

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

IN THE MATTER OF:	:	
	:	
D.W., et al.	:	CASE NOS. CA2018-10-018 CA2018-10-019
	:	
	:	<u>OPINION</u>
	:	3/4/2019

APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. CR2015-03-0495

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S. POWELL, J.

{¶ 1} Appellant, the mother of D.W. and L.H. ("Mother"), appeals from the decision of the Clinton County Court of Common Pleas, Juvenile Division, granting permanent custody of her children to appellee, Clinton County Children Services ("CCCS"). For the reasons outlined below, we affirm the juvenile court's permanent custody determination.

Facts and Procedural History

{¶ 2} On May 26, 2017, CCCS filed a complaint with the juvenile court alleging the children were abused, neglected, and dependent. In support of its complaint, CCCS alleged it had received reports concerning physical abuse and illegal drug use in the family home.

Upon receiving these reports, the complaint indicates a caseworker with CCCS went to the home to investigate the allegations. Once there, the record indicates the caseworker observed D.W. with a scratch on his back and a large bump on his forehead. The caseworker also observed L.H. with a bruise on her forehead.

{¶ 3} After observing the children's injuries, the complaint indicates Mother notified the caseworker that she had recently been released from prison after serving an 11-month prison term on a drug related offense. The record indicates the drug related offense was a fifth-degree felony conviction for aggravated possession of drugs.

{¶ 4} After substantiating the reports concerning physical abuse and illegal drug use in the family home, a meeting was scheduled between Mother, the children's father ("Father"), and CCCS to address CCCS's concerns regarding the children's safety. Neither Mother nor Father appeared for this meeting. Father, however, telephoned the caseworker shortly after the meeting was to begin asking to reschedule the meeting for later that day. During this call the record indicates the caseworker heard Mother and Father arguing in the background.

{¶ 5} The meeting between Mother, Father, and CCCS was rescheduled for later that afternoon. Mother arrived at the meeting 30 minutes late. Upon her arrival, Mother notified the caseworker that she would then test positive for marijuana, methamphetamines, and benzodiazepines. It is undisputed that Father did not attend the meeting. Mother nevertheless informed the caseworker that Father would then test positive for marijuana and "maybe" methamphetamines.

{¶ 6} The children's safety was then discussed with Mother. Following this discussion, the complaint alleges Mother acknowledged that it was necessary for a safety plan to be established that required the children be removed from her and Father's care

and placed in the temporary custody of CCCS. Preferring the children be placed with a relative or one of her friends, Mother provided the caseworker with four names with whom the children could potentially be placed. Mother, however, was "unable to provide contact information for any of them."

{¶ 7} Unable to contact any potential placements for the children, Mother then attempted to locate Father. After more than 45 minutes, Mother was finally able to make contact with Father. During this contact, the complaint alleged Father was "erratic and screaming on the phone" with the caseworker. The complaint also alleged that during this conversation that Father informed the caseworker that he was "not a big meth user." The children were subsequently located with Father and the children's paternal grandfather and placed in the temporary emergency custody of CCCS. A guardian ad litem was then appointed for the children.

{¶ 8} On August 8, 2017, the juvenile court adjudicated the children dependent. Approximately two weeks later, the juvenile court issued a dispositional decision placing the children in the temporary custody of CCCS. The juvenile court then approved a case plan for both Mother and Father. The case plan required Mother and Father to complete a drug and alcohol assessment and any recommended treatment, submit to random drug screens, and obtain stable employment and suitable housing for a period of no less than three months. The case plan also required both Mother and Father to complete parenting classes.

{¶ 9} On April 18, 2018, CCCS moved for permanent custody of the children. In support of its motion, CCCS alleged that both Mother and Father had demonstrated a complete lack of commitment to reunification with the children. Specifically, as alleged by CCCS:

Since the children have been in the custody of Clinton County Children Services, the parents have made little attempt to visit with the children. At last count, the parents had been offered more than 70 potential visits with the children but have attended fewer than 30. The parents are not working toward reunification. Their case plan progress is nonexistent. They continue to test positive for drugs of abuse and are homeless and without sufficient stable income. They have not engaged in parenting classes nor [drug and alcohol] treatment, despite being provided with resources by CCCS. The children need a permanent, legally secure home. The parents have made it abundantly clear they have no intention to provide such an environment.

{¶ 10} On August 27, 2018, the juvenile court held a hearing on CCCS's motion for permanent custody. As part of this hearing, the juvenile court heard testimony from just two witnesses; Mother and a caseworker from CCCS. Father did not appear at the hearing.

{¶ 11} The caseworker testified that Mother and Father rarely visited with the children attending only 41 of the 119 scheduled visits. This equates, as the caseworker testified, to approximately two visits per month. The caseworker also testified that neither Mother nor Father had successfully completed any of their case plan services. The caseworker further testified that both Mother and Father had tested positive for methamphetamines the month prior to when the permanent custody hearing took place. The caseworker also testified that CCCS had not received any verification that Mother had obtained gainful employment, income, or stable housing.

{¶ 12} Confirming the caseworker's testimony that she had yet to obtain suitable housing, Mother testified that for the last two weeks she had been residing with Father in a hotel. Prior to that, Mother testified she had lived with her now ex-boyfriend at his home for approximately one month. Mother, however, acknowledged that she moved out of her ex-boyfriend's house after he physically assaulted her.

{¶ 13} Mother also admitted that she had not provided CCCS with any verification of her alleged employment at a laundromat. Mother further acknowledged that she had not

successfully completed her parenting classes or the required drug and alcohol treatment. Mother, a self-professed recovering heroin addict, also readily admitted that she had failed "two or three" drug screens during the pendency of this case. This, as noted above, included Mother testing positive for methamphetamines the month prior to the permanent custody hearing.

{¶ 14} Continuing, seemingly admitting that she was unable to currently care for the children, Mother testified she believed her friend would be able to take custody of the children in her stead. The record indicates this friend was the sister of Mother's ex-boyfriend, the same ex-boyfriend who, as noted above, had physically assaulted Mother. Mother testified her friend would be able to take care of the children because this friend had, according to Mother, previously "adopted kids out of foster care." Mother also alleged her friend had a good job and had a house that was "big enough" for the children. It is undisputed, however, that neither Mother's friend nor anybody else had moved the juvenile court for custody of the children.

{¶ 15} Following this hearing, the juvenile court issued a decision granting CCCS's motion for permanent custody. In so holding, the juvenile court found Mother and Father: (1) had not made any significant progress on their case plan; (2) failed to regularly communicate or visit with the children; (3) demonstrated an unwillingness to provide an adequate home for the children; (4) failed to attend the children's medical appointments "[e]ven when one of the children was having surgery;" (5) had not established stable employment or income; and (6) continued to use illegal drugs after the children were removed from their care. The juvenile court also found Mother and Father had exhibited a complete "lack of motivation or commitment" to the children given their "apparent disinterest in having regular contact with the children."

Appeal

{¶ 16} Mother now appeals from the juvenile court's decision granting CCCS's motion for permanent custody. In support, Mother specifically asks this court to consider "whether she presented a sufficient indicia of reunification within a reasonable period of time" or "placement of her children with the parties she identified." Mother also asks this court to consider the factors set forth by R.C. 2151.414(E) regarding best interests of the children "against the permanent severance of her parental rights." Upon considering the issues set forth by Mother herein, we find no error in the juvenile court's decision granting CCCS's motion for permanent custody.

Standard of Review

{¶ 17} 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. *In re K.W.*, 12th Dist. Butler No. CA2015-06-124, 2015-Ohio-4315, ¶ 11, citing *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 generally limited to considering whether sufficient credible evidence exists to support the juvenile court's determination. *In re M.B.*, 12th Dist. Butler Nos. CA2014-06-130 and CA2014-06-131, 2014-Ohio-5009, ¶ 6. This court will therefore reverse a juvenile court's decision to grant permanent custody only if there is a sufficient conflict in the evidence presented. *In re K.A.*, 12th Dist. Butler No. CA2016-07-140, 2016-Ohio-7911, ¶ 10. However, even if the juvenile court's decision is supported by sufficient evidence, "an appellate court may nevertheless conclude that the judgment is against the manifest weight of the evidence." *In re T.P.*, 12th Dist. Butler No. CA2015-08-164, 2016-Ohio-72, ¶ 19.

{¶ 18} As with all challenges to the manifest weight of the evidence, in determining whether a juvenile court's decision is against the manifest weight of the evidence in a permanent custody case, an appellate court "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *In re S.M.*, 12th Dist. Warren Nos. CA2018-08-088 thru CA2018-08-091 and CA2018-08-095 thru CA2018-08-097, 2019-Ohio-198, ¶ 16, quoting *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 20. The presumption in weighing the evidence is in favor of the finder of fact, which we are especially mindful of in custody cases. *In re C.Y.*, 12th Dist. Butler Nos. CA2014-11-231 and CA2014-11-236 thru CA2014-11-238, 2015-Ohio-1343, ¶ 25. Therefore, "[i]f the evidence is susceptible to more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment." *Eastley* at ¶ 21.

Alternative Placement with Relative or Family Friend

{¶ 19} Mother initially argues the juvenile court erred by granting permanent custody without first considering whether she had any friends "who may have the ability to parent the children." In support, Mother argues that because there was no evidence presented to "controvert her friend's interest in caring for the children and said friend's interest being communicated to CCCS prior to the hearing," this court should remand the matter to the juvenile court "for the limited purpose to address said claim." We disagree.

{¶ 20} While Mother may prefer that the children be placed with a relative or one of her friends, the record indicates that no one moved the juvenile court for custody of the children prior to the hearing on CCCS's motion for permanent custody. This includes

Mother's friend who Mother believes would be interested in obtaining custody of the children. Specifically, as the caseworker testified:

Q: And at this point, you're – are you aware of whether anyone has filed anything to obtain custody of the children?

A: No.

Q: And no one that the Agency's aware of has been found suitable; would that be accurate?

A: Yes.

{¶ 21} A juvenile court is prohibited from awarding custody to any person who did not move the juvenile court to make such an award. *In re L.R.T.*, 165 Ohio App.3d 77, 2006-Ohio-207, ¶ 13 (12th Dist.) (in a permanent custody proceeding juvenile court erred by awarding legal custody to a child's great-aunt who did not file a motion for legal custody prior to the dispositional hearing); Juv.R. 34(D)(3) (juvenile court may issue an order of disposition awarding legal custody of child who has been adjudicated an abused, neglected, or dependent child "to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody"). "To hold otherwise would throw further disarray in the already difficult situation faced by the juvenile court in determining what is in the best interest of a child in permanent custody proceedings." *In re A.J.*, 12th Dist. Clermont No. CA2018-08-063, 2019-Ohio-593, ¶ 46.

{¶ 22} In so holding, we note that the record indicates two of Mother's relatives showed an interest in obtaining custody of the children; the children's maternal grandparents and the children's maternal great-great-grandparents. Yet, as noted above, neither formally moved the juvenile court for custody of the children. Moreover, as the juvenile court found, the children's maternal grandparents were excluded from consideration as a potential temporary placement for the children after they tested positive

for amphetamines and methamphetamines upon notifying CCCS of their interest in obtaining custody of the children. The children's maternal great-great-grandparents were also excluded from consideration after they permitted the children's maternal grandparents to move into their home with them.

{¶ 23} The record further indicates that the children's maternal grandparents have since tested positive for marijuana and methamphetamines, whereas the children's maternal great-great-grandmother had informed CCCS that she "would only have about a good five to six years left of taking care of herself and other people." Therefore, given the significant concerns regarding the children's maternal grandparents' and maternal great-great-grandparents' ability to appropriately care for the children, CCCS's decision to exclude the children's maternal grandparents and maternal great-great-grandparents from consideration was certainly reasonable under these circumstances.

{¶ 24} The same is true as it relates to Mother's friend. The friend who Mother believes may be interested in obtaining custody of the children is the sister of her ex-boyfriend. Although Mother claims her friend has nothing to do with the ex-boyfriend, the close familial relationship between her friend and the ex-boyfriend presents a significant question as to whether CCCS would approve a home study for this friend had she made such a request. This is because, as noted above, Mother moved out of her ex-boyfriend's home after he physically assaulted her. Therefore, even if Mother's friend had moved the juvenile court for custody of the children, it certainly would have been reasonable for CCCS to exclude Mother's friend from consideration under these circumstances.

Reasonable Time for Reunification

{¶ 25} Mother next argues the juvenile court erred by granting CCCS's motion for permanent custody without first providing her with additional time to prove she could be

reunified with the children. Specifically, Mother asks this court to remand this matter to the juvenile court with instructions to "extend the time for [her] to demonstrate she can be reunified with her children." However, as the record indicates, Mother was given ample opportunity to prove she could adequately and safely provide for the children after the children were removed from her and Father's care. Yet, even when given time during these many months to turn her life around, Mother did not successfully complete any of her case plan services. This, as noted above, required Mother to obtain stable employment and suitable housing for a period of at least three months. Mother instead continued to use illegal drugs with Father. This includes Mother testing positive for methamphetamines the month prior to when the permanent custody hearing was held.

{¶ 26} This court has all too frequently stated that "children are entitled to have stability in their lives by being placed in a legally secured permanent placement." *In re S.M.*, 2019-Ohio-198 at ¶ 37. The children in this case simply cannot idly wait in hopes that one day their Mother and Father can overcome their significant substance abuse issues. Such concerns are further exacerbated by the fact Mother has relapsed on at least two separate occasions shortly after being released from treatment. This is in addition to concerns regarding Mother's criminal history and lack of income and driver's license. Under these circumstances it is clear that granting permanent custody to CCCS is the best chance – and likely only chance – the children have to achieve the stable family home they need.

{¶ 27} "A juvenile court 'is not required to deny [a] permanent custody motion simply based upon the groundless speculation that the mother might successfully complete her drug treatment * * * and remain drug-free.'" *In re E.F.*, 12th Dist. Clinton Nos. CA2016-03-003 thru CA2016-03-007, 2016-Ohio-7265, ¶ 36, quoting *In re J. C.*, 4th Dist. Adams No. 07CA834, 2007-Ohio-3783, ¶ 25. The juvenile court, just like this court, must act in a

manner that places the children's best interests above all else. "A child's best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security." *In re D.E.*, 12th Dist. Warren Nos. CA2012-03-035 and CA2018-04-038, 2018-Ohio-3341, ¶ 60, quoting *In re Keaton*, 4th Dist. Ross Nos. 04CA2785 and 04CA2788, 2004-Ohio-6210, ¶ 61. The juvenile court's decision to grant permanent custody to CCCS in this case does just that. Therefore, because the children have an opportunity to thrive now that they have been removed from Mother's and Father's care, the juvenile court's decision to grant permanent custody in this case was proper.

Best Interests of the Children

{¶ 28} Mother also asks this court to consider the factors set forth in R.C. 2151.414(E) regarding best interests of the children "against the permanent severance of her parental rights." "[T]he permanent termination of parental rights has been described as the family law equivalent of the death penalty in a criminal case." *In re J.S.*, 12th Dist. Butler No. CA2006-07-172, 2007-Ohio-1223, ¶ 13, quoting *In re Hayes*, 79 Ohio St.3d 46, 48 (1997). Mother, however, did not cite to any evidence within the record to support her claim. "It is well-established that it is not this court's duty to search the record for evidence to support an appellant's argument as to any alleged assignment of error." *In re A.J.*, 12th Dist. Fayette No. CA2018-08-014, 2018-Ohio-4941, ¶ 15, citing App.R. 16(A)(7) ("appellant shall include in its brief * * * citations to the authorities, statutes, and parts of the record on which appellant relies").

{¶ 29} Regardless, even if Mother had cited to evidence in the record, we find no error in the juvenile court's decision finding it was in the best interests of the children to grant CCCS's motion for permanent custody. Despite being given every opportunity to do so, the record indicates neither Mother nor Father had successfully completed any of their

case plan services. The record also indicates Mother and Father had failed to regularly communicate or visit with the children, had not established stable employment, income, or suitable housing for the children, and continued to use illegal drugs after the children were removed from their care. This includes both Mother and Father testing positive for methamphetamines the month prior to when the permanent custody hearing was held. Therefore, just as the juvenile court found, granting permanent custody to CCCS was appropriate here when considering Mother and Father had exhibited a complete "lack of motivation or commitment" to the children given their "apparent disinterest in having regular contact with the children."

{¶ 30} In light of the foregoing, and in considering the children's need to bring finality to these permanent custody proceedings, we find no error in the juvenile court's decision finding it was in the children's best interests to grant CCCS's motion for permanent custody. Therefore, contrary to Mother's claim otherwise, the juvenile court's decision granting permanent custody to CCCS was supported by sufficient evidence and was not against the manifest weight of the evidence. This case, like so many others before it, is yet another example of the significant impact illegal drugs can have on the user, the user's children, friends, and family, as well as the community as a whole.

Conclusion

{¶ 31} The juvenile court did not err in its decision to grant CCCS permanent custody of the children. As this court has stated previously, a parent is afforded a reasonable, not an indefinite, period of time to remedy the conditions causing the children's removal. *In re A.W.*, 12th Dist. Fayette No. CA2014-03-005, 2014-Ohio-3188, ¶ 23. Given the significant hurdles that both Mother and Father face in order to establish a secure, stable, and drug-free environment for themselves and the children, the juvenile court did not err by granting

CCCS's motion for permanent custody. Therefore, finding no merit to any of the arguments raised herein, Mother's single assignment of error is overruled and the juvenile court's permanent custody determination is affirmed.

{¶ 32} Judgment affirmed.

RINGLAND, P.J., and M. POWELL, J., concur.