

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

IN THE MATTER OF: C. C. : **OPINION**

: **CASE NO. 2011-A-0022**

Appeal from the Ashtabula County Court of Common Pleas, Juvenile Division, Case No. 09 JC 77.

Judgment: Affirmed.

Anita B. Staley, Barthol & Staley, L.P.A., 7327 Center Street, Mentor, OH 44060 (For Appellant, Tracy Cottrell).

Ariana E. Tarighati, Law Offices of Ariana E. Tarighati, L.P.A., 34 South Chestnut Street, Suite 100, Jefferson, OH 44047-1092 (For Appellee, Ashtabula County Children Services Board).

Carol G. Grasgreen, 5061 Glenn Lodge Road, Mentor, OH 44060 (Guardian ad litem).

MARY JANE TRAPP, J.

{¶1} Tracy Cottrell appeals from a judgment of the Ashtabula County Court of Common Pleas Court, Juvenile Division, which terminated her parental rights and granted permanent custody of her daughter, C.C., to Ashtabula County Children Services Board (“ACCSB”). For the following reasons, we affirm the judgment of the trial court.

{¶2} Substantive Facts and Procedural History

{¶3} C.C., born on March 14, 2001, lived with her biological mother, Ms. Cottrell, until she was five. In 2006, Ms. Cottrell placed C.C. with Ms. Cottrell's brother,

James Jerina, and Kristy Boyle, whom Mr. Jerina later married. The couple lives in Conneaut, and Ms. Cottrell had C.C. live with them reportedly because she was working 80 hours a week at a pizza place, and because Ashtabula has better schools than Cleveland, where Ms. Cottrell resides.

{¶4} In 2009, Ms. Boyle became overwhelmed with taking care of her three children, all under age five, as well as a newborn, in addition to C.C., who was beginning to act out. ACCSB became involved when, on October 20, 2009, the Jerinas requested the agency take over C.C.'s care. On that day, ACCSB obtained an ex parte emergency telephone order from the court and took temporary custody of C.C. She began to live in a foster home, where she has stayed since. The foster parents have four children currently living in the home, whom they have either adopted or are fostering. They have expressed a desire to adopt C.C.

{¶5} On November 2, 2009, ACCSB filed a complaint seeking temporary custody of C.C. or, alternatively, placement of C.C. in the legal custody of a relative. On November 18, 2009, the agency filed a case plan. The plan required Ms. Cottrell to obtain drug and alcohol assessment and follow all recommendations, attend counseling, complete parenting classes, obtain stable housing and employment, and show proof that she would be able to provide for C.C.'s basic needs.

{¶6} On December 17, 2009, the court held an adjudicatory hearing on the agency's motion and found C.C. to be dependent. Ms. Cottrell's father at one point applied for custody, but later withdrew his application. On January 25, 2010, the court held a dispositional hearing and ordered C.C. to remain in the agency's temporary custody.

{¶7} The agency scheduled bi-weekly visitations for C.C. and her mother, but Ms. Cottrell cancelled them frequently due to health and transportations issues. When C.C. became upset over the many missed visits, her Guardian Ad Litem (“GAL”) filed a motion to suspend visitations. The court held a hearing on the motion and suspended all visitations after October 26, 2010.

{¶8} On September 17, 2010, ACCSB filed a motion for permanent custody. It alleged that Ms. Cottrell failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside of the child’s home, and that she demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by actions showing an unwillingness to provide an adequate permanent home for the child.

{¶9} On December 29, 2010, C.C.’s GAL, Carol Grassgreen, Esq., filed her report and recommended that the court grant permanent custody of C.C. to ACCSB, basing her recommendation upon the best interest of the child.

{¶10} The GAL stated in her report that she visited Ms. Cottrell in her current residence, where she lived with her fiancé. A small room was set up for C.C., even though C.C. had visited Ms. Cottrell’s home only once since April 2009, when Ms. Cottrell’s brother took legal custody of C.C. Ms. Cottrell was unemployed at the time of the visit but hoped to return to the pizza place one day.

{¶11} The GAL noted Ms. Cottrell’s visitations with C.C. were inconsistent; she missed seven out of 12 scheduled visits between April 2010 and September 2010, due to health issues and a lack of transportation. She called in sick for four of the seven missed visits. The repeated cancellations prompted C.C. to write a letter to Ms. Cottrell,

expressing her frustration and sadness about her mother's failure to visit with her. C.C. also questioned whether her mother could care for her, given the fragility of her physical health. The agency's social worker attempted to find alternative transportation for Ms. Cottrell, but she did not respond to the suggestion.

{¶12} Regarding Ms. Cottrell's compliance with her case plan, the GAL reported she had yet to seek counseling, failed to sign releases for the agency to obtain information from her physicians regarding her diabetic condition, missed several urine screens, tested positive for alcohol in a urine screen on September 1, 2010 (although the hair test indicated negative result), and failed to inform the agency of any drug/alcohol assessment session she may have attended. Ms. Cottrell did complete a required parenting class.

{¶13} The GAL also reported the instability of Ms. Cottrell's housing situation. At the time of the GAL's report, Ms. Cottrell and her boyfriend faced eviction from their residence in Cleveland, due to a utilities payment dispute, and were in the process of moving to another residence, which they would share with a third person.

{¶14} The GAL also visited C.C. at her foster home. She found her to be an "extremely intelligent and serious young lady," receiving straight As and various academic awards from Geneva Elementary School. Her foster mother reported her to be a "very serious" and "extraordinarily articulate" child who fit in very well with the rest of the family. The GAL described the foster family as "large and loving," and C.C. is genuinely happy to be part of the family and wishes to remain with them. C.C. has "emphatically" expressed her desire to be adopted by the foster family, as she continued to question whether her mother would ever be able to care for her. She has

opened up emotionally with her foster parents and has begun to work through her feelings regarding her uncle and aunt's inability to continue caring for her.

{¶15} The GAL stated although Ms. Cottrell undoubtedly loves C.C., even after six years without C.C. in her custody, she remains incapable of addressing the issues that have impeded her ability to care for C.C., and appears unwilling or unable to do what is necessary to re-establish a stable and loving relationship with her daughter. The GAL recommended that it is in C.C.'s best interest for the court to grant permanent custody to ACCSB, so that C.C.'s wish to be adopted by her foster family can be accommodated.

{¶16} Permanent Custody Hearing

{¶17} On January 3, 2011, a magistrate conducted a hearing on the agency's motion for permanent custody. C.C.'s biological father, with whom she had no contact, was served by publication. He did not appear at the hearing.

{¶18} A social worker, Shannon Farmer, visited C.C. monthly at her foster home. She observed a strong bond between C.C. and both foster parents. C.C. would seek out their attention and approval before engaging in an activity, and would ask for their assistance with her homework. C.C. did not warm up to her foster mother initially because she did not know how long she would stay with the family, but her feelings have apparently changed -- she has become affectionate with both foster parents, referring to them as "Mom" and "Dad." The foster family has expressed a willingness to adopt her.

{¶19} Ms. Farmer also reported that Ms. Cottrell moved sometime in December 2010 due to a dispute with her landlord; however, after less than a month in the new residence, she was about to move again due to a dispute with neighbors.

{¶20} Katherine Balog, a supervisor for Children's Services at Rooms to Grow in Ashtabula County, where the visitation between Ms. Cottrell and C.C. took place, testified that Ms. Cottrell attended eight of 20 scheduled visitations from November 2009 to August 2010. Often she called to cancel due to health issues. Ms. Balog observed the mother and daughter to have "good interaction." Ms. Cottrell would bring C.C. gifts for the holidays, and C.C. was always happy to see her. On March 19, 2009, a few days after C.C.'s birthday, Ms. Cottrell failed to appear for a scheduled visit, again due to some health issues. C.C. appeared "standoffish" on that day, and would not interact with others.

{¶21} When Ms. Balog discussed with Ms. Cottrell the possibility of reunification, Ms. Cottrell indicated she lives in Cleveland, which makes it difficult for her to make weekly visits to C.C. in Ashtabula County. Ms. Cottrell attended the visitation on July 23, 2010, which turned out to be her last visit. She called in sick for the August 6, 2010 and August 20, 2010 visits, failed to call in on September 3, 2010, and was subsequently taken off the visitation schedule by the agency.

{¶22} C.C.'s foster mother testified that she has nine children, ranging from five to 17; two of them are foster children. She and her husband have been licensed foster parents for 19 years, during which time they have fostered 92 children and adopted nine children. C.C. was confused when she first moved in with the family in October 2009, but adjusted quickly. The foster mother and her husband marveled at C.C.'s

transformation after she began living with them. She felt the agency “dropped [C.C.] off at the right house” and C.C. “has been an absolute pleasure to be with.” C.C. is a straight A student in school and plays soccer on the community team. The foster mother felt C.C., being one of three girls currently in the home, is a perfect fit: “[s]he gets along with everyone and everyone gets along with her.” C.C. has also developed a special relationship with her foster father. In the words of the foster mother: “she has my husband wrapped around her little finger.”

{¶23} The foster mother reported that when Ms. Cottrell failed to appear for the visitations, C.C. would look “agitated” for the first half an hour, then “she would try to pretend like nothing was wrong and you could watch her almost swallow it and she wasn’t going to let anybody see that she was hurting.” After the last visit on July 23, 2010, Ms. Cottrell sent C.C. a couple of letters. C.C., aware that the court imposed a no-contact order, was “almost relieved,” because “[t]he roller coaster is over.” In the foster mother’s observation, the anticipation of the visitation and the frequent cancellations were upsetting to C.C.

{¶24} The foster mother testified that her family has bonded with C.C. and they would “absolutely” be interested in adopting her. She also indicated she would not foreclose contacts between C.C. and her biological mother if C.C. is interested in such contacts.

{¶25} The GAL testified that her main concerns in this case were the instability in Ms. Cottrell’s life, reflected in her lack of independent housing, her failure to consistently attend visitations, her lack of effort to continue counseling and drug and

alcohol assessment, and her failure to cooperate with the agency in documenting conditions of her physical health.

{¶26} After the hearing, the magistrate issued a decision granting permanent custody to the agency. Ms. Cottrell filed objections to the magistrate's decision. The court overruled her objections and adopted the magistrate's decision granting permanent custody.

{¶27} Ms. Cottrell now appeals, raising the following assignment of error for our review:

{¶28} "The trial court erred in granting the motion for permanent custody as such decision was against the manifest weight of the evidence and resulted in a manifest miscarriage of justice."

{¶29} We begin with the recognition that "a parent's right to raise a child is an essential and basic civil right." *In re Phillips*, 11th Dist. No. 2005-A-0020, 2005-Ohio-3774, ¶22, citing *In re Hayes* (1997), 79 Ohio St.3d 46, 48. "The permanent termination of parental rights has been described as the family law equivalent of the death penalty in a criminal case." *Id.*, citing *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, ¶14.

{¶30} Two-Prong Permanent Custody Analysis

{¶31} R.C. 2151.414 sets forth the guidelines to be followed by a juvenile court in adjudicating a motion for permanent custody. R.C. 2151.414(B) outlines a two-prong analysis. It authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that it is in the best interests of the child to grant permanent custody to the agency, and that any of the four factors apply: (1) the child is not abandoned or

orphaned, but the child cannot be placed with either parent within a reasonable time or should not be placed with the child's parents; (2) the child is abandoned; (3) the child is orphaned, and there are no relatives of the child who are able to take permanent custody; (4) the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period. See *In re Krems*, 11th Dist. No. 2003-G-2535, 2004-Ohio-2449, ¶31; R.C. 2151.414 (B)(1)(a)- (d).

{¶32} When applying this two-prong analysis required by R.C. 2151.414(B), “[i]n practice, the juvenile court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.” *Id.* at ¶33.

{¶33} “If the child is not abandoned or orphaned, then the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. 2151.414(E), the juvenile court must consider all relevant evidence before making this determination. The juvenile court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the conditions enumerated in R.C. 2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶34} “Assuming the juvenile court ascertains that one of the four circumstances listed in R.C. 2151.414(B)(1)(a) through (d) is present, then the court proceeds to an analysis of the child's best interest. In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates that the juvenile court must consider all relevant factors, including, but not limited to, the following: (1) the

interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) the wishes of the child as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child; (3) the custodial history of the child; and (4) the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody.

{¶35} “The juvenile court may terminate the rights of a natural parent and grant permanent custody of the child to the moving party only if it determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody to the agency that filed the motion, and that one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present.” *Id.* at ¶34-36. See, also, *In re T.B.*, 11th Dist. No. 2008-L-055, 2008 Ohio 4415, ¶35.

{¶36} Regarding Ms. Cottrell's assignment of error, we first clarify the appropriate standard of review in permanent custody matters. An appellate court will not reverse a juvenile court's termination of parental rights and award of permanent custody to an agency if the judgment is supported by clear and convincing evidence. See *In re J.S.E., J.V.E.* 11th Dist. No. 2009-P-0091 and 2009-P-0094, 2010-Ohio-2412, ¶25, citing *In re T.B.* See, also, *In re Krems* at ¶36, citing *In re Jacobs* (Aug. 25, 2000), 11th Dist. No. 99-G-2231, 2000 Ohio App. LEXIS 3859, *8.

{¶37} “Clear and convincing evidence is more than a mere preponderance of the evidence; it is evidence sufficient to produce in the mind of the trier of fact a firm belief

or conviction as to the facts sought to be established.” *In re Krems* at ¶36, citing *In re Holcomb* (1985), 18 Ohio St.3d 361, 368.

{¶38} Findings Supported by Clear and Convincing Evidence

{¶39} In order to grant permanent custody in this matter, the trial court must find that C.C. cannot be placed with Ms. Cottrell within a reasonable time or should not be placed with her, and that it is in the best interest of C.C. to grant permanent custody. R.C. 2151.414(B)(1). After the hearing, the magistrate issued her decision granting permanent custody to the agency and the court adopted the decision. Having reviewed the record, we have concluded the court’s findings are supported by clear and convincing evidence presented in this case.

{¶40} Cannot or Should Not Be Placed with the Parent

{¶41} Regarding the first prong of the permanent custody analysis, the trial court found C.C. cannot be placed with Ms. Cottrell within a reasonable time or should be not be placed with her. The court reached that determination based on its finding that Ms. Cottrell (1) failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside her home, and (2) demonstrated a lack of commitment toward C.C -- two of the several statutory factors enumerated under R.C. 2151.414(E). The magistrate stressed C.C. has not lived with a parent since she was five years old. Ms. Cottrell did not have employment or stable housing, relying exclusively on her boyfriend for financial support and housing. She also repeatedly cancelled scheduled visits due to health problems, yet failed to cooperate with the agency to address her health issues. Despite being provided with a case plan, she did

not comply with all the requirements – she tested positive for alcohol in one urine screen, and failed to make all ten requested drug screens.

{¶42} Best Interest of the Child

{¶43} In the second prong of the permanent custody analysis, the magistrate found granting of permanent custody to be in C.C.'s best interest upon making the following findings:

{¶44} Regarding the child's interaction and relationships with others, C.C. has no siblings, no relatives have come forward to seek custody, her visitations with her mother went well but the visitations were sporadic, and Ms. Cottrell's lack of commitment to visitation was frustrating to C.C. Regarding the child's wishes, C.C., a mature and articulate ten year old, has indicated to her GAL that she wants to be adopted by the current foster home. Regarding her custodial history, C.C. lived with her maternal uncle and aunt since 2006, when she was five, and has resided in her current foster home since 2009. Regarding her need for a legally secure permanent placement, the magistrate found her need for a legally secure placement can only be achieved through the granting of permanent custody to the agency.

{¶45} Clear and convincing evidence contained in the record support the court's findings in this case. C.C. has spent half of her life outside of her home because of Ms. Cottrell's inability to provide her with a stable living environment. Ms. Cottrell made infrequent visits to C.C. during the years C.C. lived with her maternal uncle and aunt, and failed to regularly attend the visitations after the agency took custody of C.C. Although Ms. Cottrell's health issues often prevented her from attending the visitation,

she failed to appear on occasions without any prior notification, demonstrating a lack of commitment, which frustrated and saddened C.C.

{¶46} Ms. Cottrell's housing situation and ability to provide for C.C. have not improved since 2006, when C.C. began to live apart from Ms. Cottrell. Despite the case plan provided to her by ACCSB, Ms. Cottrell did not follow through with drug and alcohol assessment and counseling required by her case plan. She still lacks stable housing and financial means to support C.C. The prospect of reunification today is no better today than five years ago.

{¶47} Because the record contains clear and convincing evidence supporting the court's decision terminating parental rights and awarding permanent custody to ACCSB, we accord the trial court the deference it is due and affirm its judgment. The assignment of error is without merit.

{¶48} The judgment of the Ashtabula Court of Common Pleas, Juvenile Division, is affirmed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.