

[Cite as *In re J.M.*, 2018-Ohio-2305.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 106487**

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**IN RE: J.M., ET AL.**  
**Minor Children**

[Appeal by Mother]

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**JUDGMENT:**  
AFFIRMED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD 14911064 and AD 15902352

**BEFORE:** Laster Mays, J., E.T. Gallagher, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** June 14, 2018

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### **Father of J.M.**

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**Father of S.H.**

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ANITA LASTER MAYS, J.:

{¶1} The appellant, mother of two minor children, appeals the juvenile court's decision that it is in the best interest of her children, S.H. and J.M., to be placed in the permanent custody of the Cuyahoga County Department of Children and Family Services ("CCDCFS"). The mother asks that this court reverse the juvenile court's decision and remand for further proceedings. As required by App.R. 11.1(D), this court has expedited the hearing and disposition of this appeal. We affirm.

{¶2} This case involves two children, J.M. and S.H. J.M. was committed to the temporary custody of CCDCFS on December 19, 2014, and S.H. on May 29, 2015. On August 25, 2016, CCDCFS filed a motion to modify temporary custody to permanent custody pursuant to R.C. 2151.413. On September 1, 2017, the mother filed a motion for legal custody of both children. The trial court held a hearing, and issued a judgment that granted CCDCFS's motion to modify temporary custody to permanent custody, and denied the mother's motion for legal custody of both children.

**I. Facts**

{¶3} During the permanent custody trial, several witnesses testified as to the fitness of the mother. Jamie Saunt ("Saunt"), an early childhood therapist who provided therapy to S.H.,

testified first. According to Saunt, S.H. suffers from post-traumatic stress disorder stemming from the sexual abuse she endured from her mother's boyfriend. S.H. also disclosed to Saunt, during play therapy, that she was exposed to her older sister engaging in sexual behavior with her boyfriend. S.H. also disclosed to Saunt that her brother, J.M., kissed her on her mouth and smacked her butt. In addition, S.H. told Saunt that, at her mother's house, S.H.'s brother took his private part and kissed her private part with it. When Saunt asked S.H. to explain further, S.H. told Saunt that her brother put his private part inside of her.

{¶4} Next, Annette Gannon ("Gannon"), the case manager for J.M., testified that she visited J.M. at his foster parent's home. She stated that J.M. and his foster parent have bonded, and his needs are being met. J.M. is currently in therapy for his past sexualized behaviors. Gannon also testified that J.M.'s behaviors have improved since being placed in his foster home.

{¶5} Kenneta Bey ("Bey"), an extended social worker for CCDCFS, who was assigned to J.M.'s and S.H.'s case testified that a total of six children were removed from the mother's care. Four children were placed with their respective fathers, and J.M. and S.H. were placed in foster care. The paternity of J.M. could not be established. Bey testified that the children were removed from the mother's home because the children were sexually abused in the mother's care. Bey testified to the court that the mother was placed on a case plan with objectives that she had to complete. The mother was ordered "to get mental health services, family therapy, to maintain housing and employment, and basic needs for the children and parenting." (Tr. 40.) Bey claimed that the mother resides in a one-bedroom apartment, which is not satisfactory for the amount of children who need to live with her. The mother also is inconsistent with her mental health services.

{¶6} Bey also testified that for a short period of time, the mother was having overnight

visitation with all six of her children, but it did not last long because of inappropriate incidents. One incident that occurred was when S.H. was in the bed with the mother and her male friend, and witnessed sexual behaviors. Other incidents consisted of the mother leaving the minor children unsupervised in her home many times.

{¶7} There were reports that a man was living in the home with the mother, and it was reported that this same man sexually abused some of the children. The mother denied that the man was living there, despite her children's accounts, and claimed that his stuff was still there because she spent her money on it, and did not want to destroy his stuff or get rid of it. Bey conducted another unscheduled visit to the mother's home, and during another walkthrough, discovered a man hiding in the closet.

{¶8} At the end of the hearing, the juvenile court issued its ruling and stated in its journal entry, "[p]ursuant to R.C. 2151.414, the Court finds that the allegations of the motion have been proven by clear and convincing evidence. It is therefore order[ed] that the Motion to Modify Temporary Custody to Permanent Custody is hereby granted." After this ruling, the mother filed this appeal, assigning one error for our review:

- I. The trial court's finding that an award of permanent custody to CCDCFS was in the best interests of the children is not supported by clear and convincing evidence and is against the manifest weight of the evidence.

## **II. Best Interest of the Children**

### **A. Standard of Review**

{¶9} Now,

“ “[t]he discretion that the juvenile court enjoys in deciding whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's decision will have on the lives of the parties concerned.” *In re L.O.*, 8th Dist. Cuyahoga No. 101805, 2015-Ohio-1458, ¶ 22, quoting *In re Awkal*, 95 Ohio App.3d at 316,

642 N.E.2d 424. We, therefore, review a trial court's determination of a child's best interest under R.C. 2151.414(D) for abuse of discretion. *In re L.O.* at ¶ 22. 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).

*In re V.C.*, 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991, ¶ 52.

## **B. Law and Analysis**

{¶10} In the mother's sole assignment of error, she argues that the trial court's decision is not supported by clear and convincing evidence and is against the manifest weight of the evidence.

In accordance with R.C. 2151.414(B), a trial court may grant permanent custody of a child to a county children's services agency if the court determines, by clear and convincing evidence, (1) the existence of at least one of the four conditions enumerated in R.C. 2151.414(B)(1)(a) through (d) and (2) that granting permanent custody to the agency is in the child's best interest. "Clear and convincing evidence" is that measure or degree of proof that is more than a "preponderance of the evidence" but does not rise to the level of certainty required by the "beyond a reasonable doubt" standard in criminal cases. *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 8, citing *In re Awkal*, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994). It "produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established."

*In re M.S.* at ¶ 8.

*Id.* at ¶ 36.

{¶11} The court, in its journal entry, considered the factors in R.C. 2151.414, which states,

(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child 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, or 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 if, 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, 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.

(d) 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.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

{¶12} In its journal entry, the court stated, “the child has been in temporary custody of a public children services agency or private child placing agency for twelve or more months of a consecutive twenty-two month period.”

It is well established that a parent has a fundamental right to raise and care for his or her child. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 28; *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 40. However, that right is not absolute. *Id.* Government children's services agencies have broad authority to intervene when necessary for a child's welfare. *In re C.F.* at ¶ 28. “All children have the right, if possible, to parenting from

either natural or adoptive parents which provides support, care, discipline, protection and motivation.”” *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 66, quoting *In re Hitchcock*, 120 Ohio App.3d 88, 102, 696 N.E.2d 1090 (8th Dist.1996). When parental rights are terminated, the goal is to create “a more stable life” for dependent children and to “facilitate adoption to foster permanency for children.” *In re N.B.*, 8th Dist. Cuyahoga No. 01390, 2015-Ohio-314, ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, \*5 (Aug. 1, 1986). We recognize, however, that termination of parental rights is “the family law equivalent of the death penalty in a criminal case.”” *In re J.B.* at ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14.

*In re V.C.*, 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991, ¶ 35.

{¶13} We find that the juvenile court relied on clear and convincing evidence when it decided that the children could not be placed with either parent within a reasonable time or that the children should not be placed with the parents and, therefore, granted permanent custody of J.M. and S.H. to CCDCFS. The record reveals that the mother does not have adequate housing, has not safely supervised her children, and is inconsistent with mental health services. The court echoed this in its journal entry,<sup>1</sup> stating,

Following 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.

{¶14} The record reveals that the juvenile court also considered the factors enumerated in R.C. 2151.414(D)(1) to determine if terminating the mother’s parental rights were in the best interest of the child. R.C. 2151.414(D)(1) states,

(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:

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<sup>1</sup> There was one journal entry for both children.



- (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.

For the purposes of division (D)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

{¶15} In the journal entry, the court stated,

Upon considering the interaction and interrelationship of the child with the child's parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period; 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; and the report of the Guardian ad Litem, the Court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the child and the child cannot be placed with one of the child's parents within a reasonable time or should be placed with either parent.

{¶16} Given all the testimony concerning the children's welfare while in the mother's custody such as the mother's inability to provide suitable and adequate housing; the inability to provide adequate supervision; the inability to provide special sexualized care for the children; and the mother's inconsistent attendance with mental health counseling, we find that the trial court did not abuse its discretion in awarding permanent custody to CCDCFS.

{¶17} Therefore, the mother's assignment of error is overruled.

{¶18} Judgment is affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the court of common pleas, juvenile division, 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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ANITA LASTER MAYS, JUDGE

EILEEN T. GALLAGHER, P.J., and  
MELODY J. STEWART, J., CONCUR