

*In the Interest of C.A.J.*, 2015 WL 1432628

- Decided March 30, 2015
- Opinion: Boggs

Posture:

Mother appealed from the juvenile court's order finding deprivation of her 9 year-old child and placing her in the permanent custody of her maternal grandmother.

Issue(s):

- (1) Was the evidence sufficient to support a finding of deprivation?
- (2) Did the juvenile court have jurisdictional authority to award permanent custody upon a finding of deprivation?

Holding:

Affirmed in part, reversed in part, and remanded. The court affirmed the deprivation determination, and reversed the permanent custody award with a remand for further proceedings.

Facts:

C.A.J.'s mother and putative father had a contentious relationship that involved frequent fighting, verbal abuse and physical confrontations. Though they never married, they lived together following the child's birth until, at some point in the relationship, the mother entered into a romantic relationship with the father's brother. Despite warnings from C.A.J.'s father that his brother had previously been convicted of child molestation, the mother subsequently married the brother and became pregnant with his child.

From May 2011 to November 2011, C.A.J. had lived with his maternal grandparents. The mother also resided there but was not often present in the home. On November 1, 2011, during an argument, C.A.J.'s mother pushed the grandmother against a wall when the child was present. Soon thereafter, the maternal grandmother filed a private deprivation petition seeking legal and physical custody of C.A.J. The petition alleged that the mother was unable to provide a stable home for C.A.J., was mentally incapable of caring for her, and had not supported her financially since she moved in with her grandparents.

Following a hearing, the juvenile court found the child to be deprived based on the mother's failure to protect her from exposure to domestic violence and the mother's relationship with a convicted child molester and registered sex offender, among other things. The court awarded temporary custody to the grandmother and entered a concurrent permanency plan of reunification and non-reunification. The case plan required that the mother undergo a psychological evaluation and follow all recommendations, demonstrate an ability to protect C.A.J. from domestic violence and sexual abuse and pay child support. The mother began counseling to address the safety issues. C.A.J. also began therapy during which she disclosed inappropriate sexual contact initiated by the mother's husband (putative father's brother). Based on that outcry, the therapist contacted DFCS, and the husband was arrested. The juvenile court

suspended all contact between the mother and C.A.J. due to her failure to protect her daughter and unwillingness to believe her daughter's claims of abuse.

At the evidentiary hearing, the mother testified that she had learned through counseling that she needed to end her marriage in order to protect her daughter but had taken no steps to do so and had maintained contact with her husband while he was in jail. The grandparents reported that the mother showed little interest in C.A.J.'s well-being and offered minimal financial support for her care. C.A.J. thrived in her grandparents' care. Following the hearing, the juvenile court again found C.A.J. deprived. It then found that reunification with the mother would be detrimental and that "placement" (by which the court meant "permanent custody" in the context of the order) with the grandmother "for the purposes of adoption" would be in C.A.J.'s best interest.

Reasoning:

On appeal from a deprivation finding, the court defers to the juvenile court's fact-finding and will affirm unless it determines that no rational trier of fact could have found by clear and convincing evidence that the child was deprived. Applying this standard, the court found no error in the juvenile court's determination that C.A.J. was deprived. The mother permitted C.A.J. to interact with a convicted child molester and registered sex offender, she expressed disbelief in the child's outcry, and showed little concern for her daughter emotionally and financially. Accordingly, the juvenile court properly found clear and convincing evidence that the mother's failure to protect C.A.J., her neglect of the child's mental and emotional needs, and her failure to financially support her resulted in a lack of parental care and control. Furthermore, these actions have caused harm to C.A.J., who had displayed aggression prior to coming to live with her grandparents and disclosed her therapist that she felt unsafe with her mother.

With respect to the juvenile court's award of permanent custody to the grandmother, the court noted that juvenile courts are authorized to award temporary custody of a child adjudicated deprived, but issues of permanent custody fall within the superior court's jurisdiction. The juvenile court cannot award permanent custody without a transfer order from the superior court. The court further reasoned that it "cannot construe the court's disposition as a grant of custody pursuant to former OCGA § 15-11-58(i), which permits a juvenile court to place a deprived child with a willing relative until the child's eighteenth birthday... [as] such placement does *not* constitute permanent custody." Moreover, the court observed that "... long-term placement under former OCGA § 15-11-58(i)(1) is only appropriate 'if the court finds that referral for termination of parental rights and adoption is not in the best interest of the child.'" Here, the juvenile court explicitly granted the grandmother "permanent custody" for purposes of adoption.

Because the juvenile court lacked authority to grant the grandmother permanent custody for purposes of adoption, the court reversed the disposition and remanded for further consideration of all custody issues in light of the finding of deprivation.