor, C.J.; Fischer, J.
JURISDICTION	Ohio
DECIDED	November 3, 2022
DOCKET	Nos. 2021-0822 and 2021-0857
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Discretionary appeal and certified-conflict case from the Twelfth District Court of Appeals concerning whether untimely dispositional hearings under former R.C. 2151.35(B)(1) deprived the juvenile court of subject-matter jurisdiction.
STANDARD OF REVIEW	De novo review of the statutory-interpretation and subject-matter-jurisdiction issues.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio
PARTIES	Butler County Department of Job and Family Services–Children Services Division v. A.T., M.K. Jr.

TOPICS

[family law procedure](#)[child custody](#)[statutory interpretation](#)[res judicata](#)[appellate procedure](#)

PRACTICE AREAS

juvenile law

family law

child custody

appellate procedure

QUESTIONS PRESENTED

1. Whether former R.C. 2151.35(B)(1)'s requirement that a dispositional hearing be held within 90 days of filing an abuse, neglect, or dependency complaint deprived the juvenile court of subject-matter jurisdiction.
2. Whether judgments granting temporary custody after the 90-day period were void or merely voidable.
3. Whether res judicata barred the parents from raising the 90-day dispositional-hearing challenge for the first time in an appeal from the permanent-custody judgment.

HOLDINGS

1. Former R.C. 2151.35(B)(1) did not express an intent to divest a juvenile court of subject-matter jurisdiction when the court failed to hold a dispositional hearing within 90 days after the complaint was filed.
2. The juvenile court's judgments granting temporary custody after the 90-day deadline were voidable, not void.
3. Res judicata barred the parents from challenging the juvenile court's compliance with the 90-day deadline because they did not raise the issue before the juvenile court or in a timely direct appeal from the temporary-custody judgments.

KEY QUOTATIONS

“But a juvenile court’s failure to dismiss the complaint is an error in the exercise of the court’s jurisdiction, not one that deprives the court of jurisdiction.” (¶ 10)

“Therefore, the juvenile court had subject-matter jurisdiction when it granted temporary custody of the children to the agency; the judgments are voidable, not void.” (¶ 62)

FACTUAL BACKGROUND

The agency filed complaints alleging that K.K., D.T., and M.K. were abused, neglected, or dependent because the family home was unsafe, and the children were placed in foster care. The juvenile court granted the agency temporary custody after dispositional hearings held more than 90 days after the complaints were filed. The parents did not seek dismissal, object to the magistrate's decisions, or directly appeal the temporary-custody judgments, but later challenged the juvenile court's jurisdiction during the appeal from the permanent-custody judgments.

PROCEDURAL HISTORY

The juvenile court granted the agency temporary custody of the children after abuse, neglect, and dependency proceedings, and later granted the agency permanent custody. The parents did not object to or directly appeal the temporary-custody judgments on the ground that the dispositional hearings occurred more than 90 days after the

complaints were filed. The Twelfth District reversed the permanent-custody judgments after concluding that the juvenile court lacked jurisdiction, and the Supreme Court of Ohio accepted the agency's appeal and a certified conflict with the Fourth District.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Supreme Court reversed the Twelfth District's judgment, answered the certified question in the affirmative, and remanded the matter to the Twelfth District to address the remaining assignments of error.

CASES CITED

- In re L.S., 4th Dist. Ross No. 20CA3719, 2020-Ohio-5516
- In re K.M., 159 Ohio St.3d 544, 2020-Ohio-995, 152 N.E.3d 245
- Pratts v. Hurley, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992
- State v. Parker, 95 Ohio St.3d 524, 2002-Ohio-2833, 769 N.E.2d 846
- State v. Swiger, 125 Ohio App.3d 456, 708 N.E.2d 1033 (9th Dist. 1998)
- State v. Harper, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248
- Bank of Am., N.A. v. Kuchta, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040
- Corder v. Ohio Edison Co., 162 Ohio St.3d 639, 2020-Ohio-5220, 166 N.E.3d 1180
- In re R.B., 162 Ohio St.3d 281, 2020-Ohio-5476, 165 N.E.3d 288
- Smith v. May, 159 Ohio St.3d 106, 2020-Ohio-61, 148 N.E.3d 542
- In re J.J., 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851
- In re Murray, 52 Ohio St.3d 155, 556 N.E.2d 1169 (1990)
- In re H.F., 120 Ohio St.3d 499, 2008-Ohio-6810, 900 N.E.2d 607
- State v. Griffin, 138 Ohio St.3d 108, 2013-Ohio-5481, 4 N.E.3d 989
- State v. Henderson, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776
- Jones v. Action Coupling & Equip., Inc., 98 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172
- Slingluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902)
- Kontrick v. Ryan, 540 U.S. 443, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004)
- Scarborough v. Principi, 541 U.S. 401, 124 S.Ct. 1856, 157 L.Ed.2d 674 (2004)
- United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002)