

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

FILED

March 16, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

NOBLE EUGENE PEPPER, SR.,)

Plaintiff/Appellant,)

v.)

MARY CATHERINE WOOD,)

Defendant/Appellee.)

Davidson Circuit No. 99D-788

Appeal No. M1999-00228-OCA-R3-CV

APPEAL FROM THE CIRCUIT COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

THE HONORABLE MURIEL ROBINSON, JUDGE

For the Plaintiff/Appellant:

For the Defendant/Appellee:

Noble Eugene Pepper, Sr.
Smyrna, Tennessee

Burton D. Glover
Goodlettsville, Tennessee

AFFIRMED

HOLLY KIRBY LILLARD, J.

CONCURS:

W. FRANK CRAWFORD, P.J., W.S.

ALAN E. HIGHERS, J.

OPINION

This is a child custody case. Years ago, while the children's parents were incarcerated, the juvenile court granted custody to the maternal grandmother. After the maternal grandmother died, the juvenile court granted temporary custody of the two children to their maternal great aunt. The father, no longer incarcerated, appealed to the circuit court. The circuit court dismissed the appeal, finding that no final order on custody had been issued. The father now appeals the circuit court's dismissal of his appeal, arguing that the juvenile court does not have jurisdiction. We affirm, finding that the juvenile court has jurisdiction, and has not yet issued a final, appealable ruling.

Noble Eugene Pepper, Sr. ("Father"), Appellant, is the father of two daughters, born in 1986 and 1987. The girl's mother is Jean Marie Pepper ("Mother"). In 1988, when the girls were approximately 1 and 2 ½ years old, the family lived in Florida. In late 1988 or early 1989, Mother and Father were arrested and taken into custody, and the Florida Department of Health and Rehabilitative Services placed the children in a shelter. The girls remained in the shelter until their maternal grandmother, Doris Steele ("Grandmother"), arrived from her home in Nashville, Tennessee to take charge of them.

Subsequently, both Mother and Father were sentenced to serve periods of incarceration. The Juvenile Court of Broward County, Florida issued an order granting Mrs. Steele temporary custody "until such time as either of the parents are released from incarceration, or until ordered otherwise by a Court of competent jurisdiction." Grandmother and the girls lived in her home in Nashville, Tennessee.

In 1992, Grandmother filed a dependency and neglect proceeding on behalf of the children before the Juvenile Court of Davidson County, Tennessee. Grandmother asserted that Father and Mother were "in and out of jail" and that both were at that time incarcerated. In her petition, Grandmother noted that she had cared for the children for the prior four years, and that she was willing and able to provide for their continued care. Grandmother sought an award of permanent custody. On September 25, 1992, the Juvenile Court issued an order finding the children dependent and neglected, and granting custody to Grandmother.

The girls remained with Grandmother until October 1, 1998. On that date, Grandmother became ill and was admitted to a hospital. She placed the children under the care of her sister, appellee Mary Catherine Wood ("Ms. Wood"), the children's great aunt. Grandmother died on October 7, 1998.

After learning of Grandmother's death, Father filed a petition before the Davidson County Juvenile Court, asking that immediate custody be granted to his wife, Jean Marie Pepper.¹ On October 26, 1998, Ms. Wood filed a petition for custody of the children. That same day, Davidson County Juvenile Court Referee Michael O'Neil issued an order on Father's petition for immediate custody. Referee O'Neil ordered: that Father's petition for immediate custody be set for trial on December 11, 1998; that a guardian ad litem be appointed to represent the interests of the children; that the matter be referred to CASA to conduct home studies of the homes of Father, Mother, and Ms. Wood; that any visitation that Father wished to exercise be arranged through and supervised by representatives of the Tennessee Department of Human Services; and that temporary custody of the children be placed with Ms. Wood.

On December 1, 1998, Father filed a motion requesting that Referee O'Neil recuse himself from the case, alleging purported violations of the Code of Judicial Conduct. On December 28, 1998 Referee O'Neil entered an order recusing himself and Davidson County Juvenile Court Judge Betty Adams Green was assigned to preside over further hearings in the matter.

On February 11, 1999, Father appealed Referee O'Neil's order of temporary custody to the Circuit Court of Davidson County. On February 18, 1999, Father filed before the Juvenile Court a motion to dismiss Ms. Wood's petition for custody. Apparently, at some point during this time period, Mrs. Wood filed with the Juvenile Court a motion to set a trial date, although the motion is not in the record. On April 9, 1999, Father filed a response to this motion. Father objected to the petition for custody filed by Ms. Wood, as well as her motion to set, arguing that the Juvenile Court lacked jurisdiction.

On April 16, 1999, the Circuit Court held a hearing on Father's appeal and Ms. Wood's motion to set. At that hearing, Ms. Wood's attorney told the Circuit Court that the custody order entered by Referee O'Neil was merely temporary, and that the parties had started custody proceedings before Juvenile Court Judge Betty Adams Green. The Circuit Court then told Father that it had no jurisdiction to consider his appeal until the Juvenile Court proceedings were completed and a final order on custody had been issued. Accordingly, on April 28, 1999, the Circuit Court

¹ Father, formerly a practicing attorney, appeared *pro se* throughout the proceedings, including this appeal. Ms. Wood argues that, by asking that custody be granted to Mother, Father was in effect representing Mother and engaged in the unauthorized practice of law. In view of our holding in this case, we decline to address this issue.

issued an order dismissing Father's appeal, pending a final judgment on the matter from the Juvenile Court. From this order, Father now appeals.

On appeal, Father raises essentially three issues: 1) whether the Juvenile Court has subject matter jurisdiction; 2) whether Ms. Wood's petition for custody sufficiently complied with Rule 9 of the Tennessee Rules of Juvenile Procedure to "trigger" the jurisdiction of the Juvenile Court; and 3) whether the Juvenile Court order granting Ms. Wood temporary custody is invalid because it was entered shortly before Ms. Wood's petition for custody was filed.

Since this case was tried by the trial court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. *See* Tenn.R.App.P. 13(d). We review all issues of law *de novo* upon the record with no presumption of correctness. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

Father first argues that the Juvenile Court lacked subject matter jurisdiction to hear the case. Father contends that Ms. Wood's petition failed to allege facts sufficient to confer jurisdiction on the Juvenile Court, and that without subject matter jurisdiction, the order granting custody of the children to Ms. Wood is void.

The Juvenile Court's jurisdiction in this case is clear. Grandmother filed a dependent and neglect proceeding regarding the children in 1992. As a result of that proceeding, the Davidson County Juvenile Court made a finding that the children were dependent and neglected, and awarded custody to Grandmother. Tennessee Code Annotated Section 37-1-103(a)(1) grants the juvenile court exclusive original jurisdiction over a proceeding in which a child is alleged to be dependent and neglected. Section 37-1-103 (c) provides that once the juvenile court has gained such jurisdiction, it retains jurisdiction until the child at issue reaches majority. Tenn. Code Ann. §37-1-103(a)(1) and §37-1-103(c). *See also State v. George*, 968 S.W.2d 896, 898 (Tenn. Crim. App. 1997)(once court has assumed jurisdiction in a dependency and neglect proceeding, jurisdiction continues until the child reaches the age of eighteen) and *State of Tenn. Dept. of Human Services v. Gouvista*, 735 S.W.2d 452, 456 (Tenn. App. 1987)(juvenile court has exclusive jurisdiction in dependency and neglect proceeding, and ordinarily such jurisdiction continues until child reaches majority). We find, therefore, that Father's first issue is without merit.

Father next argues that even if the Juvenile Court had subject matter jurisdiction to hear the case, Ms. Wood's petition did not comply with Rule 9 of the Tennessee Rules of Juvenile Procedure, and therefore failed to "trigger" the jurisdiction of the Juvenile Court to grant custody to her.

The Tennessee Rules of Juvenile Procedure govern procedures in juvenile court in all cases in which children are alleged to be "delinquent, unruly, dependent and neglected, or abandoned; ..." Tenn. R. Juv. P. 1 (b). The portion of Rule 9 upon which Father relies states:

The petition shall be verified and may be on information and belief. It shall set forth in plain and concise language with particularity the factual and other allegations relied upon in asserting that the respondent is within the juvenile court's jurisdiction, including:

* * *

(4) Whether the petition alleges delinquent, unruly, dependent and neglected, or other category of jurisdiction.

Tenn. R. Juv. P. 9 Father argues that Ms. Wood's petition does not allege any acts of the parents that would prevent them from being awarded custody, or that would justify her petition for custody.

Father's argument ignores the fact that the Juvenile Court's jurisdiction over these children is ongoing, based on the 1992 finding of dependency and neglect, and does not need to be "reestablished." Ms. Wood's petition clearly sets out the basis for her request for custody, stating that Grandmother was awarded custody on September 25, 1992, that Grandmother became ill and entered the hospital on October 1, 1998, that the children were placed in the care of Ms. Wood on that date, that Grandmother died on October 7, 1998, and that the children had remained in the care of Ms. Wood since October 1, 1998. We find, therefore, that Father's second issue is also without merit.

Finally, Father argues that Referee O'Neil's order granting temporary custody to Ms. Wood is invalid because it was entered before Ms. Wood's petition for custody was filed. Father notes that Ms. Wood had not filed any pleadings at the time of the October 15, 1998 hearing, and her petition for custody was filed 18 minutes after entry of the October 26 order granting her custody. From this he argues that the Juvenile Court had no authority to grant her custody.

It is undisputed that the October 15, 1998 hearing was initiated by Father's petition regarding custody, rather than by Ms. Wood's petition for custody. The first sentence of Referee O'Neil's order of October 26, 1998 reflects that fact, stating, "This matter came to be heard before the Honorable Michael O'Neil, Referee, upon the Petition for Immediate Custody, filed by the natural

Father, Noble E. Pepper, Sr., the statement and argument of the parties, and the record of the cause,...” Ms. Wood, in whose care Grandmother had placed the children, attended and participated in the October 15 hearing. After the hearing, the Referee awarded Ms. Wood temporary custody, pending the outcome of Father’s petition for custody. Clearly the Juvenile Court had authority to grant temporary custody to Ms. Wood.

Tennessee Code Annotated § 37-1-159 provides that appeal may be made to the circuit court from “any final order or judgment” of the juvenile court. The October 26, 1998 order granting temporary custody to Ms. Wood was not a final order since it describes the custody award as “temporary,” refers the matter to CASA for home studies on Ms. Wood and both parents, and sets a date for trial on Father’s petition for custody. We hold, therefore, that the Circuit Court did not err in dismissing Father’s appeal of the temporary order of custody issued by the Juvenile Court, based on its finding that proceedings in the Juvenile Court were incomplete, and that no final order had yet been issued.

The decision of the Circuit Court is affirmed. Costs on appeal are taxed to appellant, Noble Eugene Pepper, Sr., for which execution may issue, if necessary.

HOLLY KIRBY LILLARD, J.

CONCUR:

W. FRANK CRAWFORD, P. J., W.S.

ALAN E. HIGHERS, J.