

[Cite as *In re K.P.*, 2019-Ohio-181.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107577

IN RE: K.P., ET AL.
Minor Children

[Appeal by Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD17901295, AD17901296, AD17901297, and AD17901298

BEFORE: Kilbane, A.J., S. Gallagher, J., and Jones, J.

RELEASED AND JOURNALIZED: January 17, 2019

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MARY EILEEN KILBANE, A.J.:

{¶1} Appellant ("Mother") appeals from the judgment of the Cuyahoga County Common Pleas Court, Juvenile Division, granting permanent custody of her minor children, K.P. (d.o.b. May 7, 2012), Z.P. (d.o.b. Jan. 2, 2014), Desi.J. (d.o.b. Dec. 4, 2014) and Desm.J. (d.o.b.

Dec. 4, 2014), to appellee Cuyahoga County Department of Children and Family Services (“CCDCFS” or the “agency”). For the reasons set forth below, we affirm.

{¶2} On January 17, 2017, CCDCFS refiled a complaint alleging mother’s children were neglected and dependent and requesting temporary custody. The previous complaint was filed on October 27, 2016, but was dismissed when there was no resolution within the 90-day statutory time frame.

{¶3} The refiled complaint alleged that on September 16, 2016, one of mother’s twin children, Desm.J., ingested fuel injection cleaner, was seriously injured, and subsequently hospitalized for over 30 days. The complaint alleged, among other things, that mother had a substance abuse problem, specifically marijuana, dating back to 2014, which impacts her ability to adequately care for her children; that at the time of Z.P.’s birth, both mother and child tested positive for marijuana; and that mother has two older children, who were placed in the legal custody of relatives, in part, because of mother’s substance abuse problem.

{¶4} On January 25, 2017, the trial court granted emergency custody of the children to CCDCFS. At an adjudication hearing on April 17, 2017, mother admitted the allegations contained in the refiled complaint. The magistrate adjudicated the children neglected and dependent, and the trial court approved and adopted the decision, committing the children to the temporary custody of CCDCFS.

{¶5} CCDCFS developed a case plan directed at effecting reunification. The plan required mother to undergo mental health and substance abuse assessment and follow through with recommended treatment, complete parenting classes, obtain stable housing, and have the ability to meet the children’s basic needs.

{¶6} CCDCFS also developed a case plan for the alleged father of three of the four children. Father's case plan required him to undergo substance abuse assessment and follow treatment recommendations, complete parenting classes, resolve outstanding issues in his criminal cases, obtain stable housing, and have the ability to meet the basic needs of the children.

In addition, CCDCFS developed a case plan for the alleged father of the fourth child to establish paternity.

{¶7} On October 23, 2017, CCDCFS filed a motion for permanent custody of mother's children. In support of this motion, CCDCFS alleged that the mother had completed the substance abuse assessment, but failed to complete the recommended outpatient treatment; mother completed the mental health assessment, but failed to engage in the recommended counseling; and that mother lacked stable housing, was evicted, and was living with a relative in a home without sufficient room to accommodate the children.

{¶8} CCDCFS also alleged that the alleged father of three of the four children completed the substance abuse assessment, but failed to engage in the recommended outpatient treatment; was inconsistent in his visitation of the children; lacked stable housing and the ability to meet the children's basic needs; and failed to resolve outstanding criminal cases. The alleged father of the fourth child failed to establish paternity, and his whereabouts were unknown.

{¶9} The matter proceeded to trial in June 14, 2018.

{¶10} Toni Cora ("Cora"), social worker with Murtis Taylor Community Center ("Murtis Taylor"), testified that CCDCFS referred mother to get assistance with her mental health and substance abuse barriers to mother's ability to parent her children. The mother did not complete any services to address these issues. Cora testified that the mother did not follow through on any recommended treatment option. In addition, Cora testified that mother eventually moved to

the west side of Cleveland, and her case was subsequently closed because Murtis Taylor did not have a west-side location.

{¶11} Angela Wilson (“Wilson”), parenting coach with Ohio Guidestone, testified the mother was referred to participate in that agency’s Nurturing Parenting Program. Wilson explained it is a four-month intensive program designed to help parents improve their skills through individual visitation and group sessions. Wilson testified that she received the referral in September 2017, but had difficulty contacting the mother, who would frequently reschedule appointments or forget about the appointments. Wilson testified that she eventually volunteered to pick up the mother and transport her to the group and visitation sessions. Wilson testified mother did not complete the four-month class until May 2018.

{¶12} CCDCFS social worker, Maia Antoine (“Antoine”), testified that mother’s case was transferred to her in October 2016. Antoine testified that the mother was referred to Recovery Resources for a dual assessment for mental health and substance abuse. The mother claimed to have done the assessment, but Antoine never received a copy. Antoine testified that a referral was also made for supportive visitation, wherein the mother would receive services in the caregiver’s house, but the service never commenced. Antoine testified that in July 2017, she was transferred to a different department, and that by that time, the mother had not availed herself of the substance abuse, mental health, or parenting services.

{¶13} CCDCFS social worker, Georgiana Proctor (“Proctor”), testified she was assigned the mother’s case in the summer of 2017. Proctor testified that by the time she received the case assignment, the mother had not obtained the mental health and substance abuse assessments, despite telling Antoine she had done the assessments. Proctor testified that in August 2017, she made another referral to Recovery Resources for the mother to get the assessments.

{¶14} Proctor testified that it was eight months before the mother began the substance abuse services. Proctor testified that, despite the case plan having been ordered since May 2017, and having been recommended for treatment as early as 2014, the mother did not begin substance abuse counseling until Spring 2018. Proctor testified that as of the date of trial, the mother had not completed any substance abuse treatment or produced any evidence of sobriety. Proctor testified that despite referrals to the various agencies, the mother never became fully engaged and was inconsistent with her sporadic attendance.

{¶15} Proctor testified that mother continued to reside with the alleged father of three of the four children through the Fall of 2017, when they were evicted, and that the father had not engaged in any case plan requirements.

{¶16} Proctor testified that in January 2018, the mother moved to a two-bedroom apartment with her boyfriend, but he believed it to be too small to accommodate six people. Proctor stated, that at one point, there were ten people residing in the apartment, and the apartment had no running water for a few months. Proctor testified that throughout the time she has been assigned this case, the mother has not been employed.

{¶17} Proctor testified that the mother was currently pregnant, and that the mother's two eldest children had been placed in the legal custody of relatives. Proctor testified that the four children were placed together with a relative; that the children were well bonded; that the twins have special needs, one for hearing loss and delayed speech, and the other for medical concerns regarding the poisoning accident.

{¶18} Guardian ad Litem ("GAL") Steven Friedman ("Friedman") acknowledged that there was a significant length of time that the mother was not addressing the case plan. Friedman recommended that the juvenile court extend the temporary custody for six months to

give the mother an opportunity to complete the necessary service. Friedman did not recommend returning the children to the mother.

{¶19} On July 20, 2018, the juvenile court awarded permanent custody of the four children to CCDCFS.

{¶20} Mother now appeals assigning the following errors for our review.

Assignment of Error One

The trial court erred when it found by clear and convincing evidence that the children could not be placed with the mother within a reasonable time.

Assignment of Error Two

The trial court erred when it found by clear and convincing evidence that granting the motion for permanent custody was in the best interest of the children.

Reasonable Time Determination

{¶21} In the first assignment of error, mother argues the trial court erred when it found the children could not be placed with her within a reasonable time.

{¶22} It is well established that a parent has a fundamental right to raise and care for his or her child. *In re L.M.*, 8th Dist. Cuyahoga No. 106072, 2018-Ohio-963, citing *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. *In re K.H.* at ¶ 40.

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 L.M.* at ¶ 16, citing *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).

{¶23} 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 J.M.*, 8th Dist. Cuyahoga No. 106487, 2018-Ohio-2305, citing *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860 (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 V.C.*, 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991, citing *In re J.B.* at ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14.

{¶24} In order for the juvenile court to grant permanent custody to CCDCFS pursuant to R.C. 2151.353, it must find by clear and convincing evidence one of the conditions set forth in R.C. 2151.414(B)(1), which provides:

(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.

{¶25} Additionally, the juvenile court must find by clear and convincing evidence that granting permanent custody to the agency is in the best interest of the child. *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). R.C. 2151.414(B); 2151.414(D).

{¶26} In the instant case, regarding the first prong, the juvenile court concluded that the children had not been in the custody of CCDCFS for 12 or more months of the past 22 months, and that the children cannot be placed with either parent within a reasonable time or should not be placed with the children's parent. R.C. 2151.414(E) lists factors for determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with his or her parents.

{¶27} In concluding that children could not be placed with either parent within a reasonable time or should not be placed with the parents, the juvenile court underscored R.C. 2151.414(E)(1), (E)(2), and (E)(4), which state:

(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 parents have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.

(2) Chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the

hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

(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[.]

{¶28} Here, we find competent, credible evidence in the record to support the juvenile court's findings that mother would not be able to parent her children within a reasonable time and that the children could not be placed with her within a reasonable time. Mother's reunification case plan included, but was not limited to substance abuse treatment, mental health assessment, parenting classes, obtaining safe housing, obtaining employment, and demonstrating the ability to meet the children's basic needs.

{¶29} However, the testimony at trial established that mother failed to complete the substance abuse treatment, failed to regularly engage in mental health counseling, failed to maintain regular employment, and failed to obtain suitable housing. The prevailing sentiment of the social service professionals who interacted with mother was that she lacked motivation to complete the case plan to effect reunification.

{¶30} We acknowledge that the GAL, while not advocating a return of children to mother, recommended that the juvenile court grant a six-month extension of temporary custody because mother had recently become more engaged. The GAL opined mother's recent compliance suggested a trend in the right direction.

{¶31} However, substantial compliance with a case plan is not dispositive in and of itself on the issue of reunification and does not preclude a grant of permanent custody to a social services agency. *In re A.G.*, 8th Dist. Cuyahoga No. 105254, 2017-Ohio-6892, citing *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, at ¶ 139. "The issue is not whether the parent

has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child's removal." *Id.*, quoting *In re McKenzie*, 9th Dist. Wayne No. 95CA0015, 1995 Ohio App. LEXIS 4618 (Oct. 18, 1995).

{¶32} Here, despite mother becoming more engaged as the hearing drew nearer, the conditions causing the children's removal had not been substantially remedied. As such, there was competent, credible evidence in the record to support the juvenile court's findings that mother would not be able to parent her children within a reasonable time and that the children could not be placed with her within a reasonable time.

{¶33} Accordingly, the first assignment of error is overruled.

Best Interests Determination

{¶34} In the second assignment of error, mother argues that the trial court erred when it determined that awarding permanent custody to CCDCFS was in the best interests of the children.

{¶35} As previously noted, under the second prong, the juvenile court must determine by clear and convincing evidence, that permanent custody is in the best interest of the child in accordance with the factors listed in R.C. 2151.414(D). *In re M.L.*, 8th Dist. Cuyahoga No. 105991, 2018-Ohio-750, citing *In re J.H.*, 8th Dist. Cuyahoga No. 105078, 2017-Ohio-7070, ¶ 39; *In re J.M.*, 8th Dist. Cuyahoga No. 104030, 2016-Ohio-7307, ¶ 50. In determining whether permanent custody is in the best interest of the child, the juvenile court consider 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, 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.

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

{¶36} The juvenile court has considerable discretion in weighing these factors. *In re J.H.* at ¶ 53. The best interest determination focuses on the child, not the parent. *In re A.C.*, 8th Dist. Cuyahoga No. 105347, 2018-Ohio-386, ¶ 36; *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, at ¶ 59. Although the juvenile court is required to consider each factor listed in R.C. 2151.414(D)(1), no one factor is given greater weight than the others pursuant to the statute. *In re T.H.*, 8th Dist. Cuyahoga No. 100852, 2014-Ohio-2985, ¶ 23, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Further, only one of the enumerated factors needs to be resolved in favor of an award of permanent custody. *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17; *In re N.B.*, 8th Dist. Cuyahoga No. 01390, 2015-Ohio-314, at ¶ 53.

{¶37} The juvenile court's July 20, 2018 journal entry reflects that it considered all of the relevant factors under R.C. 2151.414(D)(1). The juvenile court outlined its reasoning as

follows:

The Court further finds that reasonable efforts were made to prevent removal of the child [ren] from [their] home, or to return the child[ren] to the home, and to finalize the permanency plan, to wit: reunification. Relevant services provided to the family and the reasons those services were not successful are mental health, substance abuse, parenting, basic needs, and housing for mother. Mother has repeatedly failed to entirely complete case plan services. Substance abuse, parenting, housing, and basic needs for alleged father. Father has outstanding warrants in the Cleveland Municipal Court, did not complete services, has had sporadic visits with the child[ren], and has not been in contact with [CCDCFS].

{¶38} The record supports the juvenile court's findings. The testimony established that the mother is still hampered by the conditions that caused the children to be removed from the home. The mother took eight months to complete the four-month parenting program designed to improve her parenting skills. By the time of trial, mother had not completed any substance abuse treatment or produced any evidence of sobriety; had not obtained employment or housing deemed suitable by CCDCFS. The children were all placed with a relative and were bonding together well.

{¶39} Our review indicates there is sufficient competent, credible evidence in the record to support the juvenile court's determination that awarding permanent custody to CCDCFS was in the children's best interests.

{¶40} Accordingly, the second assignment of error is overruled.

{¶41} Judgment affirmed.

It is ordered that appellee recover of 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 common pleas court, 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.

MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
LARRY A. JONES, SR., J., CONCUR