

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
FAYETTE COUNTY

IN THE MATTER OF:

J.M., et al.

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CASE NO. CA2012-05-015

OPINION
10/11/2012

APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case Nos. 09AND0315, 09AND0316 and 09AND0372

Susan R. Wollscheid, 121 West Market Street, P.O. Box 176, Washington Court House, Ohio 43160, guardian ad litem

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John W. Judkins, 303 W. Jefferson Street, P.O. Box 33, Greenfield, Ohio 45123, for H.L. and M.D.

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HENDRICKSON, J.

{¶ 1} Appellant, the biological mother of three children, appeals a decision of the juvenile division of the Fayette County Court of Common Pleas granting permanent custody of the children to Fayette County Children Services.

{¶ 2} Appellant is the mother of J.M., M.D. and H.L, who at the start of this case were ages 4, 3, and 2, respectively. Each child has a different father, none of whom are involved in this appeal.

{¶ 3} Prior to the start of this case, Fayette County Children Services was involved with appellant and the children. According to appellant's testimony, this is the third or fourth time the children have been removed from her home. On April 23, 2009, two of the children, J.M. and H.L., were placed in the emergency custody of the agency after it was discovered that appellant was homeless. A complaint alleging the children were neglected and dependent stated that appellant was relying on a number of people to help care for the children and not giving these people information or giving incorrect information regarding her return. J.M. and H.L. were adjudicated dependent in an entry dated July 22, 2009, and temporary custody to the agency was continued.

{¶ 4} At the time the agency removed J.M. and H.L. from appellant's custody, M.D. was permitted to live with his father with the understanding that his father would file for custody. However, the father failed to file for custody and on May 11, 2009, M.D. was placed in the emergency custody of the agency when it was discovered that his father left M.D. in the care of a 16-year-old relative and her boyfriend for over a week, and there were concerns regarding the relative's ability to take care of the child. M.D. was adjudicated dependent in an entry dated October 16, 2009, and temporary custody to the agency was continued.

{¶ 5} M.D. and H.L. were placed in a foster home where they remained until March 2010, when the foster mother needed to care for her grandparents. At that time, the children

were placed in the home of a cousin to the first foster mother. The children had a relationship with this family and when the first foster mother was unable to continue caring for the children, the family volunteered to be the foster family for the children. J.M. was initially placed with his paternal grandparents, but in March 2010, when the placement became difficult for the grandparents, he was placed with his paternal aunt and her family.

{¶ 6} A case plan was prepared with a goal to reunify appellant with her children. The case plan required appellant to obtain housing and a source of income, with proper resource and living expense management, including paying bills and maintaining the residence. The case plan also required appellant to address mental health concerns and complete parenting classes. Appellant was also required to complete a substance abuse assessment because of reports of cannabis used, a failed drug screen, and ongoing drinking.

{¶ 7} Little progress was made on the case plan and the agency filed for permanent custody of M.D. and H.L. on May 12, 2011. J.M.'s aunt initially filed for custody of her nephew, but, after considering the issues involved, determined that permanent custody was the best option for the child, and the agency filed a motion for permanent custody of J.M. on July 15, 2011. Amended motions for permanent custody of all three children were filed by the agency on August 3, 2011. After a hearing on the motions, the court granted permanent custody of all three children to the agency on April 19, 2012.

{¶ 8} Appellant now appeals the trial court's decision to grant permanent custody of the children to the agency. She raises the following two assignments of error for our review:

{¶ 9} THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND BY CLEAR AND CONVINCING EVIDENCE THAT THE MINOR CHILDREN COULD NOT BE PLACED WITH EITHER OF THEIR PARENTS WITHIN A REASONABLE TIME OR SHOULD NOT BE PLACED WITH EITHER OF THEIR PARENTS.

{¶ 10} THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY FINDING

BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD BE IN THE BEST INTEREST OF THE MINOR CHILDREN TO PERMANENTLY TERMINATE THE PARENTAL RIGHTS OF [MOTHER] AND PLACE THE MINOR CHILDREN IN THE PERMANENT CUSTODY OF FAYETTE COUNTY CHILDREN'S SERVICES.

{¶ 11} Before a natural parent's constitutionally protected liberty interest in the care and custody of her child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *Santosky v. Kramer*, 455 U.S. 745, 759, 102 S.Ct. 1388 (1982). An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶ 16 (7th Dist.). A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 520 (12th Dist.).

{¶ 12} Pursuant to R.C. 2151.414(B)(1), a court may terminate parental rights and award permanent custody to a children services agency if it makes findings pursuant to a two-part test. First, the court must find that the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D). Second, the court must find that any of the following apply: the child is abandoned; the child is orphaned; the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; or where the preceding three factors do not apply, the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re E.B.*, 12th Dist. Nos. CA2009-10-139, CA2009-11-146, 2010-Ohio-1122, ¶ 22.

{¶ 13} In this case, the juvenile court found that it was in the best interest of the

children to grant permanent custody to the agency. In addition, the court found that the children had been in temporary custody of the agency for more than 12 of 22 months and that the children cannot and should not be returned to their mother or any of the three fathers.

{¶ 14} We begin with appellant's second assignment of error which challenges the trial court's finding that granting permanent custody of the children to the agency was in the children's best interest.

{¶ 15} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to the following:

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) 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;
- (c) The custodial history of the child, including whether 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 * * *;
- (d) 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 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.

{¶ 16} The court found that appellant's interaction with her children provides clear and convincing evidence that the motions for permanent custody should be granted. After the children were removed, the agency set up visitation for appellant at the agency's visitation center for one hour per week, but the visits were cancelled because appellant left town with a carnival for period of time.

{¶ 17} In February 2010, the agency allowed appellant to have home visitations, but

returned to visitations at the agency after March 23, 2010. J.M. and H.L.'s first foster mother testified at the hearing that she had concerns when dropping the children off at appellant's home during the time the home visitations were allowed. The foster mother testified that one time she dropped the children off to appellant, she saw a huge clear bag full of beer cans. Another time, appellant had numerous friends over, with two pitbulls in the home. The foster mother stated the children would return reeking of cigarette smoke even though the foster mother had asked appellant not to smoke around the children. She also testified that appellant did not have a driver's license, but drove the children while they were in her care. She stated that she was very concerned with the children being in appellant's care. On the last home visit, appellant's boyfriend and his son got into a physical fight while the children were in the home. When she picked the children up from that visit, M.J. told her they "weren't allowed to talk about anything." When questioned, M.J. told the foster mother about the violence in the home. The home visits were terminated after this visit due to the physical violence in the home.

{¶ 18} The agency visitation supervisor testified that visitations were initially scheduled for one hour a week at the agency center, but were cancelled when appellant left town with the carnival. Appellant began visitations in June 2009 and made most of the visits. Visitation was allowed at appellant's home from February 9, 2010, to March 23, 2010, and after that, visitation was supervised at the agency. She testified that the visits "did not go well" and agency staff had to intervene during a few visits because the children were playing roughly and appellant had trouble disciplining the children and setting boundaries. Visitation was terminated on February 22, 2011, because appellant had four "no-shows" with numerous cancellations in between. The visitation supervisor testified that appellant made approximately half of the visits. Visitation resumed again on August 15, 2011, and appellant again had several late cancellations and the supervisor testified that it was affecting the

children. She stated that in the last three visits, after about 15 minutes, H.L. began asking several times if it was time to go yet. She also testified that it appears M.D. is distancing himself from his mother and that J.M. does not want to visit at all, but only wants to see his siblings.

{¶ 19} Appellant testified that the missed visitations were due to her Crohn's disease and she was not feeling well enough to go see the children. When questioned about how she would take care of the children with her disease, she stated that it would be different if they were in the home and she had people who would help her.

{¶ 20} The court found that appellant cannot handle her children during one-hour visits and often cannot or does not make a one-hour visitation per week. The court further found that when appellant had the children she often left them with others and did not return when expected. The court also noted that appellant was convicted of child endangering in late 2007 or early 2008 for an incident involving the children and found there is no evidence appellant has could or ever has cared for the children by herself on a consistent basis.

{¶ 21} The court also found that the two younger children have said that they would like to live with their mother, but the court found this was more likely based on promises of a television in their bedrooms and getting a puppy, rather than a realistic understanding of a home life. The oldest child is adamant that he does not want to live with appellant. The guardian ad litem recommended permanent custody as it was in the best interest of the children.

{¶ 22} Appellant made little progress on her case plan. The court found that appellant's employment history was "spotty" and included only short periods of employment and appellant could not recall details. Appellant applied for Social Security benefits several times, and began receiving benefits in March 2011. She also receives food stamps, a medical card and housing. Appellant also received a lump sum back payment from Social

Security, and although she has a debt for unpaid child support, only made one \$50 payment per child, and testified that she was told she did not have to pay back child support from this lump sum. Appellant testified that she bought beds, televisions and a cable hook-up for each child's bedroom from the lump-sum payment, along with toys and clothes for the children. However, appellant's sister testified she had given appellant beds, and has only seen one other bed in appellant's house. The court further found that appellant began receiving HUD housing in September 2010 and was residing in a four-bedroom home at the time of the hearing, although she testified that she wanted to buy a house in another county.

{¶ 23} Appellant failed to provide documentation of parenting classes, and failed to have a substance abuse assessment. The caseworker testified that appellant was asked several times to complete a drug screen, but refused every time. A mental health assessment in 2009 identified a mood disorder, post-traumatic stress disorder, a learning disability, cannabis use, personality disorder and borderline intellectual functioning. Appellant failed to follow through with the recommendations of the assessment.

{¶ 24} The court concluded that prior to removal, the children were left with many different people for varying lengths of time and that the children are in great need of a legally secure, stable and permanent placement. The children have been out of appellant's home since April 2009, and both families who now have the children testified that they are willing to adopt them. The two families want to continue to maintain the bond between siblings and have met and discussed continuing regular visits between the children if adoption were to occur.

{¶ 25} The court found that the children are thriving in their current placements. All their needs are being met and behavior issues are being addressed appropriately. The children are receiving medical and dental attention, including J.M., who had rotten teeth requiring extraction when he came into his aunt's care. H.L. is receiving speech therapy and

has some developmental issues. M.J.'s foster parents are in the process of seeking counseling for him. The court further found that the children are fully integrated into their current homes and are bonded with their respective families. There are other children in each home and all three children have good sibling-like relationships with the other children in their respective homes.

{¶ 26} Based on our review of the record, we find no error in the trial court's determination that it is in the best interest of the children to grant permanent custody of the children. Appellant's second assignment of error is overruled.

{¶ 27} In her first assignment of error, appellant challenges the trial court's determination that the children cannot and should not be returned to her. She argues that the conditions that led to the removal of the children had been resolved when appellant obtained housing and Social Security benefits.

{¶ 28} However, as discussed above, the trial court also determined that the children had been in the temporary custody of the agency for 12 of 22 months and appellant has not challenged this finding on appeal. If a court makes a finding that a child has been in temporary custody for 12 of 22 months, it is not required to determine that a child cannot or should not be placed with the child's parents as only one of the four findings in R.C. 2151.414(B)(1)(a)-(d) are required for granting permanent custody to a children services agency. *In re A.F.*, 12th Dist. No. CA2011-12-233, ¶ 37, 2012-Ohio-2958. See also *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, ¶ 21.

{¶ 29} Regardless, we find no error in the trial court's finding that the children cannot or should not be placed with appellant within a reasonable time. Although appellant obtained housing and a source of income, as discussed above, she failed to complete many other requirements of the case plan. As discussed by the trial court, there were problems with home visits, appellant failed to visit the children regularly, parenting issues occurred during

visits, and there is no evidence that appellant can take care of the children on a consistent basis. Appellant's first assignment of error is overruled.

{¶ 30} Judgment affirmed.

POWELL, P.J., and PIPER, J., concur.