

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF: J.P.

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Patricia A. Delaney, J.

Hon. Earle W. Wise, Jr., J.

Case No. 20 CAF 02 0006

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Delaware County Court
of Common Pleas, Juvenile Division,
Case No. 18-05-1231-AB

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 23, 2020

APPEARANCES:

For State of Ohio

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Hoffman, P.J.

{¶1} Appellant George Latham II (“Father”) appeals the January 24, 2020 Judgment Entry entered by the Delaware County Court of Common Pleas, Juvenile Division, which terminated his parental rights, privileges, and responsibilities with respect to his minor child (“the Child”) and granted permanent custody of the Child to Delaware County Department of Job and Family Services (“DCDJFS”).

STATEMENT OF THE FACTS AND CASE

{¶2} On May 5, 2018, Latasha Page (“Mother”)¹ gave birth to her third child, prematurely. The newborn tested positive for drugs at birth. Mother admitted abusing cocaine and benzodiazepines during her pregnancy. The newborn was immediately placed for adoption.² Due to ongoing concerns about Mother’s drug abuse as well as the lack of an available and appropriate family or friend placement, DCDJFS filed an ex parte motion for temporary custody of the Child and his sibling on May 7, 2018. The trial court conducted an emergency shelter care hearing on the same day and placed the Child and his sibling in the temporary custody of DCDJFS.

{¶3} On May 27, 2018, DCDJFS filed Complaints, alleging the Child and his sibling were dependent. Mother identified Father as the possible father of the Child. Father was serving a ten-year sentence for drug trafficking at Pickaway Correctional Institution at the time. The trial court ordered Appellant submit to a genetic testing, which confirmed Father was the biological father of the Child.

¹ Mother has not appealed the trial court’s termination of her parental rights or the grant of permanent custody to DCDJFS. Rather, Mother has filed a brief in this matter urging this Court to keep the Child and his sibling together. Mother filed her brief as “cross-appellee”, however, this Court found her position was consistent with that of an appellee and has referred to her as such.

² The newborn is not subject to this Appeal.

{¶4} Melissa Barber, the ongoing caseworker assigned to the family, testified Father was not on the case plan due to his incarceration. Barber explained DCDJFS does not include incarcerated parents on case plans because the parents are unable to fully participate in the required services and visitation is difficult. On November 23, 2019, Father contacted Barber to advise her he had been released from prison and to determine how to proceed with services and visitation. Prior to that day, Barber's only contact with Father had been through written correspondence. Barber mentioned the Father Factor program to Father as an initial step to establishing a relationship with the Child.

{¶5} Barber stated the Child, who had just turned 11 years old, had never met Father and had only learned Father was his father in January, 2019. The Child grew up believing another man, William Barnes, was his father. The Child had a relationship with Barnes. The only time the Child had seen Father was through the window of a door during a court hearing. At that time, the Child did not want to meet Father face-to-face. The only communication between Father and the Child was through written letters. Father wrote the Child every month, starting in January, 2019. The Child struggled to think of Father as "real family."

{¶6} After the Child and his sister were removed from Mother's home, they were initially placed together in a foster home. Due to inappropriate acting out, the foster parents asked that the Child be removed. The Child and his sister are currently in their third placement. The placement is a foster-to-adopt situation. The foster parents have two biological children and five adoptive children. Three of the five adoptive children, the Child, and his sister are cousins. The Child gets along very well with the other children in

the home. The Child has been able to open up to his foster father. He is well adjusted and content. He is also doing well in school.

{¶17} Lois Palau testified she was appointed guardian ad litem of the Child and his sister on May 7, 2018. The Child is doing well in his current placement and has a close relationship with his foster parents as well as his foster siblings. When asked if she had spoken with the Child about Father, Palau indicated the Child “has been really shut down with this type of development.” Transcript of December 11, 2019 Proceedings at 234. Palau added the Child “didn’t want to talk to me about it.” Id. at 235. Palau believed the Child did not understand how to proceed. The Child told Palau if he could not live with Mother, he was happy with his foster parents.

{¶18} Elizabeth Neff, the Court Appointed Special Advocate (“CASA”), testified she spoke with Father after the December 11, 2019 hearing, and arranged to meet with him one hour prior to his visit with the Child on December 17, 2019. Neff called to confirm the meeting, but she did not hear back from Father. Neff stated Father advised her he was working for Union Supply in Columbus, and was living with his mother. Neff had not visited the residence. The Child consistently expressed his desire to live with Mother, but his foster parents were generally his second choice. Regardless of where he lived the Child wanted to be with his sister. Father and the Child had a 2 ½ hour visit on December 26, 2019. Neff stated she met with the Child after the visit. The Child described the visit as interesting and expressed a willingness to visit Father again.

{¶19} Father described his relationship with Mother as casual. Father and Mother never lived together. Mother advised Father she was pregnant with the Child shortly after she herself learned she was pregnant. Father’s contact with Mother was limited during

her pregnancy. Father attempted to see the Child after his birth, however, he was unable to do so prior to his incarceration. While he was incarcerated, Father wrote letters to Mother inquiring about the Child. Mother never responded. After DCDJFS initiated the instant action, Father repeatedly requested visits with the Child. Father stated he was enrolled in parenting classes per DCDJFS's recommendation, however, the classes did not begin until January 16, 2020.

{¶10} Father had stable employment at the time of the hearing. He lived with his mother and niece. Father planned to move into his own apartment in February. He indicated he had the means to meet the Child's needs.

{¶11} On cross-examination, Father acknowledged he did not establish paternity or seek allocation of his parental rights and obligations. Father stated his willingness to take custody of the Child's sister in addition to the Child. He would continue the relationship between the Child and his sister even if the Child lived with him. Father agreed the judgment entry of his conviction and sentence indicated he could not obtain a driver's license for five years, but asserted his belief he was permitted to obtain one at any time since his release from prison.

{¶12} Via Judgment Entry filed January 24, 2020, the trial court terminated Father's parental rights and granted permanent custody of the Child to DCDJFS. The trial court found the Child had been in the temporary custody of DCDJFS for twelve or more of twenty-two months. The trial court further found the Child could not be placed with Father within a reasonable time and it was in the Child's best interest to grant permanent custody to DCDJFS.

{¶13} It is from this judgment entry Father appeals, raising as error:

THE TRIAL COURT DID ABUSE ITS DISCRETION WHEN IT GRANTED THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES (HEREIN NOW CALLED "DCDJFS") MOTION FOR PERMANENT CUSTODY OF THE MINOR CHILD.

{¶14} This case comes to us on the expedited calendar and shall be considered in compliance with App. R. 11.2(C).

I

{¶15} In his sole assignment of error, Father contends the trial court abused its discretion in granting permanent custody of the Child to DCDJFS. Father specifically challenges the trial court's finding the Child could not be placed with him within a reasonable time.

{¶16} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent, and credible evidence upon which the fact finder could base its judgment. *Cross Truck v. Jeffries* (Feb. 10, 1982), Stark App. No. CA5758. Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.* (1978), 54 Ohio St.2d 279.

{¶17} R.C. 2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court schedule a hearing and provide notice upon the filing of a motion for permanent custody of a child by a public children services agency or private child

placing agency that has temporary custody of the child or has placed the child in long-term foster care.

{¶18} Following the hearing, R.C. 2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (a) the child is not abandoned or orphaned, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents; (b) the child is abandoned; (c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶19} Therefore, R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶20} “After H.B. 484's addition of the ‘12 of 22’ provision to R.C. 2151.414, an agency need no longer prove that a child cannot be returned to the parents within a reasonable time or should not be returned to the parents, so long as the child has been in the temporary custody of an agency for at least 12 months.” *In re C.W.*, 104 Ohio St.3d at 167, 2004–Ohio–6411, ¶ 21.

{¶21} The findings under R.C. 2151.414(B)(1)(a) and R.C. 2151.414(B)(1)(d) are alternative findings, each is independently sufficient to use as a basis to grant an agency's motion for permanent custody. See *In re Langford Children*, 5th Dist. No. No.2004CA00349, 2005–Ohio–2304, at ¶ 17. Under the plain language of R.C. 2151.414(B)(1)(d), when a child has been in an agency's temporary custody for twelve or more months of a consecutive twenty-two-month period, a trial court need not find that the child cannot be placed with either parent within a reasonable time or should not be placed with the parents. *In re I.G.*, 3rd Dist. Marion Nos. 9-13–43, 9–13–44, and 9-13-45, 2014-Ohio-1136, ¶ 30, citing R.C. 2151.414(B)(1)(d); *In re A.M.*, 3rd Dist. Marion No. 9-14-46, 2015-Ohio-2740, ¶ 14.

{¶22} We first note the trial court found, pursuant to R.C. 2151.414(B)(1)(d), the Child had been in the temporary custody of DCDJFS for a period of time in excess of twelve of the prior twenty-two consecutive months. Appellant does not challenge this finding. Rather, as part of his challenge to the trial court's finding the Child could not be placed with him within a reasonable period of time, Appellant asserts DCDJFS should have sought a six-month extension of the case. The 12 of 22 finding alone, in conjunction with a best interest finding, is sufficient to support the grant of permanent custody. *In re Calhoun*, 5th Dist. No. 2008CA00118, 2008–Ohio–5458, ¶ 45.

{¶23} Although unnecessary, we choose to address Appellant's claim DCDJFS failed to exercise reasonable efforts to reunify him with the Child. An agency's failure to develop a reunification plan may be reasonable when a parent is imprisoned.

{¶24} *In re C.B.C.*, 4th Dist. Lawrence No. 15CA18, 2016-Ohio-916, 2016 WL 915012, ¶ 79, citing *In re N.A.P.*, 4th Dist. Washington No. 12CA30, 2013–Ohio–689, ¶

45 (parent's four-year prison sentence "made it impossible to provide meaningful case planning services and to attempt reunification with appellant); *In re S.D.*, 10th Dist. Franklin Nos. 08AP–546 and 08AP–575, 2009–Ohio–1047, ¶ 14 ("Under the circumstances, [the parent's] criminal conduct had made it difficult, if not impossible, for FCCS to provide meaningful services."); *In re A.D.*, 2nd Dist. Miami No.2007CA23, 2008–Ohio–2070, ¶ 8 ("Although [children services'] efforts were directed solely toward [the mother], such an approach was reasonable considering that [the father] was incarcerated when the children entered temporary custody and would remain incarcerated for another two and one-half years.").

{¶25} Father was sentenced to a period of incarceration of ten years shortly after the Child's birth. Father never met the Child. Although Father knew Mother was pregnant with his child, Father did not establish paternity until the trial court ordered genetic testing in this case. Father did not provide even nominal support for the Child. Father's own actions made it impossible for DCDJFS to provide him with any case plan services and, likewise, made it impossible to attempt reunification. The Child was eleven years old when he met Father for the first time. Accordingly, we cannot find the trial court erred in finding DCDJFS exercised reasonable efforts.

{¶26} Father did not assign as error the trial court's finding it was in the Child's best interest to grant permanent custody to DCDJFS. Upon review of the record, we find such finding was supported by the evidence. The Child is in a foster-to-adopt placement with his sister. The foster parents would like to adopt the Child and his sister. The negative behaviors he exhibited in his first two placements were resolved. The Child is doing well in school and is active in sports. He is bonded with his foster parents as well

as his foster siblings. The Child expressed his desire to stay with his foster family if he could not live with Mother. The caseworker, guardian ad litem, and CASA believed a grant of permanent custody was in the Child's best interest.

{¶27} Father's sole assignment of error is overruled.

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

By: Hoffman, P.J.

Delaney, J. and

Wise, Earle, J. concur

