

[Cite as *In re K.W.*, 2018-Ohio-1096.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 106039**

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**IN RE: K.W.**  
**A Minor Child**

[Appeal By T.W., Mother]

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**JUDGMENT:**  
AFFIRMED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. AD 15917675

**BEFORE:** Jones, J., E.T. Gallagher, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** March 22, 2018

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LARRY A. JONES, SR., J.:

{¶1} In this appeal, T.W., Mother, challenges the trial court's June 23, 2017 judgment granting permanent custody of K.W. to the Cuyahoga County Department of Children and Family Services ("CCDCFS" or "Agency"). For the reasons that follow, we affirm.

**Factual and Procedural History**

{¶2} In December 2015, the Agency filed a complaint alleging K.W. to be a dependent child and seeking temporary custody of him. The Agency also filed a motion for emergency predispositional temporary custody of K.W.; the trial court granted the request and K.W. was committed to the emergency custody of CCDCFS. The complaint was based on Mother's inability to manage K.W.'s behavioral and mental health issues. The Agency alleged that it was unsafe for K.W. to remain in Mother's home.<sup>1</sup> At the time this case was initiated, K.W. was 16 years old.

{¶3} An adjudicatory hearing was held in March 2016. Mother stipulated that all of the allegations in the Agency's complaint were true. The matter was set for a dispositional hearing to take place in March 2016, but the hearing was initially continued at Mother's request; she executed a waiver of the 90-day-time requirement. Thereafter, the dispositional hearing was continued a number of times — either at Mother's request or with her consent. The hearing eventually occurred on December 5, 2016, and Mother agreed to an order of temporary custody of K.W. to CCDCFS.

{¶4} A case plan was established and approved by the trial court. The goal of the plan was reunification of Mother and K.W. However, in January 2017, CCDCFS filed a motion for an order of permanent custody of K.W. A magistrate reviewed the matter, and found that CCDCFS had made reasonable efforts to reunify K.W. with Mother. The matter was set for a June 2017 trial before the court on the Agency's motion for permanent custody.

{¶5} The social worker assigned to the case testified at trial. Her testimony revealed that as part of the case plan goal to reunify K.W. and Mother, Mother needed to engage in counseling

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<sup>1</sup>A few days prior to the Agency filing its complaint, K.W. went to live with his adult brother, but the two got into a physical altercation. K.W. also had three minor siblings who remained in the home with Mother, and whom the Agency alleged would be unsafe with K.W. in the home. Mother was a single mother to the children.

and K.W. needed to receive mental health services and counseling. Specifically, the plan was for K.W. to receive individual counseling, and for K.W. and Mother to engage in family counseling. K.W. was also to receive independent living services, which was standard for all children in CCDCFS's custody who were 16 years or older.

{¶6} The social worker testified that K.W. engaged in all of the services he was able to do by himself. According to her, K.W. did well with the services, made continuous progress, had only minor issues at school and in his foster home, and consistently took his prescribed medications.

{¶7} In regard to the family counseling that K.W. and Mother were supposed to do together, the social worker testified that no progress had been made — she described the objective as being “at a standstill.” According to the social worker, Mother and K.W. were unwilling to engage each other and, thus, they had not had any family counseling.

{¶8} The social worker testified that she attempted to get Mother and K.W. to engage in supportive visitation, but that service was never implemented, in large part, because Mother refused to sign the necessary release of information forms. The Agency also attempted other visitations between the two. The social worker testified that a visitation was scheduled for April 2016, but that K.W., through no fault of his own, was late for the visitation. Mother canceled the visitation, stating that K.W. “should know how it felt \* \* \* for someone not to be able to participate.”

{¶9} Another visit was scheduled for May 2016, but Mother did not show — she cancelled the visit without informing CCDCFS. Mother made no further attempts to schedule visitations with K.W. Notwithstanding Mother's lack of efforts, the social worker sent a letter to Mother in February 2017, outlining a plan for possible visits, to be facilitated by a provider

familiar to Mother. The social worker also requested Mother to sign the necessary release forms so that she and K.W. could begin family counseling. Mother, however, neither signed the forms nor arranged for visitation.

{¶10} After the social worker sent the February 2017 letter, K.W. and Mother saw each other at a court hearing and had a positive interaction. The social worker sent another letter to Mother in May 2017, suggesting that they set up supported visits with a visitation coach. But again, Mother never signed the release of information form needed for the service to begin.

{¶11} K.W.'s guardian ad litem ("GAL") and court-appointed attorney gave their recommendations to the court. The GAL recommended that permanent custody of K.W. be given to the Agency. She stated that K.W. and Mother had an irreconcilable conflict, and that K.W., who was almost 18 years old at the time, did not wish to be reunified with Mother. Further, the case plan had not been completed. K.W.'s court-appointed attorney also told the court that K.W. did not wish to have a relationship with Mother; the attorney recommended that the Agency be granted permanent custody of K.W.

{¶12} On June 23, 2017, the trial court issued its judgment granting permanent custody of K.W. to CCDCFS. Mother now appeals and presents the following assignment of error for our review:

The trial court's decision to award permanent custody to CCDCFS was against the manifest weight of the evidence as it was not supported by clear and convincing evidence.

### **Law and Analysis**

{¶13} R.C. 2151.414 sets forth a two-part test for courts to apply when determining a motion for permanent custody to a public services agency. The statute requires the court to find, by clear and convincing evidence, that (1) granting permanent custody of the child to the

agency is in the best interest of the child under R.C. 2151.414(D), and (2) either the child (a) cannot be placed with either parent within a reasonable period of time or should not be placed with either parent if any one of the factors in R.C. 2151.414(E) are present; (b) is abandoned; (c) is orphaned and no relatives are able to take permanent custody of the child; or (d) has been in the temporary custody of one or more public or private children services agencies for twelve or more months of a consecutive 22-month period. *In re J.M-R.*, 8th Dist. Cuyahoga No. 98902, 2013-Ohio-1560, ¶ 26; R.C. 2151.414(B).

{¶14} Clear and convincing evidence is defined as

that measure or degree of proof which is more than a mere “preponderance of the evidence” but not to the extent of such certainty required “beyond a reasonable doubt” in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.

*In re Awkal*, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994), fn. 2, citing *Lansdowne v. Beacon Journal Publishing Co.*, 32 Ohio St.3d 176, 180-181, 512 N.E.2d 979 (1987).

{¶15} Where clear and convincing proof is required at trial, a reviewing court will examine the record to determine whether the trier of fact had sufficient evidence before it to satisfy the requisite degree of proof. *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 24, citing *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). Judgments supported by 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. *In re T.S. at id.*, citing *Schiebel at id.*

#### **K.W. Cannot Be Placed with Mother within a Reasonable Period of Time**

{¶16} The trial court found that K.W. could not be placed with Mother within a reasonable period of time. In making such a determination, trial courts are required to “consider

all relevant evidence” and if “one or more” factors exist the court “shall enter a finding that the child cannot be placed with [the] parent

\* \* \*.” R.C. 2151.414(E). The relevant factors relied on by the trial court here were as follows:

(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;

\* \* \*

(3) The parent committed any abuse as described in section 2151.031 of the Revised Code against the child, caused the child to suffer any neglect as described in section 2151.03 of the Revised Code, or allowed the child to suffer any neglect as described in section 2151.03 of the Revised Code between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;

(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;

\* \* \*

(16) Any other factor the court considers relevant.

*Id.*

{¶17} The record supports the trial court’s findings. In regard to the factor under R.C. 2151.414(E)(1), the court found that Mother “failed to participate in family counseling or sign release forms.” Mother contends that the Agency made reunification difficult for her by

removing K.W. out-of-county. But the social worker testified about Mother's lack of cooperation, describing the efforts the Agency made to reunite Mother and K.W. as "at a standstill." The social worker detailed her attempts to get Mother to sign the necessary releases to proceed with services that were needed to comply with the case plan, but Mother was not cooperative. Thus, the record supports the trial court's finding that Mother failed to remedy the conditions that caused K.W.'s removal.

{¶18} The record also supports the trial court's findings under subsections (E)(3) and (E)(4), both of which relate to Mother's failure to regularly visit or communicate with K.W. The record shows that on the first scheduled visit she was to have with K.W., she left because he was late (through no fault of his own), so that he would "know how it felt \* \* \* for someone not to be able to participate."

For the second scheduled visit, Mother failed to show. Thereinafter, Mother failed to take initiative to visit with K.W., despite the fact that the Agency reached out to her several times and offered suggestions as to how visitations could be arranged. The record therefore supports the trial court's findings under R.C. 2151.414(E)(3) and (E)(4).

{¶19} In regard to the catchall provision of subsection (E)(16), the trial court found that K.W. did "not wish to have a relationship" with Mother. Mother contends that, although it was a proper consideration for the trial court, the court should not have given it too much weight. We note, however, as did the GAL, that at the time, K.W. was going to "be 18 soon. This is not a six-year-old saying, I don't want to go home, I like it better at my foster home." The trial court's finding under the catchall provision of R.C. 2151.414(E)(16) was supported by the record.



{¶20} In light of the above, sufficient competent, credible evidence in the record supports the trial court's determination that K.W. could not be placed with Mother within a reasonable period of time.

### **Permanent Custody in K.W.'s Best Interests**

{¶21} We review a trial court's determination of a child's best interests under R.C. 2151.414(D) for abuse of discretion. *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). While a trial court's discretion in a custody proceeding is broad, it is not absolute. "A trial court's failure to base its decision on a consideration of the best interests of the child constitutes an abuse of discretion." *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 60, citing *In re T.W.*, 8th Dist. Cuyahoga No. 85845, 2005-Ohio-5446, ¶ 27; *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 574 N.E.2d 1055 (1991).

{¶22} In determining the best interest of a child at a hearing held pursuant to R.C. 2151.414(A)(1) or for the purposes of 2151.353(A)(4), the juvenile court must 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 \* \* \*;

- (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.

R.C. 2151.414(D)(1).

{¶23} Although a trial court is required to consider each relevant factor under R.C. 2151.414(D)(1) in making a determination regarding permanent custody, “there is not one element that is given greater weight than the others pursuant to the statute.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. This court has stated that only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re Moore*, 8th Dist. Cuyahoga No. 76942, 2000 Ohio App. LEXIS 3958 (Aug. 31, 2000), citing *In re Shaeffer Children*, 85 Ohio App.3d 683, 621 N.E.2d 426 (3d Dist.1993). A child's best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security. *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991).

#### **K.W.'s Interaction and Relationship with Significant Individuals in his Life**

{¶24} As mentioned, Mother was parenting her children alone, and her relationship with K.W. was poor and it never improved during the pendency of this case. In regard to the three minor children who still lived with Mother, one of the Agency's concerns was that it was not safe for the other children with K.W. in the home. The GAL testified that she had an in-depth discussion with K.W. about how a grant of permanent custody to the Agency would legally sever

his ties to his younger siblings. The GAL testified that K.W. was “okay with that.” Further, the record demonstrates that K.W. had a difficult relationship with his older, adult brother.

### **K.W.’s Wishes**

{¶25} K.W. expressed his wishes through both his GAL and court-appointed attorney: he did not wish to be reunited with Mother. Further, both the GAL and K.W.’s attorney stated that it was their recommendation that permanent custody of K.W. be granted to CCDCFS. At the time of the trial, K.W. was almost 18 years old and there is nothing in the record suggesting that he was incapable of appropriately expressing his wishes.

### **The Custodial History**

{¶26} K.W. went into the Agency’s custody in December 2015. By the time of trial in June 2017, he had been in custody for 18 months. Mother points out that the first year K.W. spent in custody was under an emergency custody order, rather than a temporary custody order. We find that to be a distinction without a difference for our evaluation here — all tolled, K.W. was in the Agency’s care for 18 months.

### **Legally Secure Placement without Permanent Custody**

{¶27} Mother contends that even the social worker believed that reunification could be possible if appropriate services were in place. But the record here demonstrates that CCDCFS made more than reasonable efforts to attempt to reunify Mother and K.W., but Mother did not follow through so that her portion of the case plan could be completed.

### **Trial Court’s Best Interests Decision**

{¶28} In light of the above, the record contains sufficient, competent evidence to support a finding that at least one of the best interests factors weighed in favor of permanent custody of K.W. to CCDCFS.

### **Conclusion**

{¶29} Having found that K.W. cannot be placed with Mother within a reasonable period of time and that granting permanent custody of him to CCDCFS is in his best interests, Mother's sole assignment of error is overruled.

{¶30} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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LARRY A. JONES, SR., JUDGE

EILEEN T. GALLAGHER, P.J., and  
MARY J. BOYLE, J., CONCUR

