

***In the Interest of G.R.B.***, 769 S.E.2d 119

- Decided February 12, 2015
- Opinion: Dillard
- Concurring Opinions: McFadden, Ray
- Dissenting Opinion: McMillan, Andrews

Posture:

Father appeals from the juvenile court's order finding G.R.B. deprived and awarding permanent legal custody to the child's maternal grandparents.

Issue(s):

Was the evidence sufficient to support the juvenile court's finding of deprivation?

Holding:

Reversed. The juvenile court lacked clear and convincing evidence to support a finding of deprivation.

Facts:

Six months after G.R.B. was born, his father filed a petition for legitimation and custody in the Superior Court. One month later, the child's maternal grandparents filed a motion to intervene and a complaint for grandparent custody and visitation in the same court. They simultaneously filed an emergency private deprivation petition in the Juvenile Court of Whitfield County, as a result of which they received temporary custody of G.R.B. Weeks later, the grandparents filed a verified private deprivation petition seeking custody, and a guardian ad litem was appointed for the child.

On August 19, 2013, all proceeding were consolidated and transferred to the juvenile court, which granted the father's legitimation petition. In the same order, the court also found that the mother had a significant mental health history, the relationship between the mother and father was unstable and involved domestic violence in the child's presence, the grandparents had provided a significant amount of daily care for G.R.B., and both parents were gainfully employed and capable of providing adequate housing and income to support the child. Concerned about the domestic violence and mother's adherence to her medication regimen, the court continued the case for three months, returned the child to his parents' custody and directed DFCS to open a family preservation case to ensure the parents completed a parenting class, enrolled in a marriage/relationship class, and completed an anger-management course. Following a December hearing, the case was continued for another three-month period due to the occurrence of another incident of domestic violence that resulted in the mother's arrest. A February hearing was held in response to a recent physical altercation between the father and the mother's then-boyfriend and to a request by DFCS that the father submit to drug testing. The court ordered the drug testing and for the child to remain in the grandparents' custody. Shortly thereafter, the child's paternal grandparents filed their own motion to intervene, seeking a finding of deprivation and custody or, in the alternative, visitation.

In April, the juvenile court conducted its final hearing issuing a “final order on all pending matters” finding that the child’s mother had consented to the child’s placement in the grandparents’ custody, and that the father had completed the required classes but had engaged in a physical altercation in the mother’s presence while under the influence of drugs and alcohol and brandishing a weapon. The court further found that the father admitted a history of methamphetamine use but had started treatment, and that the parents had a unstable relationship involving domestic violence. Based on these findings, which were bolstered by the recommendation of the guardian ad litem and testimony from the DFCS case manager, the court found the child “would be in danger of harm if placed with the father” and ordered that permanent legal custody be placed with the maternal grandparents with parental visitation rights and support obligations.

Reasoning:

On appeal from a deprivation order, the court views the evidence “in the light most favorable to the juvenile court’s judgment to determine whether any rational trier of fact could have found clear and convincing evidence of deprivation.” Of note in the present case, the court found no evidence that the father was under the influence of methamphetamine during the altercation with the mother’s boyfriend, nor that the child was harmed in any way by the altercation since he was not present. The court also noted that the father never used meth in the child’s presence, had begun treatment, and had passed recent drug tests. The parents had no plans to get back together, and the father maintained adequate housing, gainful employment, and was able to meet G.R.B.’s needs while in his care. Although DFCS declined to make a placement recommendation on the record, the case manager did testify that the agency had “no concerns” about G.R.B.’s well being while in his father’s care, and that he had completed all classes and programs required by his case plan.

In light of this evidence, the juvenile court lacked clear and convincing evidence by which to find G.R.B. presently deprived as to his father.