HAMILTON COUNTY JUVENILE COURT

In re: JNS

Case No. F17-334 X
JUDICIAL ENTRY

This case began on February 8, 2017, with the filing by the Hamilton County Department of Jobs and Family Services [hereinafter HCJFS], seeking an Interim Order of Custody of the child in question. Two days later an agreement was reached – specifically "to avoid a hearing on the motion" – whereby the parents agreed to abide by a pre-existing "safety plan," thereby leaving the child in residence with the maternal grandparents. Parents further agreed to make the child available to participate in recommended therapy with Cincinnati Children's Hospital Medical Center [hereinafter Children's Hospital]. The agreement included the warning that "Any breach of these orders of interim protective supervision should alert HCJFS that an emergency situation exists and a risk assessment should be done to determine whether emergency court action is needed." A Guardian ad Litem for the child was also appointed at this hearing.

In April of 2017, the situation had deteriorated to the point that HCJFS proceeded on the complaint alleging dependency, neglect and abuse and sought temporary custody of the child. By stipulation, the parties agreed to an adjudication of dependency, and the allegations of neglect and abuse were withdrawn. Based upon the agreement of the parties, the child was placed in the temporary custody of HCJFS and ordered to remain in continued residence with maternal grandparents. The parents declined reunification services and all parties expressed their agreement with the permanency goal of preparing the grandparents to guide the child to adulthood.

Following that adjudication and disposition by stipulation, several case plans were filed, all stating that Children's Hospital "would like" to begin hormone therapy with the child pursuant to a treatment plan for the diagnosis of gender dysphoria.

Parents objected to the plan and several hearings were held. On August 23, 2017, the Magistrate declined to expedite the matter as he found that no emergency, as previously suggested in the petitions, existed. Inexplicably, the case plan seeking hormone treatment was withdrawn and the case took the posture of a relatively routine post-dispositional hearing on the issue of who should be the custodian of the child, weighing first and foremost the best interests of that child. HCJFS filed a Motion to Terminate Temporary Custody and Award Legal Custody to the maternal grandparents. An in-camera interview of the child was conducted on October 2, 2017, by the Magistrate and reviewed in preparation for the post-dispositional phase of the trial by this Court.

On December 6, 2017, maternal grandmother filed a Petition for Custody, and maternal grandfather filed a Petition for Custody on December 8, 2017. The matter was before this Court for final determination of custody.

If only it could be that simple.

On December 12, 2017, January 23, 2018 and January 26, 2018, the Court conducted a trial on the post-dispositional motions.

The following attorneys and parties appeared: assistant prosecuting attorney Donald Clancy representing Kody Krebs and Diedre Garner (HCJFS); attorney Karen Brinkman and attorney Amanda Pipik representing mother and father; attorney Ted Willis (civil attorney for mother and father); attorney Paul Hunt representing Brenda Gray-Johnson (Guardian ad Litem) and Mary Ramsay (Court Appointed Special Advocate); attorney Tom Mellott representing JNS (child); attorney Jeff Cutcher representing maternal grandparents; and attorney Jason Goldschmidt representing Children's Hospital.

Despite the withdrawal of the case plan calling for hormone therapy to begin, the testimony presented by HCJFS centered on the medical condition of the child and the function of the Children's Hospital Transgender Program. While the child was first presented BY HER PARENTS to Children's Hospital for psychiatric treatment of anxiety and depression, that diagnosis rather quickly became one of gender dysphoria. Gender dysphoria is defined as: discomfort or stress that is caused by a discrepancy between a person's gender identity and the gender assigned at birth, and the associated gender role...." (World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender and Gender Nonconforming People, 7th Version). Treatment of that discomfort and stress can involve different degrees of intervention, and must be highly individualized and can range from psychotherapy, hormone therapy and ultimately surgical intervention to change sex characteristics. (It must be noted that the parents, while objecting to the administration of hormone therapy, have continued to financially support the ongoing therapy sessions for the child at the Children's clinic.) The entire field of gender identity and non-conforming gender treatment is evolving rapidly and there is a surprising lack of definitive clinical study available to determine the success of different treatment modalities. One aspect, however, is constant in the testimony presented in court of all of the medical personnel, and in the sparse recognized professional journals available, and that is that the potential candidate for gender transition therapy must be consistent in the presentation of his or her gender identity. It is a concern for the Court that the statistic presented by Dr. Conard, the Director of the Transgender Program, in her testimony is that 100% of the patients seen by Children's Hospital Clinic who present for care are considered to be appropriate candidates for continued gender treatment.

In this case, it is understandable that the parents were legitimately surprised and confused when the child's anxiety and depression symptoms became the basis for the diagnosis of gender dysphoria. The child has lived until the summer of 2016 consistent with the assigned gender at birth. The parents sought appropriate mental health treatment when their child's generalized anxiety and depression reached the point that hospitalization became necessary. The parents

acknowledged that the child expressed suicidal intent if forced to return to their home. It is unfortunate that this case required resolution by the Court as the family would have been best served if this could have been settled within the family after all parties had ample exposure to the reality of the fact that the child truly may be gender non-conforming and has a legitimate right to pursue life with a different gender identity than the one assigned at birth.

It is not within this Court's jurisdiction to intrude on the treatment of a child except in the very rare circumstance when the child's life hangs in the balance of treatment versus non-treatment. The threat of suicide and the existence of suicidal ideation can never hold this Court hostage as it searches for proper outcome of litigation revolving around the best interests of that child. Despite the fact that the parents initially stipulated during the adjudicatory phase that the child had expressed suicidal ideation, the medical records in evidence indicate that at the time of the filing of the complaint, that ideation was not presenting as an imminent threat.

It is particularly troubling to the Court that the initial filings in this case indicate that suicide is a potential factor to be considered by the Court, when in the medical records admitted during trial it is clearly not. On January 31, 2017, the medical record clearly indicates "NO" to the question: Is the patient at risk for suicide? The complaint alleging the emergency nature of the facts was filed the very next week! The medical records admitted into evidence show that on February 10, 2017, the same response was entered to the same question. This was a mere three days after the filing of the complaint, and during the pendency of the "emergency" posture of the complaint. The suggestion of imminent suicide alleges a fact pattern that requires this Court to act expeditiously in determining to what extent—if any—court intervention is appropriate. Should the Court take jurisdiction every time a minor threatens self-harm if he or she is unable to gain parents' consent for some desired procedure, such as a rhinoplasty or similar cosmetic surgery? It is a sad commentary that the Juvenile Court system deals with the suicidal ideation of troubled adolescents on a regular basis but cannot let that threat govern the outcome or disposition of a case before it.

It now becomes the duty of this court to determine what is in the best interests of this child for the few remaining months of minority. Evidence was presented that the parents agree that the child should remain with the maternal grandparents and continue to attend the high school at which the child is excelling both academically and musically. The child wishes to remain in the care of the grandparents. The grandparents are suitable caregivers and have demonstrated an ability to meet the child's needs. The Court Appointed Special Advocate and the Guardian ad Litem for the child recommended a grant of legal custody to the grandparents and advocated that the child's best interest was served by the continued placement with the grandparents.

THEREFORE, it is the order of the Court that the Temporary Custody to HCJFS is terminated and Legal Custody of the child is awarded to the maternal grandparents, subject to the following conditions:

1. Grandparents shall have the right to consent to the child's petition to change name filed in the Probate Court.
2. Grandparents, indicating in open court that they do not choose to pursue support for the child, shall immediately cover the child with insurance for medical care.

3. Grandparents shall have the right to determine what medical care shall be pursued at Children's Hospital and its Transgender Program, but before hormone therapy begins, the child shall be evaluated by a psychologist NOT AFFILIATED with Cincinnati Children's Hospital on the issue of consistency in the child's gender presentation, and feelings of non-conformity.
4. Parents are granted reasonable visitation and encouraged to work toward a reintegration of the child into the extended family.

In accordance with 42 U.S.C. Section 11431, the above-referenced child is entitled to immediate enrollment in school as defined by O.R.C. section 3313.64. The enrollment of a child in a school district under this division shall not be denied due to a delay in the school district's receipt of any records required under section 3313.672 of the Ohio Revised Code or any other records required for enrollment. Northwest School District shall bear the costs of education, pursuant to O.R.C. sections 2151.35(B)(3) and 2151.362. Such determination is subject to re-determination by the department of education pursuant to O.R.C. 2151.362.

The Court would be remiss if it did not take this opportunity to encourage the Legislature to act in crafting legislation that would give the Juvenile Courts of this state a framework by which it could evaluate a minor petitioner's right to consent to gender therapy. What is clear from the testimony presented in this case and the increasing worldwide interest in transgender care is that there is certainly a reasonable expectation that circumstances similar to the one at bar are likely to repeat themselves. The Legislature should consider a set of standards by which the Court is able to judge and act upon that minor's request based upon the child's maturity. That type of legislation would give a voice and a pathway to youth similarly situated as JNS without attributing fault to the parents and involving them in protracted litigation which can and does destroy the family unit.

Judge Sylvia Sieve Hendon
February 16, 2018