

[Cite as *In re Q.M.*, 2015-Ohio-1313.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 101999, 102001, 102003, 102004,
102007, and 102008

IN RE: Q.M., ET AL.
Minor Children

[Appeal by T.C.-M., Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD12917758, AD12917759, AD12917760,
AD12917761, AD12917762, and AD12917763

BEFORE: Kilbane, P.J., McCormack, J., and Blackmon, J.

RELEASED AND JOURNALIZED: April 2, 2015

ATTORNEY FOR APPELLANT

James S. Sweeney
341 South Third Street
Suite 300
Columbus, Ohio 43215

ATTORNEYS FOR APPELLEES

For C.C.D.C.F.S.

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Amy L. Carson
Assistant County Prosecutor
C.C.D.C.F.S.
8111 Quincy Avenue
Cleveland, Ohio 44104

Michelle Murray
Assistant County Prosecutor
C.C.D.C.F.S.
3955 Euclid Avenue
Cleveland, Ohio 44115

**Guardian ad Litem
for Minor Children**

James H. Schulz
1370 Ontario Street
Suite 1520
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P.J.:

{¶1} Appellant, T.C.-M. (“Mother”), appeals from the orders of the juvenile court that awarded permanent custody of her children to the Cuyahoga County Division of Children and Family Services (“CCDCFS”). Having reviewed the trial court record, transcripts, and relevant case law, we affirm.

Procedural History and Substantive Facts

{¶2} The six children who are the subject of these proceedings are Q.M. (born in 2011), F.M. (born in 2010), A.M. (born in 2008), M.M. (born in 2007), D.M. (born in 2006), and C.M. (born in 2005). On October 23, 2012, CCDCFS filed a complaint for temporary custody of the minor children, alleging that the children were neglected and dependent. CCDCFS averred that Mother and P.M. (“Father”),¹ have repeatedly engaged in acts of domestic violence in the presence of the children; three of the children (C.M., D.M., and M.M.) were previously adjudicated because of the domestic violence between the parents and were committed to the protective supervision of CCDCFS; the home is unsafe and unsanitary, Mother and Father lack appropriate judgment and parenting skills; and Mother has been suffering from depression; Mother is developmentally delayed and her delays interfere with her ability to provide for her children. CCDCFS also averred that Father has been diagnosed with a mental health disorder and has failed to address his mental needs; Father has a substance abuse

¹ The agency’s complaint was filed against Mother as well as Father. The Father has filed a separate appeal in *In re Q.M.*, 8th Dist. Cuyahoga Nos. 102032, 102033, 102034, 102035, 102036 and 102037.

problem; Father has two older children from a previous relationship who have been committed to the legal custody of a relative.

{¶3} On November 6, 2012, the CCDCFS issued its case plan with a goal of reunification that, inter alia, required Mother to learn ways to appropriately address anger to reduce the risk of harm to the children, clean the home to reduce a risk of fire, and to learn appropriate ways to maintain control of the children. The parents were also to address the children's developmental and physical issues. On November 20, 2012, the trial court appointed guardians ad litem ("GAL") for Mother and Father, and a GAL was appointed for the children.

{¶4} Following a hearing in December 2012, the parents stipulated that emergency custody would be granted to CCDCFS, and the children were placed in foster care. Thereafter, the case plan was amended to include counseling for the children to address emotional issues caused by witnessing domestic violence and physical abuse in the home. The amended case plan also required the children to be taken to all scheduled doctors' appointments and follow through on treatment as needed.

{¶5} At a subsequent hearing on January 8, 2013, the complaint was amended in order to strike the allegation that Mother was developmentally delayed. After being advised of her rights, Mother entered an admission to the amended complaint and the children were adjudicated to be dependent.

{¶6} The GAL for the children submitted a report based on his investigation. He reported the following:

1. “[S]erious domestic violence issues”;
2. “[S]erious abuse issues” to which the children are subjected;
3. Numerous incidents of inappropriate physical discipline by both parents;
4. “[H]orrible living conditions,” including bug infestation and urine-stained beds;
5. The children were bathed approximately once every three weeks, bathing all children at the same time, and their hair was likely never washed;
6. Dirty and inappropriate clothing;
7. Q.M. was significantly underweight and has severe physical problems;
8. Many of the children were behind on their immunizations and did not receive appropriate medical checkups or treatment;
9. Numerous incidents of psychological abuse, some resulting from the children being forced to eat on the floor, except on Father’s birthday, when they were permitted to eat at the table;
10. The children exhibited inappropriate boundaries, being “way too friendly [with] strangers”; and
11. Possible sexual abuse.

The GAL concluded his report with a recommendation of temporary custody with the agency, stating that “[t]his appears to be one of the most serious cases of abuse, both physical and psychological, that I have been involved with in over twenty years of being a [GAL] in this court.”

{¶7} On February 22, 2013, the trial court conducted a hearing on the issue of temporary custody of the children. In open court, and with their attorneys present,

Mother and Father agreed to granting temporary custody of the children to CCDCFS, pending further review for substantial compliance with the case plan. The court noted that the agency had made reasonable efforts to prevent removal of the children, to eliminate the continued removal of the children from the home, or to make it possible for the children to return home. The court ordered Mother to undergo drug and mental health assessments, domestic violence counseling, and parenting education. The court also ordered the children to be assessed for learning disabilities and delays.

{¶8} On September 10, 2013, CCDCFS conducted a review of the matter and noted that Mother completed parenting classes and domestic violence services. She attended every scheduled visitation and had increased interactions with her younger children. The home had been cleaned, and the Mother obtained separate housing, but it was too small to accommodate the children. Further, Mother had ongoing conflicts with the Father and the neighbors. The review also noted that Q.M. has several medical concerns, is enrolled in Help Me Grow, and is receiving occupational and speech therapy.

Four of the other children were attending counseling sessions for children who witness violence. The review further stated the following:

All six children are placed together in one foster home where all basic and special needs are being met. This is the least restrictive option at this point[.] The four oldest children are participating in trauma support group[.] The two youngest will begin Head Start to allow the children more interaction with peers and gain needed skills to be better prepared for kindergarten. * * * The visits still need supervision because, while visiting, parents have arguments in front of [the] children[,] with [the] assigned social worker[,] and each other.

{¶9} CCDCFS sought an extension of temporary custody because of “continued domestic relations/discord, parenting and lack of housing stability at this time.” CCDCFS stated that “[d]uring this review period both parents are making progress but are not consistently demonstrating the desired behavior, which is the reason that the children cannot return to either parent’s care at this time.”

{¶10} The trial court granted the extension, and on September 30, 2013, the GAL for the children filed a report recommending that the children remain in their present placements. The GAL noted that Mother has received Social Security since she was a child because of her developmental delays. However, she had been unsuccessful in obtaining services for individuals with developmental disabilities because she had been unable to document her childhood mental condition. The GAL expressed “serious concerns” regarding the continuing domestic violence and anger management issues, noting that Mother threw items at Father in their home after they both completed their classes. The GAL also noted that the children have all been placed together in the same foster home. Three of the children have a chromosomal disorder and have been referred for physical therapy, and one of the children is also in speech therapy and is scheduled to begin occupational therapy.

{¶11} On April 18, 2014, CCDCFS filed a motion to modify the award of temporary custody to permanent custody. In a report from August 2014, the GAL for the children recommended that the trial court grant the motion. In relevant part, the children’s GAL wrote:

The case plan addresses services for the parents. The first objective is to address domestic violence issues. Since the last court date, the mother completed domestic violence classes in February 2013 and father completed anger management classes in January 2013. However, the social worker reports the parents have continuing problems with domestic violence issues.

First, it was reported that mother threw things at father in their home after they both completed their classes. * * * [There] was an incident at a visitation on September 9, 2013, where father allegedly got angry and both parents argued with each other in front of the children. Subsequent to that, the parents have had verbal arguments at visitations as well as making inappropriate comments to the children.

* * *

Mother also completed a psychological evaluation through the Cuyahoga County Juvenile Court Diagnostic Clinic [that] recommended additional parenting classes and also indicated [that Developmental Disabilities] services would be beneficial for the mother.

There is a significant difference in the interaction of the children at the foster home as opposed to visitation with the parents. The children are much more animated * * * and interact more comfortably * * * in the foster home. Clearly, they are more comfortable there. It is their safe haven. They have a clear and strong bond with the foster mother. They listen to her. They comply with her directives and with the rules of the home. They have made tremendous strides since being in foster care. * * * The foster mother is on top of everything. * * * She has obtained services for these children and is very proactive in obtaining services for them, in researching each child's issues and needs, and reaching out for services for the children. She has given the children structure, one on one attention, used appropriate parenting techniques and [have given them] the love and attention they

need. They feel safe and comfortable with her. Frankly, she is the most impressive foster mother I have ever met in over twenty years as a [GAL] for this court. * * * Her commitment to these children is unbelievable and in my opinion the children were very fortunate to be placed in this foster home.

{¶12} The matter proceeded to a trial before a judge on August 14, 2014, at which the following evidence was adduced.

{¶13} Debbie Sherrick (“Sherrick”), the licensed foster mother, testified that she has been a foster mother for 21 years and has provided foster care for 120 children, all of whom had special needs. She and her husband, who is also a foster parent, have had specialized training regarding domestic violence, attention deficit hyperactivity disorder, and attention deficit disorder.

{¶14} Sherrick testified that she accepted custody of all six of the children because she did not want them to be split up into different foster homes, even though she already had three boys in the home. The six children had been with her for 22 months. C.M., who is now nine years old, has a disorder associated with her 17th chromosome, and this condition can produce up to 52 symptoms, including physical, developmental, and emotional issues. She has developmental delays, and Sherrick takes her swimming and to gymnastics in order to improve her physical abilities. One of her kidneys is not functioning, and she undergoes medical care for this issue.

{¶15} Sherrick next testified that D.M., who is eight years old, has some low scores at school, but is otherwise healthy and tries to assist with the other children.

{¶16} M.M., who is seven years old, also has a disorder associated with her 17th chromosome and has physical disabilities and developmental delays. She had failure to thrive syndrome as an infant. Presently, she undergoes physical and speech therapy, and Sherrick takes her swimming in order to improve her abilities. This child also has dental and vision issues, which Sherrick plans on addressing.

{¶17} A.M., who is five years old, does not have developmental or medical issues. She attended Head Start and did well.

{¶18} F.M., who is four years old, was not up-to-date with her immunizations when she arrived at Sherrick's home. She has poor vision, and Sherrick has taken her to various professionals to address this issue. She is developmentally delayed and attends occupational therapy. She has not been diagnosed with the defective 17th chromosome, but she has undergone tests and must undergo additional testing for other genetic abnormalities.

{¶19} Q.M., who is three years old, has the genetic abnormality on her 17th chromosome. She has partial paralysis in her face and mouth, which Sherrick addresses through daily exercises. Q.M. also attends speech therapy. Q.M. has hearing deficits, poor vision, a "lazy eye," and kidney issues, all of which Sherrick has addressed. Q.M. had a dirty and infected feeding tube when she arrived at Sherrick's home, and Sherrick

took her to an internist to address this issue and to learn how to replace and care for the tubes. Q.M. has gained weight with Sherrick and no longer needs the feeding tube.

{¶20} With regard to the children's behavior, Sherrick testified that when they first arrived at her home, they fought, hit each other, and grabbed food from one another. Sherrick testified that she had to assist them with all of their decision making and had to teach them not to fight. The four older girls are in counseling, and all of the children now get along better. Sherrick emphasized that she loves the children, loves seeing them grow, and is willing to adopt them. She also testified that if she ultimately does adopt them, she would also let them continue to see their biological parents.

{¶21} On cross-examination, Sherrick acknowledged that the parents have expressed a desire to continue to see the children, even if they lose permanent custody of them.

{¶22} April Long ("Long"), a social worker with CCDCFS, testified that she has been involved with the family since February 2013. The family's case plan, which had the goal of reunification of the family, required the Father to address his substance abuse issues, required both parents to address their mental health and domestic violence issues, and required them to learn to care for the children's medical and developmental needs.

{¶23} Long further testified that Mother receives Social Security for her disabilities, but she cannot receive county assistance from the Cuyahoga County Board of Developmental Disabilities ("CCBDD") because she is lacking documentation to show that her impairments have existed since her childhood.

{¶24} With regard to their domestic violence issues, Long stated that the parents completed domestic violence counseling, but they continue to argue. Long recorded their recent incidents of physical, verbal, and emotional abuse. Long also testified that the parents had completed domestic violence classes, but based upon their behavior at supervised visitation, they have not benefitted from the parenting classes, nor have they made progress in their parenting abilities. Long testified that the children have been exposed to “severe domestic violence” and are in counseling because of the exposure. Finally, Long testified that permanent custody is in the children’s best interest because the parents have failed to benefit from services that have consistently been provided for them, and the issues that led to our initial removal have not been rectified. And these children have medical issues. They need a slew of support from the parents, and they need this ongoing through their lives. And our agency does not feel that the parents have even met the basic needs of the children, let alone their medical needs.

{¶25} James Schulz, GAL for the children, testified that based upon his investigation and the interactions of the children with the parents, the foster mother, and the social worker, he believes permanent custody would be in the best interest of the children. He opined that CCDCFS made efforts “to try to give the parents services, but those efforts, unfortunately, haven’t been successful.” He also stated that the foster home is the most appropriate placement, where all of the children’s needs are met.

{¶26} On September 8, 2014, the trial court granted the motion to modify temporary custody to permanent custody. In granting permanent custody to CCDCFS, the court considered each of the factors in R.C. 2151.414(D)(1)(a)-(e) and found as follows:

Upon considering the interaction and interrelationship of the child with the child's parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period; the child's need for a legally secure placement and whether that type of placement can be achieved without a grant of permanent custody; and, the report of the Guardian Ad Litem, the court finds by clear and convincing evidence that a grant of permanent custody is in the best interest of the child and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

{¶27} The trial court additionally concluded, pursuant to R.C. 2151.414(E)(2), that [f]ollowing the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.

The chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year.

{¶28} Mother now appeals, assigning the following error for our review:

Assignment of Error

The trial court erred in awarding permanent custody of the minor children to the Cuyahoga County Division of Children and Family Services when it was not in the children's best interest.

Law and Analysis

{¶29} In order to terminate parental rights and grant permanent custody to CCDCFS, the court must apply the two-prong test set forth in R.C. 2151.414. First, the court must find by clear and convincing evidence, that it is in the best interest of the children to grant permanent custody to the agency. Second, the court must determine, by clear and convincing evidence, in accordance with the factors listed in R.C. 2151.414(E), that "the child[ren] cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent," and determines in accordance with division (D) of this section that "permanent custody is in the best interest of the child[ren]". R.C. 2151.414(D)(2); *In re R.M.*, 8th Dist. Cuyahoga Nos. 99809, 99810, and 99811, 2013-Ohio-4928, ¶ 7.

{¶30} The factors for the first prong of consideration under R.C. 2151.414(B)(1) include the following: (a) the children cannot be placed with either parent within a reasonable period of time or should not be placed with either parent; (b) the children are

abandoned; (c) the children are orphaned and no relatives are able to take permanent custody of the children; or (d) the children have been in the temporary custody of one or more public or private children services agencies for 12 or more months of a consecutive 22-month period.

{¶31} In addition, R.C. 2151.414(E) sets forth the factors to consider in undertaking an R.C. 2151.414(B)(2) determination, by clear and convincing evidence, that the children cannot or should not be placed with their parents within a reasonable time, and provides in relevant part:

(1) Following the placement of the child[ren] outside [their] home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child[ren] to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child[ren] to be placed outside [their] home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child[ren] at the present time and, as anticipated, within one year[.]

(3) The parent committed any abuse as described in section 2151.031 of the Revised Code against the child[ren], caused the child[ren] to suffer any neglect as described in section 2151.03 of the Revised Code, or allowed the child[ren] to suffer any neglect as described in section 2151.03 of the Revised Code between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;

* * *

(16) Any other factor the court considers relevant.

{¶32} Substantial compliance with a case plan is not dispositive in and of itself on the issue of reunification and does not preclude a grant of permanent custody to a social services agency. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 139. ““The issue is not whether the parent has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child’s removal.”” *Id.*, quoting *In re McKenzie*, 9th Dist. Wayne No. 95CA0015, 1995 Ohio App. LEXIS 4618 (Oct. 18, 1995).

{¶33} The existence of one factor alone will support a finding that a child cannot be reunified with the parents within a reasonable time. *See In re William S.*, 75 Ohio St.3d 95, 1996-Ohio-182, 661 N.E.2d 738; *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 50.

{¶34} With regard to the second consideration in R.C. 2151.414(B)(2), that it is in the best interest of the children to terminate parental rights, R.C. 2151.414(D)(1)(a) through (e) set forth the relevant factors a court must consider in determining the best interest of the children and include, but are not limited to, the following:

- (a) The interaction and interrelationship of the child[ren] with the child[ren]’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child[ren];
- (b) The wishes of [each] child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;

- (c) The custodial history of the child[ren], including whether the child[ren have] 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 * * *;
- (d) The child[ren]’s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child[ren].

{¶35} Only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re D.W.*, 8th Dist. Cuyahoga No. 98717, 2013-Ohio-272; *In re Shaeffer Children*, 85 Ohio App.3d 683, 621 N.E.2d 426 (3d Dist.1993); *In re C.H.*, 8th Dist. Cuyahoga Nos. 82258 and 82852, 2003-Ohio-6854.

{¶36} The trial court is required to find, by clear and convincing evidence, (1) one of the factors enumerated in R.C. 2151.414(B)(1)(a)-(d), and (2) an award of permanent custody is in the best interest of the child. Clear and convincing evidence is that which will produce in the trier of fact ““a firm belief or conviction as to the facts sought to be established.”” *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶37} 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. *In re M.J.*, 8th Dist. Cuyahoga No. 100071, 2013-Ohio-5440,

{¶38} In this case, with regard to the first prong of the two-prong test, the trial court found by clear and convincing evidence that the children have been in temporary custody for over two years. The children had been in agency custody for more than 12 months of a consecutive 22-month period. The record supports the court's finding.

{¶39} The court also determined, under the first prong, that the children cannot be placed with either parent within a reasonable time or should not be placed with the children's parents. The record supports the court's determination. The record demonstrates that the Mother has failed continuously and repeatedly to substantially remedy the conditions causing the children to be removed from the home. Although she completed some of the requirements of his case plan, she did not benefit from those services. The evidence demonstrated that Mother receives Social Security for her own disabilities and is also a candidate for assistance from the CCBDD. In addition, although Mother completed parenting programs and domestic violence programs, she did not benefit from them, as the evidence indicated that she continued to have altercations with the Father in the presence of the children. Moreover, there was absolutely no evidence presented to suggest that Mother is able to provide for the children given their considerable physical, medical, and developmental issues, as their basic needs, as well as their medical and special needs, had not been met while in the parents' care. The evidence clearly and convincingly established that the children cannot or should not be placed with Mother within a reasonable time, as she is unable to provide for their care because of her own difficulties and the children's special needs.

{¶40} As to the issue of whether the award of permanent custody is in the children's best interest, the evidence demonstrates that three of the children have a chromosome-based condition that produces physical and mental complications, most of which had not been addressed in Mother's care. The evidence further demonstrates that Mother was not able to provide for ordinary care, such as immunizations and general care. The evidence also demonstrates that the foster parents have special training in caring for the children. The record clearly and convincingly demonstrates that the foster mother provides extraordinary care for all of the children and is able to address their medical, developmental, and emotional needs. The foster parents are committed to keeping the children together, love them, and want to adopt them. Significantly, the children's GAL also indicated that the award of permanent custody is in the children's best interest. The evidence in the record was sufficient to demonstrate that the award of permanent custody is in the best interest of all of the children.

{¶41} Therefore, based upon our thorough review of the record, despite Mother's participation in services, cooperation with CCDCFS, and sincere efforts at reunification, the trial court properly terminated parental rights and awarded permanent custody of the children to CCDCFS.

{¶42} Accordingly, the sole assignment of error is overruled.

{¶43} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and
PATRICIA A. BLACKMON, J., CONCUR