

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE L.B.

A Minor Child

[Appeal by Li.B., Mother]

:
:
:
:

No. 108446

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: August 22, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-18911292

Appearances:

R. Tadd Pinkston, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Anthony R. Beery, Assistant Prosecuting Attorney, *for appellee.*

LARRY A. JONES, SR., J.:

{¶ 1} Appellant-Mother appeals the trial court's granting of permanent custody of L.B. to the Cuyahoga County Department of Children and Family Services ("CCDCFS" or "agency"). For the reasons that follow, we affirm.

{¶ 2} In 2018, CCDCFS filed a motion for permanent custody of L.B. The matter proceeded to a hearing, at which the following evidence was presented.

{¶ 3} Mother is the mother of five children, including L.B.¹ Mother does not have custody of any of her children — three of her children are in the custody of paternal grandfather and the agency has permanent custody of the fourth child.

{¶ 4} Mother is a habitual drug user with a drug history dating back to 2003. L.B. was born drug-dependent in 2016, the second of Mother's children to be born drug-dependent. After L.B. was born and went through withdrawal, Mother entered a treatment facility with L.B. Mother soon relapsed and was discharged from the treatment facility. The agency took emergency custody of L.B. in April 2016, when he was two months old. Mother's case plan included substance abuse and mental health treatment.

{¶ 5} L.B. returned to his mother's care in May 2018, and the court granted protective supervision to the agency. Protective supervision remained in place until Mother completed a drug-court program through juvenile court. Approximately one month after Mother successfully completed her program, and less than a week after the agency terminated protective supervision, Mother relapsed on fentanyl, and the agency took emergency custody of L.B. and moved for permanent custody. At this time, L.B. had been in mother's care for approximately four months of his life.

{¶ 6} When the agency moved for permanent custody in September 2018, the county also moved for predispositional temporary custody, but did not seek

¹ L.B.'s father is unknown.

emergency custody of L.B. because Mother was living with a friend who could temporarily serve as a “sober support” to Mother and caregiver for L.B. The agency ultimately determined that Mother’s friend could not take custody of L.B. because Mother resided in her friend’s house and continued to use drugs. The agency also had concerns with regard to the friend’s ability to care for L.B. long-term because the friend was the sole caregiver for his adult son, who had special needs.

{¶ 7} Mother continued to use drugs and refused drug screens so the agency moved for emergency custody of L.B. The court granted the agency’s motion and found that L.B. was a dependent child. At the time of the February 2019 permanent custody hearing, Mother openly admitted to her case worker that she continued to abuse heroin and fentanyl. Despite agency efforts, Mother was also not participating in case-plan services.

{¶ 8} The case worker testified that Mother had completed substance abuse programs in the past, but relapsed. Mother visited with the child and those visits were appropriate. Mother was employed and had housing, but had to move if she wanted her child placed in that home.

{¶ 9} The case worker testified that L.B. was with the same foster mother since being placed in agency custody, was doing well in the foster home and had no special needs, and the foster mother expressed an interest in adopting L.B.

{¶ 10} L.B.’s guardian ad litem wrote a report recommending permanent custody to be in L.B.’s best interest. She testified at the hearing that her recommendation had not changed since she wrote the report.

{¶ 11} The trial court granted the agency's motion and placed L.B. in the permanent custody of CCDCFS. This timely appeal followed.

{¶ 12} Mother raises two assignments of error for our review:

I. 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 child[].

II. The trial court erred when it failed to grant mother's request to continue the permanent [custody] hearing.

{¶ 13} We address the second assignment of error first. In the second assignment of error, Mother contends that the trial court erred when it would not continue the permanent custody hearing.

{¶ 14} The decision whether to grant a continuance is within the "broad sound discretion of the trial court." *In re M.W.*, 8th Dist. Cuyahoga No. 103705, 2016-Ohio-2948, ¶ 13. A trial court's decision whether to grant a continuance is therefore not subject to reversal absent a finding of abuse of discretion. *In re K.D.*, 8th Dist. Cuyahoga No. 81843, 2003-Ohio-1847, ¶ 10. An appellate court may only find that a trial court abused its discretion if it finds that the decision of the trial court was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 15} According to Mother, the court erred in denying her motion; Mother wanted a continuance so the agency could continue to investigate whether Mother's friend, whom she lived with, could gain legal custody of L.B.

{¶ 16} First, we note that there was no motion for legal custody pending at the time of the permanent custody hearing. R.C. 2151.353(A)(3) requires that prior to awarding legal custody to “either parent or to any other person,” the person requesting legal custody must file a motion requesting legal custody and a signed statement of understanding. Neither of these requirements had been met.

{¶ 17} Additionally, the agency case worker testified that the agency had previously determined that Mother’s friend was not a suitable placement option for L.B. because Mother continued to reside in the house and abuse drugs. The case worker testified that the agency began to investigate the friend as a placement option, but had to stop its investigation once the agency discovered Mother resided in the home. Moreover, Mother was aware for the four months prior to the permanent custody hearing that her residing with her friend was a barrier to placement of L.B. with the friend, but Mother continued to reside in the house.

{¶ 18} In light of the above, the trial court did not abuse its discretion in denying Mother’s motion to continue the permanent custody hearing, and the second assignment of error is overruled.

{¶ 19} In the first assignment of error, Mother contends that the trial court erred in granting permanent custody of L.B. to the agency.

{¶ 20} A trial court must make two determinations before granting permanent custody. First, it must find that one of the factors listed in R.C. 2151.414(B)(1) exists. If the court finds one of those factors exists, then, second, it

must find that permanent custody is in the child's best interest under R.C. 2151.414(D)(1).

{¶ 21} The standard of proof to be used by the trial court in deciding a permanent custody case is clear and convincing evidence. The Supreme Court of Ohio has defined clear and convincing evidence as

the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

In re Estate of Haynes, 25 Ohio St.3d 101, 104, 495 N.E.2d 23 (1986).

{¶ 22} We will not reverse the judgment of the trial court when some competent, credible evidence supports its findings. *In re Z.D.*, 8th Dist. Cuyahoga No. 107878, 2019-Ohio-2337, ¶ 20, citing *In re Marano*, 4th Dist. Athens No. 04CA30, 2004-Ohio-6826, ¶ 12. Accordingly, we must determine if competent, credible evidence supports the trial court's findings regarding both the best interest of the child and the requirements of R.C. 2151.414(B)(1)(a)-(e). *In re Z.D.* at *id.*

{¶ 23} As mentioned, only one of the factors under R.C. 2151.414(B)(1) must exist to satisfy the first step in a permanent custody proceeding. One of the factors is that 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. R.C. 2151.414(B)(1)(a) and (E). The trial court here made that finding; Mother does not

challenge it, and the record, on its face, clearly and convincingly supports the finding.

{¶ 24} Thus, the trial court had to consider whether permanent custody was in L.B.'s best interest. In making that determination, the trial court was required to "consider all relevant factors," including 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).

{¶ 25} "[O]nly one of the best-interest-of-the-child factors needs to be present to grant an award of permanent custody." *In re Z.D.* at ¶ 22, citing *In re S.C.*, 8th Dist. Cuyahoga No. 102350, 2015-Ohio-2410, ¶ 30.

{¶ 26} The trial court stated that it considered the best-interest factors and found, pursuant to R.C. 2151.414(E)(9), that Mother

placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

{¶ 27} The court also found, pursuant to R.C. 2151.414(E)(11), that Mother had her parental rights terminated with respect to one of L.B.'s siblings and "failed to provide clear and convincing evidence to prove, that notwithstanding the prior termination, that she can provide a legally secure permanent placement and adequate care for L.B.'s health, welfare and safety."

{¶ 28} Mother contends that there was not clear and convincing evidence to support the trial court's finding that permanent custody was in L.B.'s best interest because L.B. was bonded to Mother and her friend. Mother also claimed that L.B.'s custodial history had been "secure with Mother" and L.B.'s medical needs were met when the child resided with Mother.

{¶ 29} The record shows that while L.B. may have bonded with Mother and her friend, the court was to consider all best-interest factors and needed to only find that one of the factors applied. The trial court found multiple best-interest factors applied. We disagree with Mother's claim that the custodial history has "been secure with Mother." The child has been in agency custody for most of his short life. He was only in Mother's custody for a short time after he was born and for a few months

in the fall of 2018. Both times Mother suffered relapses and the child was placed in agency custody.

{¶ 30} While it is unfortunate, the facts of this case demonstrate that Mother is unable to provide long-term stability or permanency for L.B. She has struggled with addiction for over 15 years and does not have custody of her other four children. L.B. was born drug-dependent, Mother relapsed three times since L.B. was born, and L.B. has twice been removed from her care. In addition, the record shows that Mother has shown no interest in engaging in services to reunify with L.B. Mother admitted to the agency case worker that she was regularly using heroin or fentanyl and would not take a drug test because she knew she would fail the test.

{¶ 31} Finally, although Mother proposed her friend taking legal custody as an alternative to permanent custody, Mother resides with this friend and continues to abuse drugs. Although Mother contends that she was willing to move out of the home, she failed to do so between the four months prior to the permanent custody hearing.

{¶ 32} Therefore, we find that the trial court's finding that permanent custody was in the best interest of the child was supported by clear and convincing evidence.

{¶ 33} The first assignment of error is overruled.

{¶ 34} 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 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.

LARRY A. JONES, SR., JUDGE

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