

[Cite as *In re S.J.*, 2018-Ohio-851.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106096

IN RE: S.J., ET AL.
Minor Children

[Appeal By Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 14910667, AD 14910668, AD 14910669,
AD 14910670 and AD 14910671

BEFORE: Keough, J., Stewart, P.J., and Jones, J.

RELEASED AND JOURNALIZED: March 8, 2018

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KATHLEEN ANN KEOUGH, J.:

{¶1} Appellant-mother (“mother”), appeals from the judgment of the Cuyahoga County Common Pleas Court, Juvenile Division, granting permanent custody of her five minor children to appellee, the Cuyahoga County Division of Children and Family Services (“CCDCFS”). For the reasons that follow, we affirm.

{¶2} On August 21, 2014, CCDCFS filed a complaint alleging that the five minor children, ranging in age from two to five years old, were neglected and requesting a disposition of temporary custody to CCDCFS. The basis for the complaint was that mother was unable to provide safe and stable housing and to provide for the children’s basic needs and was not taking her medication. After a hearing, the court granted CCDCFS predispositional custody and ordered that the children remain in shelter care until the dispositional hearing. In November 2014, the children were found to be neglected, and mother subsequently stipulated to their temporary custody to CCDCFS. The permanency plan for the children was reunification.

{¶3} Extension of temporary custody was granted twice at the request of CCDCFS — August 20, 2015 and March 16, 2016. The basis for granting the extensions was that mother was making significant progress on the case plan and was making strides in remedying the reasons for the children’s removal from her home. According to CCDCFS’s December 2015 motion for a second extension of temporary custody, mother had completed her parenting classes and counseling, obtained and maintained employment, and secured housing. The reunification process was to begin with mother participating in supportive visits.

{¶4} However, on June 13, 2016, CCDCFS filed a motion to modify temporary custody to permanent custody, contending that although mother had completed the services listed in her

case plan, she did not benefit from those services, and reunification was no longer possible. Additionally, in December 2016, and while the motion was pending, mother left her home due to break-ins and began residing in various locations. However, she did not report her new address to CCDCFS and when she was offered help to find new housing, she declined assistance. During this time, she only visited with the children on two occasions — once in December 2016 and then in May 2017. According to subsequent testimony at the permanent custody hearing, the lack of visitation was due to the coordination of mother’s work schedule with the schedules of the children’s foster homes. However, mother’s caseworker testified that mother only contacted his office on one occasion during this time-frame to set up visitation.

{¶5} A year later, the trial court conducted a hearing on the agency’s motion and issued a decision granting CCDCFS permanent custody of mother’s five children.

{¶6} Mother appeals, contending in her sole assignment of error that the trial court’s determination that it was in the best interest of all the children to be placed in the permanent custody of CCDCFS is against the manifest weight of the evidence.

{¶7} When reviewing a trial court’s judgment in child custody cases, the appropriate standard of review is whether the trial court abused its discretion. *Masters v. Masters*, 69 Ohio St.3d 83, 85, 630 N.E.2d 665 (1994). An abuse of discretion is more than an error of law or judgment; it implies that the court’s attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). “When reviewing the trial court’s custody decision, an appellate court must make ‘every reasonable presumption in favor of the lower court’s judgment and finding of facts.’” *In re M.S.*, 8th Dist. Cuyahoga No.

101693, 2015-Ohio-1028, ¶ 6, quoting *In re Brodbeck*, 97 Ohio App.3d 652, 659, 647 N.E.2d 240 (3d Dist.1994).

{¶8} Termination of parental rights is an alternative of last resort but is sanctioned when necessary for the welfare of a child. *In re Wise*, 96 Ohio App.3d 619, 624, 645 N.E.2d 812 (9th Dist.1994). Before a juvenile court may terminate parental rights and award permanent custody of a child, it must find by clear and convincing evidence that (1) the grant of permanent custody to the agency is in the best interest of the child; 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 twenty-two month period. R.C. 2151.414(B)(1).

{¶9} “Clear and convincing” evidence is more than a mere “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 Awkal*, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994), citing *Lansdowne v. Beacon Journal Publishing Co.*, 32 Ohio St.3d 176, 180-181, 512 N.E.2d 979 (1987). It produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Id.* Where clear and convincing evidence 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 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); *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, 782 N.E.2d 665, ¶ 16 (7th Dist.).

{¶10} In this case, the children have been in the temporary custody of CCDCFS for at least 12 of the past 22 months; mother concedes that CCDCFS met the factor listed in R.C. 2151.414(B)(1)(d) to satisfy the second prong a court must find for terminating parental rights.¹ Accordingly, the only issue on appeal is whether it was in the children’s best interest under the factors set forth in R.C. 2151.414(D)(1)-(5) to grant permanent custody to CCDCFS.

{¶11} When considering the best interest of a child in a permanent custody hearing, the juvenile court is required under R.C. 2151.414(D)(1) to consider all relevant factors, including, but not limited to: (a) the interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster parents, 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; (c) the custodial history of the child; (d) the child’s need for a legally secured permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; and (e) whether any of the factors in R.C. 2151.414(E)(7) to (11) apply in relation to the parents and child. Although a trial court is required to consider each of the R.C. 2151.414(D)(1) factors in making its permanent custody determination, “[o]nly one of these factors needs to be resolved in favor of the award of permanent custody.” *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17.

{¶12} In this case, the court considered all relevant factors, including those listed in R.C. 2151.414(D)(1)-(5). A review of the record clearly and convincingly supports the trial court’s finding that permanent custody is in the children’s best interests.

¹The court found that the children were abandoned by their fathers. This finding has not been challenged on appeal, and the alleged fathers are not parties to the appeal.

{¶13} Justin Fraley (“Fraley”), extended services worker with CCDCFS, testified regarding the interaction and interrelationship of the children with each other, their mother, and their foster parents. He stated that he was assigned to the children’s case in 2012, and that the children have been in the temporary custody of CCDCFS since August 2014; approximately three years from the date of the hearing. All five children were initially placed in the same foster home; however, the foster family was unable to continue caring for all five children due to behavioral concerns and referrals that were made to CCDCFS. Despite his best efforts, Fraley was unable to find a foster home to accept all five children. Therefore, in August 2016, the children were separated — three were relocated to a foster home in the Toledo area, and two were placed in a foster home in Cleveland.

{¶14} Fraley testified that he was never told by the children that they wanted to be with each other. However, according to Fraley’s December 27, 2016 entry in his activity log, he noted that the children ask about their siblings, but do not ask about their mother. Fraley also admitted that during the last visit in May 2017, the children were happy to see each other and their mother. He stated that they have a bond to each other and that the children want to have a relationship with their mother. The children’s guardian ad litem testified that six months prior to the hearing, the three children in Northwest Ohio expressed a desire to go back with their mother, whereas the two girls in Northeast Ohio wished to stay with their foster mom, but have contact with their mother.

{¶15} Fraley stated that despite the excitement that the children express when they see each other, it is not in the children’s best interests to be placed together. His opinion was based on the observation that since the children were separated into two foster homes, the children’s

behaviors are completely different. Fraley explained that their initial foster placement was disrupted because to the children's behavioral concerns played into each other, meaning that when one child got into trouble or acted out, the other children would imitate the behaviors both at home and at school.

{¶16} According to Fraley, since the separation of the children, their behaviors are different. Regarding the three children who live together, Fraley explained the youngest boy still needs the most attention and care, but the oldest boy is progressing with minimal tantrums and his speech and skills are improving daily. Their sister has an IEP and participates in speech therapy, but her behavior can be somewhat inconsistent. Fraley testified that the foster mother has adapted to the needs of the children, and when the youngest boy acts out, she is able to redirect and calm him. The foster mother has also expressed a desire to adopt all three children.

{¶17} Regarding the two children in Northeast Ohio, Fraley testified that both girls are adapting well. The oldest is in counseling and has found structure in her foster home, and the younger girl is making improvements every day. According to Fraley, the girls' foster mother is undecided on adoption.

{¶18} The record supports the children's need for a legally secured permanent placement, which unfortunately cannot be achieved without a grant of permanent custody to the agency. The children have been in agency custody since August 2014. Clear and convincing evidence was presented that the children have individual specialized needs. The testimony at trial demonstrated that the current living environments of all the children satisfy those needs and a sense of structure has been instilled into their lives.

{¶19} The record shows that mother is unable to care for and safely and effectively parent the children based on their behavioral needs. Fraley testified that the only way for reunification would be if mother had constant live-in assistance to help her with the children, if she fully engaged in parenting the children, and if she had a full acknowledgment and understanding of the children's special needs, both separately or collectively.

{¶20} Fraley admitted that mother at one point completed her case plan, but said, that only meant that she could meet the children's basic needs. Even if she were able to secure stable housing again, Fraley opined that without full-time support, he was unsure whether mother would be able to provide for their specialized needs. Additionally, Fraley testified that although she completed parenting classes and received individualized mentoring through a supportive visitation coach, she has not benefitted from those sessions and has not remedied the parenting concerns that caused the referral for parenting. Specifically, mother was overwhelmed during visits and had difficulty redirecting the children when behavioral concerns arose. Testimony was given that mother would have to direct all of her attention to one specific child during the visits due to his behavioral issues, which caused the other four children to be isolated and ignored. Additionally, mother had to be reminded of the whereabouts of her children when they were out of her view.

{¶21} Although this court recognizes that mother had at one point substantially completed her case plan, mere completion is insufficient.

A parent's successful completion of the terms of a case plan is not dispositive on the issue of reunification. The ultimate question * * * is whether the parent has substantially remedied the conditions that caused the child's removal. A parent can successfully complete the terms of a case plan yet not substantially remedy the conditions that caused the children to be removed — the case plan is simply a

means to a goal, but not the goal itself. Hence, the courts have held that the successful completion of case plan requirements does not preclude a grant of permanent custody to a social services agency.

(Citations omitted). *In re C.C.*, 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360, ¶ 25 (8th Dist.).

{¶22} Upon review of the record, we find that the trial court weighed all relevant factors and made a decision in the best interest of all five children, individually and collectively. This court finds that clear and convincing evidence support the trial court's decision. Accordingly, the trial court did not abuse its discretion in granting permanent custody of the children to CCDCFS. Mother's assignment of error is overruled.

{¶23} 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.

KATHLEEN ANN KEOUGH, JUDGE

MELODY J. STEWART, P.J., and
LARRY A. JONES, SR., J., CONCUR