

STATE OF MICHIGAN
COURT OF APPEALS

In re E. A. SMITH, Minor.

UNPUBLISHED
October 13, 2016

No. 331943
Wayne Circuit Court
Family Division
LC No. 11-504408-NA

Before: FORT HOOD, P.J., and GLEICHER and O'BRIEN, JJ.

PER CURIAM.

In this child protective proceeding, the circuit court released its jurisdiction over the subject minor and directed the parents to the domestic relations division of the court to resolve any custody dispute, but simultaneously placed the child in the care of the noncustodial parent. The court was not permitted to enter an order altering custody in that fashion. Accordingly, we reverse and remand to the circuit court.

I. BACKGROUND

Respondent-mother gave birth to her daughter, ES, on January 5, 2016. Because her two older children were the subjects of child protective proceedings in Bay County and had been placed outside the home, the Department of Health and Human Services (DHHS) immediately took ES into care and placed her with her paternal grandmother. Respondent and ES's father never married, but he acknowledged paternity. At adjudication, both parents entered pleas of admission, allowing the court to take jurisdiction over the child. Specifically, father admitted his criminal history dating back to 2002. The sentence for father's most recent conviction ended in 2010, and he has been discharged from all parole/probationary conditions. These were the only allegations raised against father.

At the initial disposition, a hearing referee recommended placing ES in her mother's care and ordering services. As no allegations supported father's lack of parental fitness, the referee dismissed him as a respondent. The father objected to the referee's recommendation to place the child with her mother, citing concerns about respondent's mental health and ES's safety while in her care.

The matter proceeded to a hearing before a circuit court judge. The court placed ES in her father's custody. Instead of continuing the matter so respondent could engage in services and work toward reunification, the court completely dismissed the child protective proceedings and ordered, "Parties may address custody issues in the domestic relations division."

Respondent now appeals. The DHHS agrees with respondent that this matter must be returned to the circuit court to follow correct procedures.

II. ANALYSIS

Respondent contends that the circuit court erred in awarding father custody of ES without taking the best-interest factors of the Child Custody Act (CCA) into consideration. In support of her claim, respondent contends that under the acknowledgment of parentage act (APA), the mother is deemed the child's custodial parent and before altering that custody arrangement, the court must make a detailed best-interest determination on the record. The DHHS agrees that the circuit court improperly awarded sole custody to father absent a best-interest analysis and asserts that the court should have continued the child protective proceedings as respondent pleaded to jurisdictional grounds.

We review a circuit court's dispositional orders for clear error. *In re Sanders*, 495 Mich 394, 406; 852 NW2d 524 (2014). Here, the court's dispositional order awarded custody of the subject child to the father. In that regard, we review the court's factual findings under the great weight of the evidence standard, legal conclusions de novo, and ultimate custody decision for an abuse of discretion. *In re AP*, 283 Mich App 574, 590; 770 NW2d 403 (2009).

As in *AP*, 283 Mich App at 590-591, “[i]n this case, there are two distinct and separate statutory schemes affecting the care and custody of the minor child: the juvenile code and the CCA.” In addition, the APA, MCL 722.1001 *et seq.*, plays a role here. Each of these acts permits a court to infringe upon the fundamental right of parenting, issue orders intended to protect the child's welfare, declare paternity, and secure child support, among other actions. *AP*, 283 Mich App at 592. However, “[i]f any of these actions directly or incidentally involve the legal or physical custody of a child, the courts are bound by the CCA in determining who should have physical and legal custody of a child.” *Id.*

This case began under the Juvenile Code. The circuit court has broad discretion in matters of disposition in a child protective proceeding, and can order any disposition authorized by the Juvenile Code and the court rules. MCR 3.973(A). It may warn the parents and dismiss the petition. MCL 712A.18(1)(a). It may place the child under court supervision in her own home or that of a related adult, MCL 712A.18(1)(b), place the child in foster care and direct the parents to comply with the case service plan, MCL 712A.18f, or terminate parental rights. MCL 712A.19b; MCR 3.977(E). If the court elects to exercise jurisdiction, it may remove the child from the custodial parent and place her with the noncustodial parent. See *In re Brown*, 171 Mich App 674, 676-677; 730 NW2d 746 (1988). While the child remains a court ward, “the juvenile court's orders supersede all previous orders, including custody orders entered by another court, even if inconsistent or contradictory.” *AP*, 283 Mich App at 593. However, if the court terminates its jurisdiction under the Juvenile Code, it can only change custody if it “abide[s] by the relevant procedural and substantive requirements of” the CCA. *Id.* at 578, 598.

To abide by the requirements of the CCA, the court must determine whether the child has an established custodial environment with either parent and whether the court's proposed custodial disposition would affect a change. *Id.* at 600-601. This resolution decides the parties'

evidentiary burdens. *Id.* at 601. The court must then consider the best interests of the child under MCL 722.23 of the CCA. *AP*, 283 Mich App at 602-603.

In this case, the circuit court could have declined to exercise jurisdiction, terminated the wardship, and referred the parties to the domestic relations arm of the family court to settle any custody dispute. The loss of jurisdiction under this scenario would resurrect respondent's right to custody under MCL 722.1006 of the APA and the acknowledgment of parentage signed by father, and the court would be required to return the child to respondent's custody. *AP*, 283 Mich App at 593-594 (“[T]he previous custody orders affecting the minor become dormant, in a metaphoric sense, during the pendency of the juvenile proceedings, but when the juvenile court dismisses its jurisdiction over the child, all those previous custody orders continue to remain in full force and effect.”). Alternatively, the circuit court could have elected to exercise jurisdiction, made the child a temporary ward, and placed her with the father pending further child protective proceedings. *Brown*, 171 Mich App at 676-677. The circuit court could not blend these options. As such, the court erred when it both changed custody to the father and terminated its jurisdiction over the child without complying with the provisions of the CCA.

Accordingly, we reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher
/s/ Colleen A. O'Brien