

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1932

September Term, 2015

IN RE: JAMARI B. & JAMIYA B.

Meredith,
Leahy,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: May 24, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

With the express acquiescence of all parties, Judge Robert B. Kershaw in the Circuit Court for Baltimore City on October 2, 2015, signed an order awarding the legal custody and guardianship of two juveniles, Jamari B. and Jamiya B., to the maternal grandmother, Jewel W. This appeal is by Jamila W. ("Mother"), the biological mother of Jamari B. and Jamiya B. and the daughter of Jewel W. Her appeal raises a single contention:

"The Juvenile Court impermissibly delegated its authority to decide visitation by leaving the decision for the relative."

The Factual Background

At the time of the disposition of this case, Jamari was six years old and Jamiya was three years old. They had both been living with their maternal grandmother, Jewel W., for two years. The family first came to the attention of the Baltimore City Department of Social Services on August 5, 2013, when it filed a Petition with Request for Shelter Care for the two children who were then four years old and one year old respectively.

On that day, the Mother was arrested for assaulting George B., the biological father of the children. The Mother was incarcerated pending her trial. The children were placed in the care of their grandmother, Jewel W. On September 3, 2013, the Mother was found guilty of assault. She was released from incarceration and placed on probation for two years, to end on September 3, 2015.

The Department found it necessary to intervene when, on September 4, 2013, the Mother threatened to remove the children from the grandmother's care. The petition recited that the Mother was homeless and, therefore, did not have adequate housing arrangements

for the children. The Mother also had a history of mental illness. She had been diagnosed with bi-polar disorder, schizophrenia, and depression. The Mother also had a history of domestic violence against George B., the father.

The petition further pointed out that both biological parents have a history of substance abuse and alcohol abuse. George B. admits that he cannot go a day without drinking alcohol. He agreed to submit to a substance abuse evaluation, but then failed to show up for the scheduled appointment. George B. admits that he would be unable to provide for the children.

Accordingly, on September 5, 2013, the circuit court adjudicated both children to be Children in Need of Assistance ("CINA") and that they would remain in the temporary custody of Jewel W. The court conducted regular review hearings on January 16, 2014; May 12, 2014; November 21, 2014; and September 24, 2015. As of that September 24, 2015 hearing before Family Magistrate Bradley Bailey, the parties had reached an agreement, which was incorporated into the Family Magistrate's recommendations to the circuit court.

At the September 24, 2015 hearing before the Family Magistrate, the parties presented the joint agreement that had been reached by them for the disposition of the children. It was agreed to and signed in the presence of the Family Magistrate by 1) the court-appointed attorney for the two children; 2) the attorney for the Mother, Jamila W.; 3) the biological father, George B., and his attorney; 4) the maternal grandmother and

custodian/guardian of the children, Jewel W., and her attorney; and 5) the representative of the Baltimore City Department of Social Services. Immediately before the signatures, the final paragraph provided:

"By signing below, the parties state that they have reviewed this recommendation of the parties, consent to the immediate issuance by the Court of an Order consistent with these recommendations and waive their right to take an exception to the findings of fact, conclusions of law, and recommendations of the Magistrate that are consistent with these recommendations."

(Emphasis supplied).

The heart of the agreement was that all parties agreed as to what would be the final disposition of the case by the court:

"The parties having agreed to the following disposition, it is therefore ordered by the Circuit Court for Baltimore City, Juvenile Causes Division:

"Custody and Guardianship of Jamari [B.] and Jamiya [B.] is being granted to Jewel [W.] The guardian appointed by this Court has sole legal custody of this child. The Court appointed guardian is not permitted to allow the child to live in someone else's physical custody without the issuance of a new court order. The grant of custody and the guardianship hereby terminates BDCSS' obligations and responsibilities to the child. The Court considered a report by BCDSS completed in compliance with applicable regulations, on the suitability of the person to be guardian of the child. The report included home study, child protective services history, criminal history check and review of the proposed guardian's physical and mental health history. A meeting and interview with the child at court.

"The Court has determined that no grounds exist to hold a further view of this order of custody and guardianship and the jurisdiction of the Court is hereby terminated.

"That order of commitment to the Baltimore City Department of Social Services for relative placement dated January 21, 2015 be rescinded[.]"

(Emphasis supplied).

At the hearing on September 24, 2015, Magistrate Bailey summed up what had been presented to him:

"The Department of Social Services has submitted reports to the Court in support of the agreement which has been reached today. These are guardianship suitability studies for the children. Again, I have also received a signed recommendation with – which sets forth the agreement in this case. That is, the agreement concerning the disposition of this review, and the parties have agreed that there will be a change in the legal status.

"These children have been with [Jewel W.] for some time, just about two years, since October of 2013. They've done well, prospered in her care. The parties today are asking that the current orders of commitment, the children have been placed with [Jewel W.] under orders of commitment. Today it is agreed that those commitments should be rescinded and that the Court should enter an order granting custody and guardianship of both Jamari and Jamiya to Jewel W. It is also – under a permanency plan of relative placement which is being implemented today.

"The parties have also asked the Court to terminate jurisdiction over the children."

(Emphasis supplied).

Magistrate Bailey explained that although both the court and the Department of Social Services were terminating their involvement in the case, the parties would not be losing their parental rights.

"[THE COURT]: ... [T]his order does not have the effect of terminating parental rights. The parents would have the right to ask that a court of

competent jurisdiction conduct a review for the purpose of enforcing visitation and/or for the purpose of changing custody. So Father and Mother would retain the right to do so. You understand that.

"[FATHER]: Yes, Your Honor.

"THE COURT: When you feel that your circumstances would be appropriate and you are of the mind to ask that the children be placed in your custody, you would still have the right to do so. The important thing to note is this; you would not file your request for review with the Juvenile Court or the clerk of this court. You would file the request with the Family Division."

To make the conditions of visitation absolutely clear, the Mother, the biological father, and the guardian grandmother replaced their September 24, 2015 agreement with an amended agreement of October 13, 2015.

"This agreement is made this 13th of October and replaces the agreement of 24th day of September 2015, and is part of a proceeding in the Circuit Court for Baltimore City Division for Juvenile Causes.

"The Jamari and Jamiya [B.] are the subject of the above referenced petitions. The purpose of this agreement is to establish visitation between Jamari and Jamiya and their birth parents: Jamila [W.] and George [B.]

"This is an agreement between Jamila [W.] and George [B.], birth parents of Jamari and Jamiya [B.] and Jewel [W.] caregiver and maternal grandmother, Jr., hereinafter referred to as the Parties.

"A Parties agree that they are committed to a relationship that is supportive of the children's needs, now and in the future and understand that these needs may change.

"B **Jamila [W.] and George [B.]** agree and want it to be known that it is in the best interest of the minor sibling children: Jamari and Jamiya [B.] that they enter into this agreement.

"It is hereby agreed:

That Jamila [W.] and George [B.] and Jewel [W.] do hereby agree to request the court to grant Custody and Guardianship to Jewel [W.]

"WHEREFORE, Jamila [W]. and George [B.] and Jewel [W.] AGREE THAT:

"VISITATION

- Jamila [W.] and George [B.] may have supervised visits on Wednesday from 4:00 - 6:00 pm and Saturday from 8:00 am to 2:00 pm and on Sunday from 10:00 am till 5:00 pm and at other times as determined by Jewel [W.] who will approve persons to supervise the visits, i.e. Denise [L.], Jamila and George will coordinate their respective visits if Jewel [W.] or either of them believes it is in the best interest of Jamari and Jamiya;
- Jamila [W.] and George [B.] agree to participate in therapy with the children so that the therapist can recommend unsupervised visits.
- Permanent changes to this Agreement must be done in writing and signed by all parties.
- Disputes that materially alter this agreement will be resolved by either mediation or court decision."

(Emphasis supplied).

With no exceptions to them having been filed, the recommendations of the Family Magistrate on September 24, 2015 were accepted by Judge Kershaw and made the subject of a final order on October 2, 2015.

The Contention

The biological father, George [B.], has not appealed that order of October 2, 2015.

The appeal is taken only by the Mother. Her sole contention is:

"The Juvenile Court impermissibly delegated its authority to decide visitation by leaving the decision for the relative."

Dismissal of the Appeal

The appellee, the Department of Social Services, requests us to dismiss this appeal because one cannot appeal from a decision to which one has consented. As the Court of Appeals explained in In re Nicole B., 410 Md. 33, 64, 976 A.2d 1039 (2009):

"As to John's appeal, the issue is whether he is attempting to appeal from a judgment to which he consented or acquiesced. It is well-settled that a party in the trial court is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order."

(Emphasis supplied).

Osztreicher v. Juanteguy, 338 Md. 528, 534-35, 659 A.2d 1278 (1995), held to the same effect:

"It is well settled in Maryland that '[t]he right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal.' Applying this principle, it has been held that a litigant 'cannot, knowing the facts, both voluntarily accept the benefits of a judgment or decree and then later be heard to question its validity on appeal.' This rule has also been applied to consent judgments. Acquiescence implies consent, although by no means express consent. It has been held that a litigant who acquiesces in a ruling is completely deprived of the right to complain about that ruling."

(Emphasis supplied; citations omitted). See also, Barnes v. Barnes, 181 Md. App. 390, 410-11, 956 A.2d 770 (2008).

The Mother now complains that the grandmother/guardian and the therapist cannot decide when it is appropriate to switch from supervised visitation to unsupervised visitation because the law is that only the court may make decisions affecting visitation and may not delegate that authority to private persons. By the express terms of the amended agreement of October 13, 2015, however, the Mother expressly agreed to having that decision decided by the grandmother in consultation with the therapist.

"Jamila [W.] and George [B.] agree to participate in therapy with the children so that the therapist can recommend unsupervised visits."

(Emphasis supplied).

We agree with the appellee that the Mother may not now appeal the very decision to which she agreed and in which she fully acquiesced. We dismiss the appeal.

An Alternative Holding

The respective reasons for dismissing the appeal and for affirming the decision of the trial court on the merits are so intimately related that we do not hesitate to express this alternative holding. Even if, arguendo, the Mother's contention were properly before us, we would summarily reject it.

The contention that only the court, and not a non-judicial person, may make a decision affecting visitation relies exclusively on taking statements out of context from the two decisions of In re Justin D., 357 Md. 431, 745 A.2d 408 (2000) and In re Mark M., 365 Md. 387, 782 A.2d 332 (2001). In both of those cases, unlike the present case, the child in

question continued to be a CINA and the court, therefore, continued to exercise its supervisory authority over the child. In this case, by contrast, the court terminated its jurisdiction over the two children. Judge Wilner contrasted the two very different contests for visitation decisions in Frase v. Barnhart, 379 Md. 100, 120-21, 840 A.2d 114 (2003):

"It is common – and in some instances required – for juvenile courts, in dealing with children who have been found in need of assistance (CINA), to have periodic review hearings to monitor the progress of the child, the child's parents, and any other guardian or potential custodian. In that setting, of course, the child has already come under the direct jurisdiction and supervision of the court and may well be in the legal custody of the court. ... The context, which justifies the direct and continuing supervision of the court, is that, as part of the CINA finding, the court has determined that court intervention is required to protect the child's health, safety, and well-being.

"The court's role is different in a normal private custody dispute.... Although the matter of custody, visitation, and support may always be reopened upon a showing of changed circumstances, the court's jurisdiction over the particular dispute ends when the dispute is resolved, which the law anticipates will occur within a reasonable time after the evidentiary hearing."

(Emphasis supplied).

It is clear that the two cases on which the Mother exclusively relies have absolutely nothing to do with the case now before us. The contention totally lacks merit.

**APPEAL DISMISSED; COSTS
TO BE PAID BY APPELLANT.**