[Cite as *In re M.G.*, 2017-Ohio-5684.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In re M.G.

Court of Appeals Nos. L-16-1297

Trial Court No. JC 15247926

DECISION AND JUDGMENT

Decided: June 28, 2017

* * * * *

Laurel A. Kendall, for appellant.

Angela Y. Russell, for appellee.

* * * * *

JENSEN, P.J.

I. Introduction

{¶ 1} Appellant, S.G., appeals the judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating her parental rights and awarding permanent custody of her daughter, M.G., to appellee, Lucas County Children Services ("LCCS").

A. Facts and Procedural Background

{¶ 2} In November 2012, LCCS became involved with appellant's family based upon allegations of medical neglect and lack of adequate supervision of appellant's five children. The allegations sprung from an incident involving appellant's 17 year old daughter, in which the daughter, who was living with appellant at the time, failed to follow through with her infant's medical appointments, prompting LCCS to investigate the matter and ultimately raising concerns for the well-being of appellant's children. In September 2013, LCCS substantiated its concerns for neglect and temporary custody of appellant's children was awarded to the agency at a shelter care hearing that followed the filing of a complaint with the juvenile court. Appellant's children were subsequently adjudicated neglected.

{¶ 3} Thereafter, M.G. was born on May 11, 2015. Four days later, LCCS filed a complaint in dependency with the juvenile court, in which it recited the foregoing facts and sought a shelter care hearing and an award of temporary custody of M.G.[1] An emergency shelter care hearing was held and interim temporary custody of M.G. was awarded to LCCS.

{¶ 4} On July 7, 2015, an adjudicatory hearing was held before a magistrate. At the hearing, the guardian ad litem, Sharon Fitzgerald, presented her report in which she recommended an award of temporary custody to LCCS with instructions to LCCS to

[1] M.G.'s father was also made a party to the action, but has not filed a notice of appeal and is therefore not a party to this appeal.

consider all options to find stable housing for M.G. At the conclusion of the hearing, the magistrate found M.G. to be dependent, and awarded temporary custody to LCCS. Case plan services consisting of mental health services, domestic violence counseling, housing, income, and parenting services, were offered to appellant with the goal of reunification, and the magistrate ordered appellant to comply with said case plan. The trial court subsequently adopted the magistrate's decision.

{¶ 5} Approximately two months after the adjudicatory hearing was conducted, LCCS filed its motion for permanent custody of M.G. In the motion, LCCS asserted that M.G. was not orphaned or abandoned and had not been in the temporary custody of LCCS for 12 or more consecutive months, that she could not or should not be placed with either of her parents within a reasonable time, and that a grant of permanent custody was in M.G.'s best interest. A dispositional hearing on LCCS's motion for permanent custody was subsequently conducted on September 14 and 19, 2016, and October 31, 2016.

{¶ 6} At the dispositional hearing, LCCS called several witnesses. Its first witness, Donita McGuire, is a mental health and drug and alcohol counselor with Unison Behavioral Health ("Unison"). McGuire testified that appellant was referred to her for mental health therapy in November 2013. Prior to her first visit with McGuire, appellant was diagnosed with "major depressive disorder, delusional disorder with a rule out of bipolar one." Consequently, McGuire attempted to assist appellant in dealing with her stress and anxiety. McGuire testified that appellant made "little progress" during the

therapy, noting that appellant was angry and resistant to the therapy. McGuire also stated that appellant missed numerous appointments.

{¶ 7} LCCS's next witness was Dr. Janis Woodworth. Dr. Woodworth is the executive director for Harbor Behavioral Health and is also a licensed psychologist. In her capacity as a psychologist, Dr. Woodworth conducted an assessment of appellant to determine whether she had any mental health issues that could interfere with her ability to safely parent her children. During the assessment, appellant informed Dr. Woodworth of her history of depression, as well as the fact that she had been charged with petty theft on five occasions. Appellant explained that she committed these acts of petty theft in order to support her children.

{¶ 8} While observing appellant's interactions with her children, Dr. Woodworth noticed that appellant placed her youngest child (excluding M.G., who was not born at the time of the assessment) into a high chair and left the child unattended for about 30 minutes while she talked to her oldest daughter and talked on her cell phone. When Dr. Woodworth shared this observation with appellant, appellant dismissed it and insisted that her parenting was appropriate for the children and that she knew how to take care of them.

{¶ 9} At the conclusion of her assessment, Dr. Woodworth diagnosed appellant with a major depressive episode in partial remission and recommended that appellant participate in interactive parenting and continue to participate in mental health services at Unison where she could be monitored for symptoms of depression. According to Dr.

Woodworth, appellant refused to participate in mental health services, which concerned Dr. Woodworth because appellant's depression was not fully treated and could relapse.

{¶ 10} For its third witness, LCCS called appellant's clinical therapist, Beth Braucksieck. Appellant was referred to Braucksieck in November 2015 for mental health therapy. Initially, appellant's treatment plan was limited to helping her to understand the connection between her mental health and her criminal history. However, the treatment plan was updated in April 2016 to include parenting skills, which consisted of a review of appropriate disciplinary measures for children of different ages and discussions about how appellant could be an active parent, which Bracksieck described as taking steps to keep children safe before an accident happens rather than reacting after the fact. Braucksieck testified that appellant seemed "very disconnected" and "a little distracted" during therapy sessions.

{¶ 11} On cross examination, the guardian ad litem questioned Braucksieck regarding two incidents that occurred in which appellant was involved in arguments with the custodian of her children, K.S. According to Braucksieck, an incident occurred in April 2016 when appellant confronted K.S. at LCCS over a dispute concerning a cell phone. During the ensuing argument, appellant pushed K.S. in front of the children. Appellant testified that she only pushed K.S. after K.S. grabbed her. Braucksieck was unable to recall most the details of the other incident, but she remembered that the incident occurred during a barbeque at K.S.'s home in March 2016 at which appellant

made an appearance despite not being invited. Once again, appellant disputed Braucksieck's testimony, insisting that she was invited to the barbeque at K.S.'s home.

{¶ 12} At the conclusion of Braucksieck's testimony, LCCS called K.S. to testify. Regarding the barbeque incident, K.S. indicated that appellant refused to leave upon K.S.'s request. K.S. relented and allowed appellant to remain at the barbeque. Later in the evening, K.S. informed appellant that it was time for her to leave. Appellant again refused to leave, forcing the father of one of appellant's children to forcefully remove her.

{¶ 13} K.S. went on to testify that, during the altercation that occurred at LCCS, appellant knocked out one of her contact lenses, causing her eye to turn slightly red. According to K.S., a third incident occurred in which appellant pushed and choked her in the presence of the children in an effort to remove the children from K.S.'s vehicle. K.S. testified that appellant drove her vehicle to K.S.'s house prior to the incident. Notably, appellant did not have a valid driver's license at the time of the incident. Indeed, appellant's driving privileges were revoked following prior convictions for driving without a license or automobile insurance.

{¶ 14} As its next witness, LCCS called one of its visitation monitors, Arneitta Doss. Doss testified that appellant was good about bringing food for her children during visitations. Additionally, Doss stated that appellant's interaction with M.G. was "really good." She opined that appellant had developed a close relationship with M.G. and noted that M.G. cries when appellant has to leave the visitation room. Nonetheless, Doss

indicated that appellant had difficulty following the rules that governed her visitation with her children at LCCS. Specifically, Doss stated that appellant used her cell phone during the visitations in violation of LCCS policies. Further, appellant failed to clean her visitation room at the conclusion of the visitation as required by LCCS. Doss went on to state that the children were "out of control" during appellant's visitations.

{¶ 15} An LCCS caseworker, Adrienne Finley, subsequently testified that appellant refused services following her adjustment disorder diagnosis in March 2013. Despite Finley's observation that appellant's son was developmentally delayed, appellant declined Help Me Grow services for her son. During her testimony, Finley stated that she was concerned with appellant's attitude about her children's missed medical appointments. According to Finley, appellant justified the missed appointments by stating that she was "too busy" or that she "couldn't get there."

{¶ 16} Due to her concerns for the well-being of the children, Finley conducted an announced home visit at appellant's residence in September 2013. Upon arrival at the residence, Finley observed that four of appellant's children, all of whom were under the age of four, were left alone in a room on the main floor while appellant was taking a bath upstairs. According to her testimony, Finley noticed that the children had scattered batteries, nuts, bolts, and screws on the floor. When confronted about these hazards and the danger they posed to the young children, appellant ignored Finley and began to pick the items up off of the floor.

{¶ 17} Approximately seven months later, an incident occurred in which, according to Finley, appellant's minor daughter and granddaughter went missing from their placement and were gone for approximately two weeks. Finley testified that the daughter and granddaughter did not resurface until the agency filed a motion against appellant, inferring that appellant "was a player in them going AWOL despite having been referred to [LCCS's] parenting program." As a consequence of her lack of cooperation in the return of appellant's daughter and granddaughter, LCCS discharged appellant from its parenting program.

{¶ 18} As its final witness, LCCS called Fitzgerald to testify as to her observations as M.G.'s guardian ad litem. Fitzgerald was asked to describe appellant's case plan, to which she responded: "The case plan * * * included, as mother said, maintain stable housing, do parenting, do counseling, maintain a stable income, visit with the child, stay out of trouble." Fitzgerald went on to state that appellant failed to complete her case plan services, noting appellant's failure to successfully complete her parenting class. She testified that she was concerned about appellant's minimization of certain risk factors applicable to M.G. and her lack of supervision over the children. Fitzgerald was also troubled by appellant's lack of appreciation for the effect that her criminal activity was having on her children. Speaking more generally, Fitzgerald opined that appellant "doesn't seem to understand that what she does affects her children." Ultimately, Fitzgerald recommended a grant of permanent custody to LCCS.

{¶ 19} For her part, appellant took the stand and testified that she initially permitted custody of her children to be awarded to K.S. with the understanding that she would be allowed to visit the children "as wanted." Appellant indicated that the arrangement initially worked well, but problems began to arise when K.S. formed a relationship with F.R., the father of four of her children. According to appellant, K.S. is now married to F.R., although K.S. testified that she is not married to F.R.

{¶ 20} When questioned about the condition of her home upon Finley's arrival for the home visit in September 2013, appellant explained that the room in which the children were playing was empty due to the fact that she had just moved into the residence. Appellant denied Finley's claims that there were nuts and bolts in the room at the time of the visit, insisting rather that the children were in a safe environment. Appellant also refuted Doss's claim that she failed to clean the visitation room after visiting with her children at LCCS. Ultimately, appellant opined that the reason the agency was seeking permanent custody of her children was because she was convicted for petty theft and driving without a license while her children were in the car.

{¶ 21} On cross examination, appellant acknowledged that her son was living with her despite a court order requiring any interaction with her son to be supervised. She also acknowledged that she was convicted for complicity to commit petty theft following M.G.'s birth. When questioned about her attendance record during visits with M.G., appellant indicated that there were instances in which she cancelled or failed to attend the visitations.

{¶ 22} At the conclusion of the hearing, the juvenile court issued its judgment entry in which it court found that M.G. could not and should not be placed with appellant within a reasonable period of time because, under R.C. 2151.414(E)(1), appellant failed continuously and repeatedly to substantially remedy the conditions causing M.G. to be placed outside of the home. The court also found that a grant of permanent custody to LCCS was in M.G.'s best interest under R.C. 2151.414(D), noting that M.G. had been in foster care since birth and was doing well in such care. Consequently, pursuant to R.C. 2151.414(B)(1)(a), the court granted LCCS's motion for permanent custody. Appellant's timely appeal followed.

B. Assignment of Error

{¶ 23} On appeal, appellant assigns the following error for our review:

1. The court's grant of permanent custody to LCCS was against the manifest weight of the evidence.

II. Analysis

{¶ 24} In her sole assignment of error, appellant argues that the juvenile court's grant of LCCS's motion for permanent custody was against the manifest weight of the evidence.

{¶ 25} "A trial court's determination in a permanent custody case will not be reversed on appeal unless it is against the manifest weight of the evidence." *In re A.H.*, 6th Dist. Lucas No. L-11-1057, 2011-Ohio-4857, ¶ 11, citing *In re Andy-Jones*, 10th Dist. Franklin Nos. 03AP-1167, 03AP-1231, 2004-Ohio-3312, ¶ 28. In conducting a

review on manifest weight, the reviewing court "weighs the evidence and all reasonable inferences, considers the credibility of the witnesses and determines whether in resolving conflicts in the evidence, the [trier 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." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 17. We recognize that, as the trier of fact, the trial court is in the best position to weigh the evidence and evaluate the testimony. *In re Brown*, 98 Ohio App.3d 337, 342, 648 N.E.2d 576 (3d Dist.1994). Thus, "[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts." *Eastley* at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, fn. 3, 461 N.E.2d 1273 (1984).

{¶ 26} Here, the trial court concluded that permanent custody to LCCS was warranted based on its finding that M.G. could not and should not be placed with appellant within a reasonable period of time and permanent custody to LCCS was in M.G.'s best interest. Appellant does not contest the trial court's best interest findings, which we find are supported by the record in light of the fact that M.G. has been in foster care since birth and is doing well in such care. Rather, appellant's argument is focused on the contention that the trial court's finding that M.G. could not and should not be placed with appellant within a reasonable period of time under R.C. 2151.414(E) was against the manifest weight of the evidence. R.C. 2151.414(E) provides, in relevant part:

If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either 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 parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those 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.

{¶ 27} Here, the evidence presented at the dispositional hearing demonstrates that appellant was afforded a variety of case plan services including mental health services, domestic violence counseling, housing, income, and parenting services. Admittedly, appellant has participated in many of these case plan services to varying degrees.

However, the record supports the juvenile court's finding that appellant's participation in her case plan services failed to lead to a change in the behavior that precipitated the removal of M.G.

{¶ 28} Concerning the mental health services that were offered to appellant to help address her depression diagnosis and help her cope with her stress and anxiety, the therapists that testified at the dispositional hearing unanimously agreed that appellant has failed to progress. Indeed, the testimony reveals that appellant missed several therapy appointments and, according to McGuire and Dr. Woodworth, was resistant to the mental health services she was offered.

{¶ 29} Regarding parenting services, appellant's case plan consisted of education on proactive steps she could take to keep her children safe before an accident happened. This was precipitated by Finley's home visit at appellant's residence, in which Finley observed that appellant's children were left alone in a room with batteries, nuts, bolts, and screws strewn about the floor while appellant was taking a bath upstairs. Appellant takes issue with this testimony, noting that LCCS failed to introduce pictures of the room at the dispositional hearing. We find no merit to appellant's attack on Finley's credibility on this basis, and we note that Finley testified that appellant began picking up the room when she was confronted about it, which would have made it impossible to photograph the room.

{¶ 30} As with her attitude toward mental health services, appellant showed little interest in parenting services. Appellant's indifference toward the need for her to

improve her parenting skills was demonstrated on a number of occasions. For example, appellant placed one of her children in a high chair and left the child unattended for 30 minutes so that she could use her cell phone, in violation of LCCS policies. Although appellant denied using her cell phone during visits, both Doss and Dr. Woodworth testified to that fact and Dr. Woodworth noted that appellant was dismissive about the severity of leaving her children unattended. Further, appellant declined Help Me Grow services for her son despite concerns over her son's developmental progress, and stated that she was "too busy" to take her children to their medical appointments.

{¶ 31} Additionally, appellant revealed a lack of parental judgment by engaging in unlawful conduct during the pendency of these proceedings. In particular, appellant engaged in altercations with K.S. on more than one occasion and in the presence of her children. Moreover, appellant permitted her son to live with her in violation of a court order directing her not to have unsupervised contact with her children, and then refused to acknowledge a problem with violating the court order on cross examination at the dispositional hearing. Likewise, the evidence demonstrates that appellant drove her vehicle without a license on several occasions despite the fact that her driver's license was suspended.

{¶ 32} Finally, appellant's interference with LCCS's efforts to locate her minor daughter and granddaughter over a period of two weeks supports LCCS's discharge of appellant from her parenting services. The fact that appellant's daughter and granddaughter did not resurface until the agency filed a motion against appellant strongly

suggests that appellant was acting in concert with her daughter in her daughter's efforts to evade LCCS.

{¶ 33} In light of the foregoing evidence demonstrating appellant's failure to successfully complete her case plan services, we find that the trial court properly concluded that appellant has failed continuously and repeatedly to substantially remedy the conditions causing M.G. to be placed outside of appellant's home under R.C. 2151.414(E)(1). Therefore, we conclude that the juvenile court's finding that M.G. could not and should not be placed with appellant within a reasonable period of time was not against the manifest weight of the evidence.

{¶ 34} Having concluded that the record supports the juvenile court's best interest analysis under R.C. 2151.414(D) and its findings under R.C. 2151.414(E)(1), we find that LCCS's motion for permanent custody was properly granted. Accordingly, appellant's sole assignment of error is not well-taken.

III. Conclusion

{¶ 35} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, P.J. _____
JUDGE

Christine E. Mayle, J.
CONCUR. _____
JUDGE