

[Cite as *In re T.W.-T.*, 2019-Ohio-3202.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

IN RE: T.W.-T.

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: Appellate Case No. 28386
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: Trial Court Case No. 2016-592
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: (Appeal from Common Pleas Court-
: Juvenile Division)
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OPINION

Rendered on the 9th day of August, 2019.

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TUCKER, J.

{¶ 1} Mother appeals from a judgment of the Montgomery County Common Pleas Court, Juvenile Division, which terminated her parental rights and placed her son, T.W.-T., in the permanent custody of Montgomery County Children Services (“MCCS”). For the reasons that follow, we affirm.

I. Facts and Course of the Proceedings

{¶ 2} MCCS has a long history with Mother, having first become involved with her when she was a juvenile in foster care. In 2009, while still in foster care, Mother gave birth to a daughter. That child was eventually adjudicated dependent and placed in the legal custody of relatives. Mother has no contact with that child. In December 2014, Mother gave birth to T.W.-T.

{¶ 3} On October 6, 2015, Mother threatened an RTA bus driver by sparking a taser near him. T.W.-T., who was ten months old at the time, was on the bus with Mother during the incident. Because Mother was arrested and jailed, she placed the child in the care of the biological father. Thereafter, Mother was released on electronic home monitoring pending trial.

{¶ 4} That same month, Mother was involuntarily committed to a psychiatric unit following an attempted suicide. On October 24, 2015, while Mother was hospitalized, MCCS conducted a visit with her. Mother admitted that she had not been receiving mental health treatment on a regular basis and that she had not been taking the medication prescribed for her bipolar disorder. Mother informed MCCS that she had been evicted from her home. Mother admitted to sparking the taser at the bus driver, but

stated that it was justified because the driver was causing problems for her. Mother agreed to let T.W.-T. remain with his father and agreed to supervised visitation after she was stabilized and discharged.

{¶ 5} Upon her release from the hospital, Mother stayed with a maternal relative. However, in November 2015, Mother set fire to some leaves near the relative's home. Mother denied attempting to burn down the relative's residence, and instead, indicated that she merely wanted to scare the relative. Mother also threatened the relative with a knife, and the two became involved in a physical altercation. Police were called, but no arrest was made. However, Mother subsequently removed her ankle monitor and was arrested. On December 23, 2015, Mother was convicted of aggravated menacing and resisting arrest. She was sentenced to community control.

{¶ 6} MCCS filed a complaint for neglect and dependency in January 2016. In April 2016, T.W.-T. was adjudicated neglected and dependent. Temporary custody was granted to Father. In December 2016, Father was arrested for a parole violation and returned to prison. On December 13, 2016, following Father's arrest, MCCS was granted temporary custody of T.W.-T., who was placed in foster care.

{¶ 7} A case plan was established for Mother requiring her to engage in mental health care and to obtain stable housing and income. The plan also required Mother to participate in the child's health care appointments once she stabilized her mental health issues. The plan required Mother to abstain from using drugs or alcohol. Finally, the plan required Mother to engage in visitations with the child.

{¶ 8} Two extensions of temporary custody were requested and granted. On December 18, 2017, MCCS filed a motion for permanent custody. A hearing was

conducted on March 22, 2018. Mother was present and represented by counsel. During the testimony of another witness, Mother had to be admonished to control her behavior. Mother then expressed her desire to leave the hearing. Therefore, the juvenile court interrupted the testimony of the witness on the stand and permitted Mother to present her testimony. Thereafter, Mother left the hearing and expressed her willingness to allow her attorney to represent her without her presence.

{¶ 9} Following the hearing, the magistrate awarded permanent custody to MCCS. Mother filed objections, which were overruled, and the trial court granted permanent custody to MCCS. Mother appeals.

II. Analysis

{¶ 10} Mother asserts the following as her sole assignment of error:

A GRANT OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST
WEIGHT OF THE EVIDENCE AND AMOUNTED TO AN ABUSE OF
DISCRETION.

{¶ 11} R.C. 2151.414 sets forth a two-part test for determining a motion for permanent custody to children's services. As relevant to this case, the statute requires the court to find, by clear and convincing evidence, that: (1) the child has 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 and (2) granting permanent custody of the child to the agency is in the best interest of the child. *In re S.J.*, 2d Dist. Montgomery No. 25550, 2013-Ohio-2935, ¶ 14, citing *In re K.M.*, 8th Dist. Cuyahoga No. 98545, 2012-Ohio-6010, ¶ 8, citing R.C. 2151.414(B)(1).

{¶ 12} Mother does not dispute that, at the time of the hearing, the child had been in the temporary custody of MCCS for more than 12 months. However, she does claim that the evidence does not support the juvenile court's finding that it was in the best interest of the child to grant permanent custody to MCCS.

{¶ 13} R.C. 2151.414(D) directs the trial court to consider all relevant factors when determining the best interest of the child, including but not limited to: (1) the interaction and interrelationship of the child with the child's parents, relatives, foster parents and any other person who may significantly affect the child; (2) the wishes of the child; (3) 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 12 or more months of a consecutive 22-month period; (4) 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; and (5) whether any of the factors in R.C. 2151.414(E)(7) through (11) are applicable.

{¶ 14} In determining whether the juvenile court erred with regard to its best interest determination, we first review the child's relationships, wishes and custodial history.¹ T.W.-T. has resided in his current foster home since December 2016. The evidence showed that the child was very closely bonded with his foster mother, foster siblings and the extended foster family. When the child entered the foster home, he was suffering from bowed legs and was placed in physical therapy. He also had knots on his neck which eventually led to diagnoses of a vitamin D deficiency, anemia and high

¹ The child, who was less than four years old at the time of the hearing, was deemed too young to express his wishes. However, we note that the guardian ad litem appointed to represent the child recommended that MCCS be awarded permanent custody of the child.

alkaline phosphate.² The foster mother takes him to all of his physical therapy and medical appointments. The child also exhibited behavioral issues including hyperactivity. The foster mother takes him to his mental health therapist three times per week. The child has shown improvement in his behavior and physical development while in the foster home. There is evidence in the record that the foster mother takes the child to approximately 12 different health care appointments each month. Mother has not attended any of the visits during the pendency of this case.

{¶ 15} There was no dispute that Mother loved the child and that the child had a bond with her. However, the evidence demonstrated that the child exhibited increased hyperactivity and used improper language after visiting with Mother. There was also evidence that Mother did not interact appropriately with the child.

{¶ 16} In examining the child's need for a legally secure permanent placement and whether that could have been accomplished without an award of permanent custody to MCCS, we note that Mother had not complied with her case plan.

{¶ 17} Mother's visitations with the child were suspended by MCCS in March 2017 after Mother exhibited angry and explosive behavior that caused her to be escorted from the agency's premises. At that visit, it was noted that Mother was recording her son acting inappropriately and posting it to social media. When Mother was asked to stop, she became very upset and began yelling and cursing throughout the visitation center.

² The child's high phosphate level appeared to have been caused by Mother's admitted ingestion of the household cleanser Comet during her pregnancy. Mother testified that her doctor informed her that she should, instead, eat powder. She also testified that she craved the cleanser and stated that it was no different than any "weird" pregnancy cravings. Mother also testified that her mother ingested toilet cleaner while pregnant with her.

The caseworker noted that Mother's behavior was visibly upsetting the child, who began crying. The visit was terminated, but Mother refused to give the child to a staff member. When Mother finally put the child down, she was escorted from the premises. The foster mother was walking into the agency as Mother was being removed and overheard Mother threaten to "put a bullet in the head" of the foster mother.

{¶ 18} Mother's visitation was then moved to Erma's House, which was not able to begin supervised visitation until September 2017. Mother had one visit, then missed the next visit. At her October 4, 2017 visit, Mother had an outburst which caused Erma's House to terminate visitation at their facility.

{¶ 19} Visitation was re-instituted at MCCS in January 2018, but it was again terminated in March 2018 just prior to the final hearing. At that time, Mother became angry after the child handed the caseworker a piece of candy to hold for him while he went outside to play with Mother. Mother stated that she believed this action showed that the child thought the caseworker was his mother. The caseworker calmed Mother, but Mother again became agitated while playing with the child. Mother began to play roughly until the child told her to stop. At that point, Mother yelled at the child and told him that she could still "pop [his] butt." Mother continued to be agitated and was finally escorted from the premises. When asked about this incident, Mother testified that her feelings had been hurt.

{¶ 20} The case plan also required Mother to refrain from the use of drugs and alcohol. However, she admitted that in December 2017, she attended a party where she consumed alcohol. After the party, she drove a vehicle which she subsequently crashed into a building. Mother left the scene despite the fact that the passenger in the car was

injured and bleeding. She waited until after the holidays were over to turn herself in to the police. When questioned about the incident, Mother responded that it was a holiday and that she was just “enjoying [herself].” Tr. p. 42. She then stated that she did not drink or smoke pot every day. She also dismissed the incident as just her trying to have fun.

{¶ 21} Mother was also required to obtain stable housing and income. The record shows that she had obtained subsidized housing and had been living in the same home for over a year. However, she was unable to generate stable income or obtain stable employment. There was evidence that she did obtain numerous jobs, but that she did not maintain them for more than a few weeks. There was evidence that either she would quit because she did not enjoy the job or she would be terminated because of conflicts with co-workers. Mother worked at a fast food restaurant for a few days in February 2018 before she had an episode that resulted in her termination and the filing of ten harassment charges against her. At the hearing, Mother testified that she was currently cleaning houses and making \$150 per week in unreported income. She was unable to verify this income and had not previously informed the caseworker about this alleged income.

{¶ 22} Mother was also required to engage with mental health services and to follow all recommendations, which included attending therapy and managing her medication. The record shows that Mother had a history of unstable behavior. In addition to the above-described violent incidents, there was evidence that during a visit with her caseworker, Mother threatened to punch the caseworker. There was also evidence that Mother was involved in an altercation during which she doused her mother's

boyfriend with lighter fluid and attempted to use a lighter to set him on fire. Mother admitted that she had been trespassed from several places due to her anger issues. She also admitted that she was involved in a physical altercation at a bus stop in October 2017.

{¶ 23} Mother's involvement with mental health services was, at best, sporadic. She had been involved with three different mental health facilities during the pendency of this case. She originally engaged with Day-Mont health services, where she was admitted to a psychiatric unit for ten days in October 2016. She was prescribed medication and given a follow-up visit. The facility made recommendations for group and individual therapy as well as medication management. After her discharge, Mother attended one visit but then did not return for follow-up care for at least four months. Thereafter, she continued to attend appointments about once every other month.

{¶ 24} Mother then engaged in mental health treatment with Focus Care for approximately three months before the facility refused to treat her due to what Mother described as an incident where she "flipped out" on the telephone with the staff.

{¶ 25} Thereafter, Mother completed a mental health assessment at Samaritan on March 12, 2018. The following day, Samaritan staff contacted Mother's caseworker and informed her that Mother had threatened the individual who conducted the assessment, that she had made threats aimed at MCCA staff, and that she had made generalized threats about "taking people out" and "bloodshed." Mother also informed the staff that she regularly carried a taser and knife with her. Finally, Mother told Samaritan staff that she would kidnap her child if necessary. Samaritan indicated it would not continue to see Mother unless a member of MCCA staff were present at her appointments. The

caseworker informed Samaritan that Mother had animosity toward the MCCC staff and that having staff present at her appointments would not be conducive to treatment. The Samaritan staff indicated that the matter would be discussed with management and that the caseworker would be contacted again. As of the date of the hearing, Samaritan had not contacted the caseworker.

{¶ 26} The juvenile court found that the above factors supported a finding that the child's best interest would be better served by awarding permanent custody to MCCC.

{¶ 27} A juvenile court's decision on termination will not be overturned "if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established." (Citations omitted.) *In re A.U.*, 2d Dist. Montgomery No. 22264, 2008-Ohio-186, ¶ 15. Furthermore, "issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact." *In re A.J.S.*, 2d Dist. Miami No. 2007-CA-2, 2007-Ohio-3433, ¶ 22. Deference is given to the findings of the juvenile court because the "trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *In re J.Y.*, 2d Dist. Miami No. 07-CA-35, 2008-Ohio-3485, ¶ 33, citing *Seasons Coal Co., Inc. v. City of Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984).

{¶ 28} The juvenile court's determination that granting MCCC permanent custody was in the best interest of the child was supported by clear and convincing evidence and was not against the manifest weight of the evidence. The juvenile court properly considered the statutory best-interest factors, and the evidence supported the court's

findings as to each factor. Based on the evidence and the court's findings, we cannot say that the court abused its discretion by granting MCCS permanent custody of T.W.-T. Accordingly, Mother's assignment of error is overruled.

III. Conclusion

{¶ 29} Mother's sole assignment of error being overruled, the judgment of the juvenile court is affirmed.

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DONOVAN, J. and HALL, J., concur.

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