

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE M.H., ET AL.	:	
	:	No. 108444
Minor Children	:	
	:	
[Appeal by L.W., Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 7, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD-16912847, AD-16912848, AD-16912849, AD-
16912850

Appearances:

Mark A. Stanton, Cuyahoga County Public Defender, and
Britta M. Barthol, Assistant Public Defender, *for*
appellant.

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Ashley L. Thomas-Sosic, Assistant
Prosecuting Attorney, *for appellee*.

EILEEN A. GALLAGHER, J.:

{¶ 1} Appellant-mother L.W. (“mother”) appeals the trial court’s decision
terminating her parental rights and granting permanent custody of four of her minor

children to appellee Cuyahoga County Department of Children and Family Services (“CCDCFS”). We affirm.

Factual Background and Procedural History

{¶ 2} Mother has 14 children. Five children had reached the age of majority by August 2016 when CCDCFS filed a complaint for dependency and temporary custody as to the remaining nine, minor children. As noted, this appeal relates to mother’s four youngest children, M.H., MC.H., L.W. and C.W. All four of these children entered agency custody in September 2016.

{¶ 3} The children were adjudicated dependent in November 2016. Around that time a case plan was implemented which included the requirement that mother obtain housing and see that the children’s basic needs were met:

Mother will establish and maintain stable, safe and appropriate housing for her and the [children]. They are to maintain housing for at least a 6 month period of time. Mother will ensure that all of the [children’s] basic needs (food, clothing, shelter, medical care and education) are met on a regular basis. They are to maintain all utilities.

{¶ 4} In July 2018, CCDCFS filed a motion for permanent custody. The hearing on that motion occurred in March 2019. By that time, the children had been in agency custody for nearly two-and-a-half years. In that time, mother failed to secure appropriate housing for the children and was residing in a homeless shelter.

{¶ 5} At the hearing on its motion, CCDCFS presented two witnesses. The first witness, Catherine Brindza, was an extended worker assigned to the case in August 2016. She testified that she worked with the family for about two years.

When Brindza began working with the family, mother had been living at a nursing home where she was recovering from a stroke she suffered earlier that spring.

{¶ 6} Brindza testified that mother was released from the nursing home in January 2017 and that she secured housing upon release. Some of mother's older children lived with her in that home. Brindza stated that the house was "appropriate," but acknowledged that it failed to meet mother's special needs, particularly mobility issues that resulted from her stroke including being confined to a wheelchair. Mother was evicted from this home in February 2018.

{¶ 7} In March 2018, mother began residing at a homeless shelter, where she has remained, living with two of her adult children.

{¶ 8} Brindza testified that mother has had significant financial problems. She is not able to budget or otherwise manage her finances. This has contributed to mother's inability to find and maintain housing. Brindza testified that mother has failed to address this problem, as evidenced by the fact she has continued to reside in a homeless shelter.

{¶ 9} Brindza noted that although mother's physical impairment and mobility limitations did contribute to her inability to find adequate housing, there was also concern as to whether mother was "diligent" in her attempts to find housing in the first place. Mother stated she was "comfortable" living in the shelter.

{¶ 10} Brindza further testified that mother received some financial assistance from the government but that she had never known mother to be employed and that mother had never expressed a desire to become employed.

Finally, Brindza stated that she inquired of mother several times whether she had any relatives or next of kin who would be appropriate for placement or custody of the children, but that mother stated “there isn’t anyone.”

{¶ 11} CCDCFS also called Gabrielle Uhrin to testify, the extended worker currently assigned to the case. Uhrin assumed the case in approximately October 2018. She testified that the case plan had not changed and underscored that finding housing was a primary objective.

{¶ 12} Uhrin testified further about mother’s unwillingness or inability to secure housing. For example, she stated that in October 2018, mother was approved for housing through the Cuyahoga Metropolitan Housing Authority but that mother declined the placement and stated that she “just didn’t like the home.” Uhrin stressed to mother that housing should be her first priority and that mother asked her “why can’t I just live in the shelter with all the kids?”

{¶ 13} Uhrin expressed doubt as to mother’s ability to parent and discipline the children, explaining that during visitations mother “just kind of sits there.” She observed that in general the children do not listen to her and described visitation as “chaotic,” noting that the kids “kind of run around” and play with each other, indicating that mother is not involved. As an illustration, Uhrin described a visitation where the children consumed “a lot” of candy. Mother told one child that “you don’t want to do that * * * it’s a lot of sugar.” The child ignored her. Uhrin described the child as having “four lollypops in his mouth at once” amongst other

candies and stating “he just wants to be hyper, that’s what he wants to do, so he was gonna [sic] do it.”

{¶ 14} Uhrin contrasted this experience with her observation of the children during foster home visits. She described the children as being “pretty respectful” to the foster parents. She testified that “[t]hey’re doing a lot better than the first time I visited them. They’re listening well. They’re doing their chores.” She explained that one child’s behavioral issues have “significantly decreased.”

{¶ 15} Echoing Brindza’s testimony, Uhrin agreed that mother had never expressed any interest in “additional referrals with regard to basic needs or employment or anything of that nature.” Moreover, she never sought or expressed interest in extending visitation with the children and that she has never known mother to be employed.

{¶ 16} There was evidence presented that mother and two of her adult children, one of whom was herself pregnant, had been approved for a housing voucher for three bedrooms. There was also some indication that a possible housing unit had been identified. However, by the date of the hearing this unit had not been inspected and mother was still residing at the homeless shelter.

{¶ 17} The children’s guardian ad litem unequivocally recommended that CCDCFS be awarded permanent custody of the children. Although she expressed without doubt that mother loves the children, she opined that the “kids’ needs go before adults’ needs, and these kids need permanency.” In her report she stated “[m]other has not yet remedied the causes for her Children’s removal. She still does

not have a home. She still has not shown any long-term ability to maintain financial resources to ensure ability to consistently meet the Children's basic needs." The guardian ad litem testified that "if [mother] could change the circumstances she certainly would, but as a practical matter, these four children have been out of her custody for two years, five months, and ten days."

{¶ 18} Following the hearing on CCDCFS's motion for permanent custody, the court found there was clear and convincing evidence to grant the motion and terminate mother's parental rights to the four children. This appeal follows.

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

(1) 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.

(2) The trial court's finding that it was in the best interests of the children to be placed in the permanent custody of the agency pursuant to R.C. 2151.414(D)(1) was not supported by clear and convincing evidence.

Because these assignments of error are interrelated we discuss them together.

Law and Analysis

{¶ 20} The right to raise one's own child is "an essential and basic civil right." *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67, quoting *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997); *see also In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990) (a parent has a "fundamental liberty interest' in the care, custody, and management" of his or her child), quoting *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). However, this right is not absolute. It is "always subject to the ultimate welfare of

the child, which is the polestar or controlling principle to be observed.” *In re L.D.*, 2017-Ohio-1037, 86 N.E.3d 1012, ¶ 29 (8th Dist.), quoting *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979).

{¶ 21} Because termination of parental rights is “the family law equivalent of the death penalty in a criminal case,” *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14, it is “an alternative of last resort.” *In re Gill*, 8th Dist. Cuyahoga No. 79640, 2002-Ohio-3242, ¶ 21. It is, however, “sanctioned when necessary for the welfare of a child.” *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 7, citing *In re Wise*, 96 Ohio App.3d 619, 624, 645 N.E.2d 812 (9th Dist.1994). “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.* at ¶ 66, quoting *In re Hitchcock*, 120 Ohio App.3d 88, 102, 696 N.E.2d 1090 (8th Dist.1996). Where parental rights are terminated, the goal is to create “a more stable life for the dependent children” and to “facilitate adoption to foster permanency for children.” *In re N.B.* at ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, 5 (Aug. 1, 1986).

R.C. 2151.414(D)(2)

{¶ 22} R.C. 2151.414(D)(2) sets forth a list of circumstances, which, if satisfied, mandates a finding that permanent custody is in the best interest of the child. R.C. 2151.414(D)(2) states:

If all of the following apply, permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency:

(a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

(b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.

(c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.

(d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

See also In re H.C., 7th Dist. Harrison Nos. 13 HA 5 and 13 HA 6, 2013-Ohio-5871, ¶ 32 (“[T]he R.C. 2151.414(D)(2) best interest test requires the court to find permanent custody is in the child's best interest and commit the child to permanent custody of the agency if the four listed conditions are met.”). “Clear and convincing evidence” is that “measure or degree of proof” that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *In re M.S.*, 2015-Ohio-1028, at ¶ 8.

{¶ 23} Mother's challenge to court's R.C. 2151.414(D)(2) determination consists of her contention that “the record lacks sufficient, competent, credible

evidence to support the court's finding" as to subdivision (a). As such, she essentially concedes that subdivisions (b), (c) and (d) were satisfied.

{¶ 24} As previously stated, subdivision (a) requires the trial court to make a two-part determination. First, the court must determine that at least one factor in R.C. 2151.414(E) exists. Second, the court must determine that the child cannot be placed with his or her parent in a reasonable time or that the child should not be placed with a parent.

{¶ 25} Although subdivision (a) only required the trial court to find that one factor in division (E) existed, the court nevertheless articulated four such factors, each of which was independently sufficient to satisfy the requirement. Undergirding the court's findings was mother's failure to secure housing and provide for the children's basic needs.

{¶ 26} Pursuant to division (E)(1) the court found:

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

{¶ 27} Pursuant to division (E)(4) the court found:

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} Pursuant to division (E)(14) the court found:

The parent is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or mental neglect.

{¶ 29} Pursuant to division (E)(15) the court found:

The parent has committed abuse against the child or caused or allowed the child to suffer neglect and the Court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

{¶ 30} Based on the evidence presented at the hearing, we cannot conclude that the court erred in making these findings. We disagree with mother's assertion that "the record lacks sufficient, competent, credible evidence to support the court's finding." To the contrary, we find the record is replete with evidence indicating that at the time of the hearing mother had been, and continued to be, unwilling or otherwise unable to secure housing for the children and provide for their basic needs. That mother has failed to address these deficiencies is dispositive. We find no error.

R.C. 2151.414(D)(1)

{¶ 31} R.C. 2151.414(D)(1) sets forth an alternative basis by which a trial court may terminate parental rights and grant permanent custody of a child to CCDCFS completely independent of division (D)(2). *In re J.B.*, 8th Dist. Cuyahoga No. 97995, 2012-Ohio-3087, ¶ 22, fn. 2, citing *In re M.K.*, 10th Dist. Franklin Nos. 09AP-1141 and 09AP-1142, 2010-Ohio-2194, ¶ 22 and *In re K.H.*, 2d Dist. Clark No. 2009-CA-80, 2010-Ohio-1609, ¶ 56. Before a court grants permanent custody to the agency pursuant to R.C. 2151.414(D)(1) it must first satisfy a two-prong test.

{¶ 32} First, the court must find by clear and convincing evidence that one of the following conditions set forth in R.C. 2151.414(B)(1)(a) through (e) exists:

(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.

R.C. 2151.414(B)(1).

{¶ 33} Second, 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. *Id.* "Clear and convincing evidence" is that "measure or degree of proof" that

“produce[s] in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *In re M.S.*, 2015-Ohio-1028, at ¶ 8.

A juvenile court’s decision to grant permanent custody will not be reversed as being against the manifest weight of the evidence “if the record contains some competent, credible evidence from which the court could have found that the essential statutory elements for permanent custody had been established by clear and convincing evidence.”

In re G.W., 8th Dist. Cuyahoga No. 107512, 2019-Ohio-1533, ¶ 62, quoting *In re A.P.*, 8th Dist. Cuyahoga No. 104130, 2016-Ohio-5849, ¶ 16. Moreover, the best interest determination focuses on the child, not the parent. *N.B.*, 2015-Ohio-314, at ¶ 59.

{¶ 34} R.C. 2151.414(D)(1) states that in determining whether permanent custody is in a child’s best interest, the court “shall 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 * * *;

(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 [R.C. 2151.414(E)(7) to (11)] apply in relation to the parents and child.

{¶ 35} No one factor is to be given greater weight than the others. *In re T.H.*, 8th Dist. Cuyahoga No. 100852, 2014-Ohio-2985, ¶ 23. Although the juvenile court is required to consider each factor listed in R.C. 2151.414(D)(1), only one of the factors set forth in R.C. 2151.414(D)(1) needs to be resolved in favor of permanent custody. *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17.

{¶ 36} The court has considerable discretion in weighing these factors. We review a court's determination of a child's best interest for abuse of that discretion. *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47.

{¶ 37} Mother argues that the court erred in determining that awarding CCDCFS permanent custody was in the children's best interest. She asserts that the determination regarding the second prong is "against the weight of the evidence and as it is not supported by clear and convincing evidence." Mother does not dispute that CCDCFS established the first prong, i.e., that one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) exists.

{¶ 38} Here, in its orders terminating parental rights and awarding permanent custody of the four children to CCDCFS, the court identified the factors it considered in determining that permanent custody was in the children's best interests:

Upon considering the interaction and interrelationship of the child with the child 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 a 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 not be placed with either parent.

{¶ 39} We reiterate that R.C. 2151.414(D)(1) requires only one factor to resolve in favor of permanent custody before a court may make such an award. We find that the evidence of mother's unwillingness or inability to secure adequate housing and meet the children's basic needs, squarely establishes that these needs would not otherwise be achieved without a grant of permanent custody to CCDCFS. *See* R.C. 2151.414(D)(1)(d). Accordingly we find no abuse of discretion. We overrule the assignments of error.

{¶ 40} 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 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.

EILEEN A. GALLAGHER, JUDGE

ANITA LASTER MAYS, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR