

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CJ 0275

STATE OF LOUISIANA  
IN THE INTEREST OF M.M.

Judgment Rendered: June 10, 2011.

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On Appeal from the  
City Court of Slidell  
Juvenile Division  
In and for the Parish of St. Tammany,  
State of Louisiana  
No. 2009 JS 7151

The Honorable James "Jim" Lamz, Judge Presiding

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

**CARTER, C. J.**

This is an appeal of a judgment of the juvenile court<sup>1</sup> assigning the guardianship of a minor child previously adjudicated a child in need of care, to the child's grandmother and closing the case of the State of Louisiana through the Department of Social Services (OCS).

**FACTS AND PROCEDURAL HISTORY**

This matter concerns a minor child, M.M., who was taken into the custody of OCS in December 2009, at the age of six years, and placed with her maternal grandmother. M.M. was adjudicated a child in need of care and the court approved a case plan with the goal of reunification with the mother. Thereafter, review hearings were held in accordance with the provisions of the Children's Code. After a hearing in December 2010, the court rejected OCS's recommendation that custody be returned to the mother and found it to be in M.M.'s best interest that she remain in the physical custody of her maternal grandmother. Therefore, the court removed the child from the custody of OCS and awarded guardianship of M.M. to the maternal grandmother. Both the mother and the attorney for M.M. have appealed.

**DISCUSSION**

The Louisiana Children's Code Annotated sets forth the review and dispositional process required after a child is placed in OCS custody. Article 692 requires an initial review hearing within six months of a child's removal from the parents and continuing at least every six months until the child is

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<sup>1</sup> The Slidell City Court exercises juvenile jurisdiction for its territorial jurisdiction pursuant to La. Ch. Code Ann. art. 302(4). As a court exercising juvenile jurisdiction, it has exclusive original jurisdiction in conformity with any special rules prescribed by law, over any child alleged to be in need of care and the parents of any such child. La. Ch. Code Ann. art. 604.

permanently placed. At a review hearing, the juvenile court may accept or reject OCS's case plan. If the court rejects the plan, it is authorized to order OCS to revise the case plan, but cannot revise the plan itself. La. Ch. Code Ann. art. 700.

The Louisiana Children's Code Annotated also requires that a permanency hearing be conducted to consider permanent placement options for the child. La. Ch. Code Ann. art. 702. The permanency hearing is required to be held within nine months after the disposition hearing if the child was removed prior to disposition or within twelve months if the child was removed at disposition, but in no case more than twelve months after the removal. La. Ch. Code Ann. art. 702. Article 702C provides that at the permanency hearing:

The court shall determine the permanent plan for the child that is most appropriate and in the best interest of the child in accordance with the following priorities of placement:

- (1) Return the child to the legal custody of the parents within a specified time period consistent with the child's age and need for a safe and permanent home. In order for reunification to remain as the permanent plan for the child, the parent must be complying with the case plan and making significant measurable progress toward achieving its goals and correcting the conditions requiring the child to be in care.
- (2) Adoption.
- (3) Placement with a legal guardian.
- (4) Placement in the legal custody of a relative who is willing and able to offer a safe, wholesome, and stable home for the child.
- (5) Placement in the least restrictive, most family-like alternative permanent living arrangement. The department shall document in the child's case plan and its report to the court the compelling reason for recommending this plan over the preceding higher priority alternatives.

In the case of both review and permanency hearings, notice must be served in the same manner as a petition unless the parties were previously notified in open court at a prior hearing. La. Ch. Code Ann. arts. 693, 703.

It is undisputed that the parties were notified that a hearing was scheduled for December 7, 2010. However, on appeal, the mother and the child's attorney contend that the parties were not notified that the hearing was a *permanency* hearing. They argue that the hearing was merely a review hearing where the parties expected nothing more than acceptance or rejection of the case plan proposed by the department. The child's attorney concedes, however, that the parties were aware that the case plan provided a permanent plan for M.M.

Review of the record reflects that attorneys for the mother, father, child, and state were present at and participated in the hearing. The issue under consideration was the permanent placement of the child. We cannot conclude that the parties were not properly notified that the hearing was, in fact, a permanency hearing. At a permanency hearing, the court is authorized to remove custody from OCS and place the child elsewhere, as was done here. *See* La. Ch. Code Ann. art. 702; *State, In Interest of Sapia*, 397 So. 2d 469, 473 (La. 1981).

Additionally, both the mother and child's attorney contend the juvenile court erred in assigning guardianship to the grandmother.

The affidavit of the child protection investigator submitted in support of the instant order placing M.M. in OCS custody sets forth that the mother was hospitalized twice within the preceding six months for attempting suicide. The mother was then diagnosed with depressive disorder and sedative, hypnotic, muscle relaxer abuse. In November, the mother was

observed by a mental healthcare worker to be under the influence of a substance and admitted to taking Xanax. The mental healthcare worker also observed the mother become aggressive toward her mother (the child's grandmother) in front of the child, which frightened the child. Thereafter, because of further aggression exhibited by the mother and drug abuse, the grandmother told the mother she could no longer live in the grandmother's house. The grandmother, who stated that she is the primary caregiver for M.M., was concerned for M.M.'s safety.<sup>2</sup>

The OCS case reports indicated that the mother was compliant with the case plan. The record reflects that the mother cooperated with OCS and was treated for substance abuse. The court acknowledged that the mother made significant improvements. However, the court placed significant weight on the fact that the child had spent most of her life living with the grandmother and found the child to be thriving under the grandmother's care. The court found that restoring custody to the mother would be "devastating" to the child and stated it found the mother to be "completely insensitive to the needs of this little girl."

The court set forth that the mother intended to move the child to a trailer in a rural and remote area, noting that the mother, who is disabled, relied on government programs for support. The court emphasized that the child would be living in an area without the conveniences of a modern metropolitan area and that transportation would be an important concern.

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<sup>2</sup> The child's parents were never married. The father, N.M., was, at the time of M.M.'s removal, incarcerated in Orleans Parish. The record indicates that his involvement in the child's life was "inconsistent." The father was notified of and represented by an attorney throughout these proceedings. The father was not present at the hearing that resulted in the judgment that is the subject of this appeal. The father's attorney objected to the court's ruling on the father's behalf, but the father has not participated in this appeal.

The court also remarked that the child would be forced to attend a strange school the following year and would be isolated from the friends she had developed both at school and through extra-curricular activities. The court concluded that it was in the best interest of the child that she remain with the grandmother “who has done an excellent job rearing this child, stabilizing this child’s life, providing this child with everything she needs” and who “consistently demonstrated the willingness to go above and beyond to shore up the deficiencies of the mother.” The court stated that “It’s the grandmother who has clearly demonstrated to this court that she has the safety and well-being of this child in her heart and not a selfish self-interest which seems apparent to the Court is the only concern of the mother.”

An appellate court may not overturn a judgment of a juvenile court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. *State, In Interest of E.F., Jr.*, 10-1185 (La. App. 1 Cir. 10/29/10); 49 So. 3d 575, 582. The two-part test for the appellate review of a factual finding is: 1) whether there is a reasonable factual basis in the record for the finding of the juvenile court; and 2) whether the record further establishes that the finding is not manifestly erroneous. *Mart v. Hill*, 505 So. 2d 1120, 1127 (La. 1987). If a reasonable factual basis exists, an appellate court may set aside a factual finding only if, after reviewing the record in its entirety, it determines the factual finding was clearly wrong. *Stobart v. State, Through Department of Transportation and Development*, 617 So. 2d 880, 882. Although an appellate court may feel its own evaluations and inferences are as reasonable as the fact finder’s, reasonable evaluations of credibility and reasonable inferences of fact should not be

disturbed upon review where conflict exists in the testimony. *Rosell v. ESCO*, 549 So. 2d 840, 844 (La. 1989).

The juvenile court's oral reasons are specific and clearly set forth its conclusion that it is in M.M.'s best interest that she remain with the grandmother. Although the court considered the mother's living situation, including her lack of income, we disagree with the assertions of the mother and the child's attorney that the decision was impermissibly based on this factor alone. Rather, the court noted that the child had lived with the grandmother for some time, even before she was taken into state custody. The court noted that the mother suffers from bipolar disorder and, if custody were returned to her, intended to remove the child from an environment in which the child thrived to a relatively rural area where she would have no support system. Notably, there is no readily available public transportation system, and the mother does not have a vehicle or valid license. The trial court's focus, it seems, was on the child's potential isolation, not particularly on the mother's lack of income. While reference was made to the grandmother's prior statements of willingness to assist in transporting the child, the court also noted the ongoing discord between the mother and grandmother.

A parent's right to the care, custody, and management of children is a fundamental liberty interest warranting great deference and vigilant protection under the law. However, in addition to protecting the parent's rights, the courts of this state are required to protect the child's rights to thrive and survive. *State, In Interest of E.F., Jr.*, 49 So. 3d at 585. The paramount concerns in these proceedings are the health, safety, and best interest of the child. La. Ch. Code Ann. art. 601. After careful

consideration, we cannot say that the juvenile court was manifestly erroneous in its conclusion that awarding guardianship to the grandmother was in the child's best interest.

### **CONCLUSION**

For the foregoing reasons, the judgment of the juvenile court is affirmed. Costs of this appeal are assessed to the child's mother, B.W.

**AFFIRMED.**