[Cite as *In re L.S.H.*, 2024-Ohio-4553.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: L.S.H.	:	APPEAL NO. C-240310 TRIAL NO. F19-221Z
	:	
	:	*O P I N I O N.*

Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 18, 2024

Cynthia S. Daugherty, for Appellant Father,

Melissa A. Powers, Hamilton County Prosecuting Attorney, and *Patsy Bradbury*, Assistant Prosecuting Attorney, for Appellee Hamilton County Department of Job and Family Services,

Raymond T. Faller, Hamilton County Public Defender, and *Robert Adam Hardin*, Assistant Public Defender, Guardian ad Litem for L.S.H.

WINKLER, Judge.

{¶1} Appellant father appeals the judgment of the Hamilton County Juvenile Court terminating his parental rights and granting permanent custody of L.S.H. to the Hamilton County Department of Job and Family Services ("HCJFS"). In his single assignment of error, father argues that the juvenile court's grant of permanent custody should be reversed because it is not supported by competent, credible evidence and because the court improperly denied father's counsel's motion to withdraw made shortly before the dispositional hearing. Determining that father's assignment is without merit, we affirm the juvenile court's judgment.

Procedural and Factual Background

{¶2} L.S.H. was born to mother and father on November 22, 2019. One day after his birth, he was removed from his parents' care by an emergency order because mother's two older children, L.S.H.'s half-siblings, had been removed from the home a few months earlier due to abuse and neglect. Mother and father engaged in services with HCJFS, visited L.S.H. through the Family Nurturing Center ("FNC"), and eventually, custody was remanded to mother and father in October 2020 with orders of protective supervision. The protective-supervision orders were terminated in April 2021. L.S.H.'s half-siblings were placed with a relative, and have never lived with L.S.H.

{¶3} The record demonstrates that on August 13, 2022, mother and father were in a car accident. Because mother was experiencing hallucinations at the scene, she was transferred to the hospital for psychiatric services and remained there until August 17. A day after she was released, father called 9-1-1 to report that mother was hanging out of their sixth-floor apartment window. When police arrived, mother

confirmed that she was trying to harm herself. Mother was again admitted to the hospital for psychiatric care, and eventually diagnosed with bipolar disorder with psychotic tendencies.

{¶4} HCJFS caseworker Lauren Samuel met with father after mother had been admitted into the hospital. She explained that father signed a release of information ("ROI") at that time, and expressed a willingness to engage in services with HCJFS so that he would be able to maintain the safety of L.S.H. once mother was released from the hospital. Samuel reported that father knew that mother had mental-health issues, but he was unable to articulate the issues or how her illness manifested. Father explained that he relied on mother to tell him when she was having a mental-health episode.

{¶5} At the end of August, mother was released from the hospital and returned home. The following day, Samuel talked on the phone with father, who was hostile and agitated. Father said that the family was out of town, did not want to work with HCJFS, and was possibly going to move away. Samuel, concerned, drove to the home and was able to meet with mother and father. At that time, father revoked his ROI, and mother reported that she had missed her follow-up appointment at the hospital and was not going to take her medications as prescribed.

{¶6} On August 31, 2022, an ex parte emergency order of custody was granted to HCJFS. On September 1, 2022, HCJFS filed a complaint alleging that L.S.H. was dependent and requested an initial disposition of permanent custody. The juvenile court granted interim temporary custody to HCJFS on September 1, 2022, finding that mother did not want custody of the child and that father had an "intellectual disability," expressed a lack of understanding about mother's mental

health, and did not know how to protect the child when mother was having an episode. The magistrate ordered a diagnostic assessment for both parents and case-management services. The court appointed an attorney for father, an attorney and guardian ad litem ("GAL") for mother, and a GAL for the child. Father's appointed counsel eventually requested a GAL for father and one was appointed.

{¶7} In December 2022, mother was charged with arson and vandalism for setting fires in the family's apartment building. Because the criminal court found her incompetent to stand trial, mother was admitted to Summit Behavioral Health to restore competency. The record demonstrates that mother was still residing there as of the date of the dispositional hearing and had not visited or contacted the child since his removal from the home. At the dispositional hearing, mother's attorney reported that mother does not think L.S.H. is her child and supports a return of the child to his "real" mother.

{¶8} Because HCJFS had difficulty meeting statutory timelines, the complaint seeking custody was dismissed and refiled several times, the last of which was September 2023. Over the pendency of this case, father was represented by two different attorneys, the first of which he asked to withdraw from representing him in January 2023. At that time, father informed the court that he no longer wanted to be involved in the case and reiterated that he was not going to execute an ROI. Despite that proclamation, the court appointed new counsel for father in February 2023. Although father had new counsel and a GAL, he was sporadic about attending hearings and failed to attend the adjudication hearing that was held on October 12, 2023.

{¶9} At the adjudication hearing, HCJFS caseworker Larissa Johnson testified that she had taken over as the caseworker for L.S.H.'s family in September

2022. She explained that when she initially met father, he refused to engage with HCJFS, but in February 2023, after new counsel was appointed for him, father met with Johnson and executed an ROI. Father then completed a diagnostic assessment, but no treatment services were recommended. However, HCJFS directed father to engage in parenting through supervised visitation with the child and maintain a steady income and appropriate housing. Johnson testified that although she referred father to FNC for visitation, father never completed the intake process and failed to visit the child. As of the date of the adjudication hearing, father had not visited the child in over a year.

{¶10} Johnson also testified that father had moved out of the family's apartment because of a fire and was living in Golf Manor. Johnson reported that she made an appointment to meet father at his home but when she arrived, he was not there. She attempted to reschedule the visit several times but father either ignored her phone calls or said that he was unable to meet her because he had to work. As of May 2023, Johnson reported that HCJFS did not know where father was living. But at the September 2023 hearing, where HCJFS's complaint was dismissed and refiled for the last time, father appeared and contested, for the first time, HCJFS's request for interim temporary custody. Although that hearing is not transcribed, the judgment entry issued after the hearing indicates that father had "expressed frustration" with visitation and had reported that he currently was unable to house the child. Father emailed Johnson shortly after the hearing to request the child's birth certificate and social security number in order to apply for and obtain larger housing. Finally, Johnson testified that father was planning on living with mother after she was released

from Summit Behavioral Health because he believes that mother's mental-health issues pose no risk to the child.

{¶11} After hearing the testimony, the court adjudicated L.S.H. dependent. The court also granted L.S.H.'s foster family's request, over father's objection, to administer medication prescribed by the child's pediatrician to help manage the child's behavioral issues.

{¶12} The dispositional hearing began on November 8, 2023, via Zoom. At the hearing, the magistrate heard arguments on father's counsel's motion to withdraw, which had been filed approximately two weeks before the hearing. Counsel explained that father had asked him to withdraw because father no longer wanted to work with counsel. The record shows that father had technical difficulties accessing the Zoom hearing. However, after connecting to the hearing, father interrupted the hearing with a profanity-laden tirade, mostly about his dislike of the caseworker, his belief that his counsel was prejudiced against him and that he wanted counsel to withdraw, that the court should not be "doing this" because he no longer lived in Ohio, but in Indiana, and that he was going to "appeal." Father then intentionally disconnected from the hearing. While father was absent from the hearing, HCJFS presented Johnson's testimony, which was similar to her testimony at the adjudication hearing. Prior to ending the hearing, the magistrate gave father's counsel and GAL time to contact father and encourage him to return to the hearing to present his testimony. Father eventually reconnected to the Zoom hearing and told the magistrate that he had a "paid attorney." The magistrate did not grant father's counsel's motion to withdraw at that time, but agreed to continue the hearing until November 30 so that father could either requalify for appointed counsel or appear with his new, privately-retained

counsel. If father appeared at the next hearing date with new counsel, the magistrate indicated that she would grant the motion to withdraw. The magistrate journalized an entry to that effect, and the entry also explained the steps father had to take in order to have new counsel appointed.

{¶13} Father did not appear at the November 30 hearing. Father's GAL reported that he had been in contact with father, father was aware of the hearing, and father was not going to attend because of work. Father's GAL advised the magistrate that it would be in father's best interest to continue the hearing without him because father was not going to participate in the hearing and simply wanted to appeal. Father's GAL also reported that it was not in father's best interest to have custody of the child. L.S.H.'s GAL reported to the magistrate that the child has been in the same foster home since August 2022 and that he is "loved and cared for" and has bonded with his foster family.

{¶14} The magistrate denied father's counsel's motion to withdraw, terminated mother's and father's parental rights, and granted permanent custody of the child to HCJFS. Father filed objections, mainly challenging the magistrate's finding that father had abandoned the child and the magistrate's failure to acknowledge that father had eventually executed an ROI and submitted to a diagnostic assessment of functioning. Upon reviewing the magistrate's decision, father's arguments, and the facts contained in the record, the juvenile court overruled the objections and adopted the magistrate's decision.[1] Father now appeals.

[1] We have reviewed the juvenile court's entry in light of our recent decision in *In re E.J.*, 2024-Ohio-2421 (1st Dist.), and are convinced that the court conducted an independent review of the record when considering father's objections.

{¶15} In his single assignment of error, father maintains that "the trial court erred as a matter of law by granting HCJFS's motion for permanent custody." When reviewing a juvenile court's grant of a motion for permanent custody, we are required to independently determine that the decision is supported by clear and convincing evidence. *In re D.G.*, 2021-Ohio-429, ¶ 8 (1st Dist.), citing *In re W.W.*, 2011-Ohio-4912, ¶ 16 (1st Dist.).

Motion to Withdraw

{¶16} Under this assignment, father first maintains that the court erred by denying his counsel's motion to withdraw when both he and counsel supported the motion. We are unpersuaded.

{¶17} In considering father's argument, we note that Juv.R. 4(F) states that an attorney or GAL may withdraw only with the "consent of the court upon good cause shown," that although indigent parents are entitled to competent counsel at all stages of the proceedings, *see* R.C. 2151.32, they are not entitled to preferred counsel, and any request to withdraw must be timely. *See In re J.H.*, 2021-Ohio-2922 (1st Dist.).

{¶18} Here, father's counsel had filed a motion to withdraw 15 days prior to the dispositional hearing, indicating that father no longer wanted to work with him after eight months. At the beginning of the dispositional hearing, father's counsel and, initially, his GAL had advised the magistrate to grant the motion to withdraw. However, after noting concerns about father's competency to agree to a motion to withdraw, and after talking with father and discovering that he did not want to proceed pro se but instead wanted to retain private counsel, the magistrate granted father a three-week continuance to either retain private counsel or requalify for appointed counsel. At the next hearing date, father failed to appear. Father's GAL reported that

father had been aware of the hearing and had indicated that he was not going to appear because he had to work. The GAL advised the magistrate that moving forward with the hearing would be in the best interest of father as he wanted to move on to the appeal process.

{¶19} The magistrate denied the motion to withdraw, noting that father was not in a position to proceed pro se or to consent to his present attorney's withdrawal due to possible competency issues, that father's current counsel had been actively involved in father's case and had appeared at hearings for the past eight months, that no other attorney had filed an appearance on behalf of father, and, finally, that father did not request an additional continuance.

{¶20} Based on the facts and circumstances outlined above as well as the fact that there was no allegation that father's counsel was ineffective, we cannot say that the juvenile court's denial of the motion to withdraw was an abuse of discretion. *See State v. Murphy*, 91 Ohio St.3d 516, 523 (2001) (reviewing a court's decision to allow an indigent defendant's attorney to withdraw for an abuse of discretion).

R.C. 2151.414(E) Findings Supported in Record

{¶21} We now consider the findings supporting the juvenile court's grant of permanent custody. Because HCJFS sought a grant of permanent custody as part of an original disposition under R.C. 2151.353(A)(4), the court had to determine "(1) that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, using the factors set forth in R.C. 2151.414(E), and (2) that permanent custody is in the best interest of the child based on the factors set forth in R.C. 2151.414(D)(1)." *In re L Children*, 2023-Ohio-1346, ¶ 12 (1st Dist.), citing *In re P/W Children*, 2020-Ohio-3513, ¶ 29 (1st Dist.). Father argues that the court's

findings are not supported by sufficient evidence and are against the weight of the evidence.

{¶22} To determine whether a child "cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence." R.C. 2151.414(E). Where the court finds that even one of the R.C. 2151.414(E) factors exists by clear and convincing evidence, that prong is satisfied. *See In re A.H.*, 2020-Ohio-3102, ¶ 23 (1st Dist.).

{¶23} Here, the record clearly and convincingly supports four factors underlying the court's finding that the child could not be placed with either parent within a reasonable time or should not be placed with either parent. We address these factors out of order for ease of discussion.

{¶24} First, the court's finding under R.C. 2151.414(E)(4) that both parents demonstrated a lack of commitment to the child by failing to visit or communicate with the child is supported by clear and convincing evidence. The record is devoid of evidence that father or mother visited or communicated with the child since his removal from the home in August 2022.

{¶25} Second, the court's finding under R.C. 2151.414(E)(10) that father abandoned the child is supported by clear and convincing evidence. Father argues that this factor does not apply to him because he "expressed frustration" with getting visitation in place. But the record demonstrates that father did not even attempt to seek visitation with the child until the spring of 2023. R.C. 2151.011(C) provides that for purposes of R.C. Ch. 2151, "a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period

of ninety days." It is uncontested that father did not visit with the child for 90 days following the child's removal from the home in August 2022.

{¶26} Third, the court's finding under R.C. 2151.414(E)(1) that despite reasonable case planning and diligent efforts by the agency to assist the parents, father failed to remedy the conditions causing the child to be placed outside the home is supported by clear and convincing evidence. Father argues that this factor is not applicable to him because HCJFS never journalized a case plan. But under R.C. 2151.412(D), a case plan is not required to be filed prior to the dispositional hearing when HCJFS seeks an initial disposition of permanent custody under R.C. 2151.353(A)(4). See In re S.S., 2017-Ohio-4474, ¶ 80 (6th Dist.) (holding that when an agency seeks an initial disposition of permanent custody, the agency is not required to prepare a case plan). Regardless, the record shows that once father executed his ROI and completed his diagnostic assessment, a case plan was filed in April 2023, which required father to visit with the child, maintain a steady job and income, allow access to his home, and understand how mother's mental health poses a risk to the child and how to protect the child. And the record demonstrates that father did not meet the case-plan goals, which prevented him from remedying the conditions that led to the child's removal. Father never visited with the child despite a referral to the FNC. He also never verified his employment or allowed the agency access to his home. Finally, he reported to HCJFS that he believed that mother's mental health did not pose a risk to the child and that mother was to live with him when she was released from institutional care.

{¶27} Finally, the court found relevant to its decision, under R.C. 2151.414(E)(16), the fact that father did not understand the child's needs when he

objected to prescribed medication to manage the child's behavioral issues and when he moved out of state but failed to report that to HCJFS until the dispositional hearing. Legally, the court could not place the child with father until a home study under the Interstate Compact for the Placement of Children ("ICPC") was approved, and the court expressed doubts that father would cooperate with that study given his sporadic and limited engagement with HCJFS.

{¶28} Finally, the court found, under R.C. 2151.414(E)(2), that father's chronic mental or emotional illness was so severe that it made him unable to provide an adequate permanent home. We hold that this finding is not supported by clear and convincing evidence in the record. Father completed a diagnostic assessment, and no concerns about his emotional illness were raised and no treatment recommendations were made. While father clearly had a difficult time managing his emotions, actions, and language during the dispositional hearing, this does not support a finding of an emotional illness so severe that it makes father unable to provide an adequate home. While it was error to apply this factor to father, this does not affect the court's ultimate finding that the child could not be placed with father or should not be placed with father as the court's other R.C. 2153.414(E) findings were supported in the record. See In re A.H., 2020-Ohio-3102, ¶ 23 (only one of the 16 factors listed in R.C. 2153.414(E) is necessary to support the parent-suitability determination).

{¶29} Because the court's findings under R.C. 2153.414(E)(1), (4), (10), and (16) are supported by sufficient evidence and not against the weight of the evidence, we hold that the first prong of the permanent-custody test is satisfied.

Best-Interest Analysis

{¶30} Turning to the second prong of the test, we consider the court's finding that a grant of permanent custody was in the child's best interest. In determining whether it is in the best interest of the child to award permanent custody to HCJFS, the court must "consider all relevant factors," including those set forth in R.C. 2151.414(D)(1)(a)-(e). See In re W.W., 2011-Ohio-4912, ¶ 46 (1st Dist.).

{¶31} Father only generally contests the court's best-interest findings, arguing that because he had previously expressed frustration at not being able to establish visitation, the fact that he has not visited the child should not be used against him to show abandonment. He further argues that the court should have considered his relationship with the child prior to the child being removed from the home. But because of father's actions, not the agency's, father has not visited with the child from September 2022 until present. L.S.H. was a little over two years old when he was removed from the home and close to five at the time of the disposition hearing. Even if the court had found that the child and father got along well when he was two, there is no evidence in the record as to whether that bond is the same, and common sense lends itself to the determination that any bond between them is now damaged, as the court found.

{¶32} We have reviewed the record, concluding that the court considered the appropriate factors in determining that it was in the child's best interest to grant permanent custody to HCJFS and that those findings are supported by sufficient evidence and not against the weight of the evidence. In making its determination, the court found and the record demonstrated that the child was bonded and thriving with his foster-to-adopt family, see R.C. 2151.414(D)(1)(a), that although the child is too

young to express his desire of where he wants to live, see R.C. 2151.414(D)(1)(b), the child's GAL supports a grant of permanent custody, and that the child has been out of father's home for 465 days, approximately 30 percent of his life and that this is not including the first period of time that the child was removed from the home. See R.C. 2151.414(D)(1)(c). Finally, the court found that the child was in need of a legally secure placement considering father's sporadic engagement with HCJFS, his failure to visit or communicate with the child, and the fact that the child could not be placed with father, who now lives out of state. See R.C. 2151.414(D)(1)(d). The second prong of the permanent-custody test is satisfied.

{¶33} Because we hold that there is clear and convincing evidence in the record to support the juvenile court's determinations as to permanent custody, we overrule father's single assignment of error, and affirm the juvenile court's judgment.

Judgment affirmed.

CROUSE, P.J., and **KINSLEY, J.,** concur.

Please note:

The court has recorded its entry on the date of the release of this opinion.