

COURT OF APPEALS  
FAIRFIELD COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN RE: S.G.

JUDGES:

Hon. William B. Hoffman, P.J  
Hon. Patricia A. Delaney, J.  
Hon. Earle E. Wise, Jr., J.

Case Nos. 19-CA-05 & 19-CA-07

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Fairfield County Court of  
Common Pleas, Juvenile Division, Case  
No. 2017 AB 0028

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 10, 2019

APPEARANCES:

For Appellee State of Ohio

For Appellant Rachel Denman

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*Hoffman, P.J.*

{¶1} Appellants S.G. (Case No. 19-CA-05) and R.D. (hereinafter “Mother,” Case No. 19-CA-07), appeal the judgment entered by the Fairfield Common Pleas Court, Juvenile Division, awarding permanent custody of S.G. to Appellee Fairfield County Child Protective Services (hereinafter “FCCPS”).

#### STATEMENT OF THE FACTS AND CASE

{¶2} S.G. was born on June 10, 2005. FCCPS became involved with Mother’s family in September 2016, when notified S.G.’s sibling was not attending school. In October, 2016, FCCPS received a report S.G.’s sibling had access to marijuana and other illegal substances in Mother’s home. Mother’s home was condemned during this time period, and S.G. and his three siblings went to live with Mother’s parents. After Mother was released from jail, where she served a sentence based on her daughter’s truancy, she moved in with her boyfriend while the children continued to reside with her parents. Mother agreed to a voluntary case plan to address housing, employment, mental health, substance abuse, parenting, and visitation.

{¶3} Mother did not make progress on the case plan, and FCCPS filed a complaint alleging S.G. was dependent and neglected on February 24, 2017. A shelter care hearing was held on March 31, 2017, and temporary custody was granted to Mother’s parents, with protective supervision to FCCPS. By agreed entry at the May 9, 2017 hearing on adjudication and disposition, temporary custody was granted to Mother’s parents, with protective supervision to FCCPS.

{¶4} On December 19, 2017, FCCPS filed a motion for legal custody of S.G. and his two non-emancipated siblings to be granted to Mother’s parents. Subsequently, due to an increasing level of conflict between S.G. and his grandfather, Mother’s parents were

unable to maintain S.G. in their home. They signed a voluntary agreement of care placing S.G. with FCCPS in March, 2018. By agreed entry, FCCPS was given temporary custody of S.G. on August 2, 2018. FCCPS filed a motion for permanent custody of S.G. on September 17, 2018. The case proceeded to an evidentiary hearing on the motion on January 4, 2019.

{¶15} The evidence at trial demonstrated Mother's case plan required her to address her lack of housing stability. She was referred to metro housing, but did not follow through with the referral. She lived with her boyfriend for a period of time, then moved in with her parents, opting to live in a tent on their property. Because S.G. is not welcome in his grandparents' home, Mother is unable to provide housing for S.G.

{¶16} As to the employment component of her case plan, Mother was unemployed from 2015, until June of 2018. From June through August of 2018, she worked at the Baymont Hotel. In September or October of 2018, she got a job at McDonald's. However, she makes \$9.55 per hour, and concedes she cannot support S.G. on her salary. Despite the encouragement of her caseworker, she has not sought better employment.

{¶17} FCCPS wanted Mother to submit to a mental health assessment. She only briefly complied with this component, and was terminated from counseling for noncompliance. She did not follow through with a referral to Ohio Guidestone.

{¶18} The case plan required Mother to submit to an assessment for alcohol and/or drug concerns and follow all recommendations, as well as demonstrate sobriety through screening. Her participation in substance abuse services was not consistent. Mother admits she has a drug problem, and takes suboxone daily despite the fact she no longer has a prescription. She was discharged from treatment at The Recovery Center

in September 2018, after missing appointments, and referred by FCCPS to Ohio Guidestone to restart treatment. She did not follow through with the referral. Her history of compliance with screening was inconsistent. She completed 40 calls, missed 20 calls, had 7 calls outside the window of time, missed 11 screens, and had 4 screens indicating substance abuse.

**{¶9}** FCCPS also wanted Mother to pursue parenting skill development. She indicated she had taken parenting classes at some point in the past, but did not comply with this portion of the case plan.

**{¶10}** Because of Mother's lack of housing independent from her parents, her ability to visit S.G. was limited. Although initially the grandfather was willing to supervise visitation, due to S.G.'s behavior grandfather was no longer willing to have S.G. in his home. Mother sometimes visited with S.G. at the home of his paternal grandmother.

**{¶11}** S.G.'s father could not be located by FCCPS and did not participate in the case.

**{¶12}** S.G. chose not to be present in the courtroom for the permanent custody hearing. However, he told his attorney he desired to maintain contact with Mother. The guardian ad litem testified permanent custody was in the best interest of S.G. because he deserved a legally secure placement.

**{¶13}** The trial court found pursuant to R.C. 2151.414(B)(1)(a), S.G. could not be placed with Mother within a reasonable period of time. In making this determination, the court found pursuant to R.C. 2151.414(E)(1) Mother had failed to substantially remedy the conditions causing S.G. to be placed outside the home. The court found Mother's chemical dependency made her unable to provide an adequate permanent home at the

present time and within a year after the hearing (R.C. 2151.414(E)(2)). The court found Mother's lack of vigilance in obtaining housing demonstrated an unwillingness to provide an adequate permanent home for S.G. (R.C. 2151.414(E)(4)). Pursuant to R.C. 2151.414(E)(14), the court found Mother was unwilling to provide shelter for the child because she was waiting for her father to change his mind about allowing S.G. in his home rather than developing a plan to obtain housing so S.G. could reside with her. The court also considered Mother's admissions at the permanent custody hearing she could not provide for the child right now, she understood she could not take him home at this time, she was not doing anything to improve her financial situation, and was uninvolved and inconsistent with her case plan pursuant to R.C. 2151.414(E)(16), which allows the court to consider any other factor the court considers relevant in determining whether the child can be placed with the parent within a reasonable period of time.

**{¶14}** The court concluded permanent custody was in the best interests of S.G. The court recognized child and mother were bonded and the child wished to maintain contact with Mother, but Mother resided with her parents and S.G. was not welcome in their home. The trial court granted the motion for permanent custody.

**{¶15}** It is from the January 9, 2019 decision of the court granting FCCPS's motion for permanent custody Appellants prosecute their appeal, assigning as error:

I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD BE IN THE BEST INTERESTS OF S.G. TO PERMANENTLY TERMINATE THE PARENTAL RIGHTS OF HIS MOTHER AND PLACE HIM IN THE

PERMANENT CUSTODY OF FAIRFIELD COUNTY CHILD PROTECTIVE SERVICES.

II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND BY CLEAR AND CONVINCING EVIDENCE THAT S.G. COULD NOT BE PLACED WITH HIS MOTHER WITHIN A REASONABLE TIME OR SHOULD NOT BE PLACED WITH HIS MOTHER.

I.

{¶16} In their first assignment of error, Appellants argue the court erred in finding permanent custody is in the best interest of S.G. They argue the court improperly considered Mother's housing issues in determining whether permanent custody is in the child's best interest, and the court failed to assess whether a secure placement could be achieved without granting permanent custody to FCCPS.

{¶17} A trial court's decision to grant permanent custody of a child must be supported by clear and convincing evidence. The Ohio Supreme Court has defined "clear and convincing evidence" as "[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty, as required beyond a reasonable doubt, as in criminal cases." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954); *In re: Adoption of Holcomb*, 18 Ohio St.3d 361, 481 N.E.2d 613 (1985).

{¶18} In reviewing whether the trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the

trier of facts had sufficient evidence before it to satisfy the requisite degree of proof.” *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54, 60 (1990); *See also, C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978). If the trial court's judgment is “supported by some competent, credible evidence going to all the essential elements of the case,” a reviewing court may not reverse that judgment. *Schiebel*, 55 Ohio St.3d at 74, 564 N.E.2d 54.

**{¶19}** Moreover, “an appellate court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the findings of fact and conclusion of law.” *Id.* Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984):

The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that 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.

**{¶20}** Deferring to the trial court on matters of credibility is “crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well.” *Davis v. Flickinger*, 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997).

**{¶21}** R.C. 2151.414(D) provides as follows:

(D)(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, 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, 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;

(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.

**{¶22}** The trial court noted S.G. was bonded to Mother and wished to live with her. However, the evidence supported the court's finding S.G. could not live in his grandparents' home with Mother because of the strained relationship between S.G. and his grandfather. Mother testified she had not taken steps to find other housing, and instead hoped her father would change his mind. The trial court did not improperly focus on her housing problems as argued by Appellants, as her housing situation was relevant to S.G.'s interactions with other family members as set forth in subsection (a) above, and whether a legally secure placement could be achieved without a grant of permanent custody to the agency as set forth in subsection (d).

**{¶23}** Contrary to Appellants' argument, the court did not "gloss over" the progress Mother had made on her case plan. The court's finding the agency had been involved with the family for two years, with little progress made on the case plan, was supported by the evidence, including Mother's own testimony. Mother admitted she could not provide a secure placement for S.G. at the time of the hearing. While she had maintained a job for a four or five month period, she had been unemployed for several years prior to such time. Further, she had made little progress on the portions of her case plan dealing with obtaining treatment for substance abuse and obtaining stable housing. Mother conceded it could be a long time before she was able to provide a stable home for him. Tr. 35-36.

**{¶24}** Appellants argue the court failed to address the second prong of R.C. 2151.414(D)(1)(d), whether a legally secure permanent placement can be achieved without a grant of permanent custody to the agency. The trial court specifically found not only could Mother or Father not provide a legally secure permanent placement, but “FCCPS was not given the name of any relatives that would be willing to take Child into their homes once Grandfather asked for removal of the Child from his home.” Conclusion of Law 86. The evidence at trial demonstrated the agency had contacted several family members, and could not find anyone willing or able to take custody of S.G. Further, while his two siblings were in the legal custody of the grandparents, this was no longer an option for S.G.

**{¶25}** We find the trial court’s conclusion a grant of permanent custody to the agency was in the best interest of S.G. is supported by clear and convincing evidence, and the trial court properly considered the relevant statutory factors and evidence presented at trial in reaching its conclusion.

**{¶26}** The first assignment of error is overruled.

## II.

**{¶27}** Appellants argue the court’s finding S.G. could not be placed with Mother within a reasonable period of time is not supported by the evidence.

**{¶28}** Pursuant to 2151.414(B)(1), the court may grant permanent custody of a child to the movant if the court determines “that it is in the best interest of the child to grant permanent custody to the agency that filed the motion for permanent custody and that any of the following apply:

(a) The child is not abandoned or orphaned, has not 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 the child cannot be placed with either of the child's parents within a reasonable period of time or should not be placed with the child's parents.\* \* \*

**{¶29}** Revised Code 2151.414(E) sets forth the factors a trial court must consider in determining whether a child cannot or should not be placed with a parent within a reasonable time. If the court finds, by clear and convincing evidence, the existence of any one of the following factors, “the court shall enter a finding that the child cannot be placed with [the] parent within a reasonable time or should not be placed with either parent”:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parent to remedy the problem that initially caused the child to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the conditions that caused the child to be placed outside the child's home. In determining whether the parents have substantially remedied the conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to

the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Cod;\*\*\*

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;\*\*\*

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.\*\*\*

(16) Any other factors the court considers relevant.”

**{¶30}** A trial court may base its decision that a child cannot or should not be placed with a parent within a reasonable time upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding the child

cannot be placed with the parent within a reasonable time. See *In re: William S.*, 75 Ohio St.3d 95, 661 N.E.2d 738 (1996).

{¶31} The trial court found pursuant to R.C. 2151.414(E)(1) Mother failed continuously and repeatedly to substantially remedy the conditions which caused S.G. to be placed outside the home. Appellants argue the testimony demonstrates she was making substantial progress on her case plan.

{¶32} The evidence at trial demonstrated Mother's case plan required her to address her lack of housing stability. She was referred to metro housing, but did not follow through with the referral. She lived with her boyfriend for a period of time, then moved in with her parents, opting to live in a tent on their property. Because S.G. is not welcome in his grandparents' home, Mother is unable to provide housing for S.G. Mother admitted at trial she could not provide a home for S.G. Although she testified she could probably get an apartment in the next three months, there was undisputed evidence she had not addressed her housing instability during the two years FCCPS was involved with the family.

{¶33} As to the employment component of her case plan, Mother was unemployed from 2015, until June of 2018. From June through August of 2018, she worked at the Baymont Hotel. In September or October of 2018, she got a job at McDonald's. However, she makes \$9.55 per hour, and concedes she cannot support S.G. on her salary. Despite the encouragement of her caseworker, she has not sought better employment. The evidence was undisputed she had only worked for a period of a few months during the two year period the case plan was in effect.

**{¶34}** FCCPS wanted Mother to submit to a mental health assessment. The testimony was undisputed she only briefly complied with this component, and was terminated from counseling for noncompliance. She did not follow through with a referral to Ohio Guidestone.

**{¶35}** The case plan required Mother to submit to an assessment for alcohol and/or drug concerns and follow all recommendations, as well as demonstrate sobriety through screening. She was not consistent with drug services. Mother admits she has a drug problem, and takes suboxone daily despite the fact she no longer has a prescription. She was discharged from treatment at The Recovery Center in September 2018, after missing appointments, and referred by FCCPS to Ohio Guidestone to restart treatment. Mother testified she was now willing to engage in treatment, but had not received the referral she needed to begin. However, the caseworker testified she had twice made the referral to Ohio Guidestone and Mother had not engaged in services.

**{¶36}** The evidence was undisputed Mother's history of compliance with screening was inconsistent. She completed 40 calls, missed 20 calls, had 7 calls outside the window of time, missed 11 screens, and had 4 screens indicating substance use. The caseworker testified Mother showed more effort shortly before trial concerning the call and screen requirement of the case plan, but her compliance remained inconsistent.

**{¶37}** FCCPS also wanted Mother to pursue parenting skill development. She indicated she had taken parenting classes at some point in the past, and did not comply with this portion of the case plan.

**{¶38}** Because of Mother's lack of housing independent from her parents, her ability to visit S.G. was limited. Although initially the grandfather was willing to supervise

visitation, due to S.G.'s behavior grandfather was no longer willing to have S.G. in his home. Mother sometimes visited with S.G. at the home of his paternal grandmother.

{¶39} We find the evidence supports the court's finding Mother failed to remedy the conditions which led to the removal of S.G. from the home. While she began to make an attempt to comply with the case plan during the final months before the permanent custody hearing, by her own testimony, during most of the two year period FCCPS was involved with the family, she did not make progress on her case plan:

Q. So, I guess, in your own words, how do you feel like your level of compliance with your case plan with Protective Services with this Court – how do you feel that it has been throughout the life of this case?

A. Obviously, it's not good. It's on paper.

{¶40} Tr. 35.

{¶41} The trial court may base its finding a child may not be placed with a parent within a reasonable period of time on the existence of a single factor set forth in R.C. 2151.414(E). *In re: William S., supra*. Because we find the evidence supports the trial court's finding pursuant to R.C. 2151.414(E)(1), we need not address Appellants' arguments the evidence did not support the court's findings pursuant to R.C. 2151.414(E)(2), (4), (14), and (16).

{¶42} The second assignment of error is overruled.

{¶43} The judgment of the Fairfield County Common Pleas Court, Juvenile Division, is affirmed.

By: Hoffman, P.J.

Delaney, J. and

Wise, Earle, J. concur



