

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

IN THE MATTER OF:	:	OPINION
M.M.R., DEPENDENT CHILD	:	CASE NO. 2020-P-0055
	:	
	:	

Appeal from the Portage County Court of Common Pleas, Juvenile Division, Case No. 2020 JCF 133.

Judgment: Affirmed.

Cecily J. Mullins, Megargel, Eskridge & Mullins, LLP, 231 South Chestnut Street, Ravenna, OH 44266 (For Appellant, Ashley Wilhelm).

Victor V. Vigluicci, Portage County Prosecutor, and *Kristin L. Maxwell*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Appellee, Portage County Department of Job and Family Services).

Aaron J. Heavner, 228 West Main Street, P.O. Box 248, Ravenna, OH 44266 (Guardian ad litem).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Ashley M. Wilhelm, the biological mother of minor M.M.R., D.O.B. September 26, 2010, appeals the June 23, 2020 entry of the Portage County Court of Common Pleas, Juvenile Division, terminating her parental rights and ordering that M.M.R. be placed for adoption. For the reasons set forth herein, the order is affirmed.

{¶2} M.M.R. was removed from her mother's care in early 2018 after police responded to a burglary call at her home and found Ms. Wilhelm's husband high on methamphetamine and armed with a knife. Drugs and drug paraphernalia were found in Ms. Wilhelm's purse, and she admitted to being on a five-day methamphetamine binge while being the sole caregiver for her daughter. M.M.R. was adjudicated dependent and placed in the temporary custody of the Portage County Department of Job and Family Services (PCDJFS).

{¶3} A case plan was adopted with the goal of reunification. The plan required Ms. Wilhelm to complete a drug and alcohol assessment and follow all recommendations; submit to random drug screens; complete a mental health evaluation and follow all recommendations; and maintain employment and safe, stable housing. Two six-month extensions were granted to allow Ms. Wilhelm to complete the plan, but she did not substantially complete all the objectives.

{¶4} On December 31, 2019, Ms. Wilhelm filed a motion for legal custody. PCDJFS filed a motion for permanent custody on February 14, 2020. Two hearings on the matter were held in June 2020. Ultimately, the court found that it is in M.M.R.'s best interest to be placed in the permanent custody of the PCDJFS for the purpose of adoption.

{¶5} Ms. Wilhelm appeals, assigning one error for our review:

{¶6} The trial court's decision that an award of permanent custody to the Portage County Department of Jobs [sic] and Family Services and the termination of appellant's parental rights was in the child's best interest was against the manifest weight and sufficiency of the evidence.

{¶7} R.C. 2151.414(B)(1) governs the termination of parental rights and provides in pertinent part:

{¶8} [T]he court may grant permanent custody of a child to a movant if the court determines at the hearing * * * by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

{¶9} * * *

{¶10} (d) The child has been in the temporary custody of one or more public children services agencies * * * for twelve or more months of a consecutive twenty-two-month period * * *.

{¶11} Here, there is no dispute that M.M.R. has been in the custody of PCDJFS for over 12 months of 22 months. Instead, on appeal, Ms. Wilhelm challenges the sufficiency and manifest weight of the evidence as to the trial court's finding that it was in M.M.R.'s best interest to be placed in the permanent custody of the PCDJFS.

{¶12} Sufficiency is ““a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.” * * * In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law.” *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶11, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997), quoting Black's Law Dictionary 1433 (6th Ed. 1990). “Weight of the evidence concerns “the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.”” *Eastley, supra*, at ¶12, quoting *Thompkins, supra*, at 387.

{¶13} In determining the best interest of a child, the court “shall consider all relevant factors, including, but not limited to” those set forth in R.C. 2151.414(D)(1):

{¶14} (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;

{¶15} (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;

{¶16} (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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

{¶17} (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;

{¶18} (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child. R.C. 2151.414(D)(1)(a)-(e).

{¶19} The trial court's determination regarding the best-interest issue must be supported by clear and convincing evidence, which 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*, 11th Dist. Geauga No. 2003-G-2535, 2004-Ohio-2449, ¶36, citing *In re Holcomb*, 18 Ohio St.3d 361, 368 (1985). "A reviewing court generally will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence." *In re N.M.P.*, 11th Dist. Portage No. 2018-P-0056, 2018-Ohio-5072, ¶54, quoting *In re D.M.*, 4th Dist. Hocking No. 15CA22, 2016-Ohio-1450, ¶10. "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *In re M.B.*, 11th Dist. Ashtabula No. 2017-G-0024,

2017-Ohio-7293, ¶37, quoting *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

{¶20} The trial court addressed each factor in R.C. 2151.414(D)(1). First, as to subsection (a), the relationship of the child with her parents or other persons of significance, the court found, as Ms. Wilhelm points out, that during the visits between mother and child “each showed appropriate affection, conversation, and play.” The court also considered that M.M.R. is bonded with both her mother and her foster family. The court further noted that there are no appropriate relatives who are available to care for M.M.R. and that though Ms. Wilhelm loves M.M.R., she has not remedied the issues that facilitated M.M.R.’s initial removal from her care.

{¶21} Second, subsection (b) relates to the wishes of the child. Ms. Wilhelm argues the court found M.M.R. incapable of maturely verbalizing her wishes but nevertheless considered the child’s wishes to stay at the foster home. While accurate, it was not error on the part of the lower court to do so. R.C. 2151.414(D)(1)(b) expressly allows the court to consider “the wishes of the child, as expressed directly or through the child’s guardian ad litem, with due regard for the maturity of the child.” That is exactly what the court did here; it considered that the child, though only nine years old, expressed she felt safe with her foster family and wanted to stay there, and the recommendation made by her guardian ad litem that it was in her best interest to be placed in the permanent custody of the PCDJFS.

{¶22} Subsection (c) relates to the length of time that the child is in the custody of PCDJFS. The court considered that M.M.R. had been in custody 25 months.

{¶23} As to subsection (d), the child's need for a legally secure permanent placement, the court expressly found that M.M.R. needs "a legally secure, permanent placement which cannot be achieved without a granting of Permanent Custody to PCDJFS." Specifically, the court noted that "[r]eunification is unlikely due to the parents' inability to complete their case plan;" mother had not addressed her substance abuse issues; "mother and father have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home."

{¶24} These findings are supported by the record, which shows Ms. Wilhelm tested positive for illicit substances on six out of nine drug screens; two screens were negative, and she refused one screen. Ms. Wilhelm's drug use was a primary factor precipitating M.M.R.'s removal from her care. Over the last two years, Ms. Wilhelm has not refrained from using illicit substances or completed the recommended drug and alcohol treatments.

{¶25} Additionally, while Ms. Wilhelm completed most of a parenting course, only missing the exit interview, she did not follow the mental health recommendations, including taking the recommended medicine for her bipolar disorder or completing the recommended counseling or psychiatric appointments at two different facilities. Ms. Wilhelm argues that she should not be faulted for failing to take the prescribed medication as she did not like feeling like a "zombie" and during one assessment, she was told she was not, in fact, bipolar. It does not appear from the record, however, that the court relied heavily on the fact that Ms. Wilhelm did not take her medication; it noted only that Ms. Wilhelm admitted to self-medicating with marijuana as she tapered off the medicine without the advice of a physician.

{¶26} Ms. Wilhelm cites scheduling difficulties, work conflicts, and the Covid-19 pandemic as reasons for her failure to attend the recommended classes. She argues that she had to maintain stable income or that would have been used against her to terminate parental rights. However, testimony was presented to show that for at least part of the pendency of this matter, Ms. Wilhelm was employed at Bob Evans and had Mondays and Tuesdays off work. Later, Ms. Wilhelm was self-employed, setting her own schedule, but did not use those opportunities to complete the case objectives.

{¶27} She also argues the Covid-19 pandemic interfered with her ability to complete the case plan. However, Ms. Wilhelm had two years to complete the case objectives, including a substantial amount of time before the pandemic occurred in the United States. Indeed, the motion for permanent custody was filed in February, almost a month before the pandemic's effects were felt locally.

{¶28} Lastly, Ms. Wilhelm argues that she maintained a consistent address throughout the entire pendency of this matter. While true, the court also considered that the case worker was unable to complete a home visit, as Ms. Wilhelm refused scheduled and unscheduled visits on multiple occasions since 2018. Further, as the PCDJFS notes, a legally secure, permanent placement entails more than a physical home, but also an adult who is able to consistently provide for the needs of the child. The record shows that although Ms. Wilhelm loves her daughter and has maintained employment and housing, she had failed to remedy the issues that precipitated M.M.R.'s removal, her drug use, and has failed to substantially comply with the case objectives set for her.

{¶29} The court considered every relevant factor in R.C. 2151.414 and concluded it was in M.M.R.'s best interest to be placed in the permanent placement of the PCDJFS. After carefully reviewing the entire record, we conclude that sufficient evidence was presented as to each element of the case, and included 22 exhibits and the testimony of the social worker familiar with the child. Moreover, we find the court's decision was not against the manifest weight of the evidence, as the record shows Ms. Wilhelm had failed to substantially remedy the conditions which led to the filing of the complaint.

{¶30} In light of the foregoing, the judgment of the Portage County Court of Common Pleas, Juvenile Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.