

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE L.M., ET AL.	:	
	:	No. 108761
Minor Children	:	
	:	
[Appeal by M.M., Father]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 21, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 18910941, AD 18910942, and AD 18910943

Appearances:

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

Michael C. O'Malley, Cuyahoga County Prosecutor, and
Anthony R. Beery and Cheryl Rice, Assistant Prosecuting
Attorneys, *for appellee.*

SEAN C. GALLAGHER, J.:

{¶ 1} Appellant M.M. (“father”) appeals the judgment of the Juvenile Division of the Cuyahoga County Court of Common Pleas that terminated his parental rights and granted permanent custody of three children to the Cuyahoga

County Division of Children and Family Services (“CCDCFS” or “the agency”). Upon review, we affirm the judgment of the trial court in the case of each child.

Background

{¶ 2} On September 5, 2018, CCDCFS filed a complaint in each of the underlying cases alleging three young children to be abused and neglected, and seeking temporary custody of the children. The complaint raised a number of concerning allegations regarding the care and well-being of the children, including the children being observed wandering the neighborhood looking for food, living in an unsanitary home with a lack of food, being filthy, having head lice, having bruises and marks on their bodies, and not being enrolled in school. The complaint alleged that mother fails to provide appropriate supervision for the children, does not have an appropriate residence, has a substance abuse problem, fails to provide the basic needs for the children, and has anger management issues. The complaint alleged that father has failed to establish paternity for the children, has failed to consistently support, visit, or communicate with the children, and was involved in pending criminal proceedings. CCDCFS was granted predispositional custody of the children, and the children were placed in a foster home.

{¶ 3} On November 30, 2018, the children were adjudicated to be abused and neglected, and on December 4, 2018, they were committed to the temporary custody of CCDCFS. Father failed to appear at these proceedings. The magistrate found that neither mother nor father had visited the children since they were committed to emergency custody, neither parent had complied with the case plan,

and father had not established paternity. The magistrate's decisions were adopted by the trial court.

{¶ 4} On February 27, 2019, CCDCFS filed a motion to modify temporary custody to permanent custody. The social worker of record filed an affidavit indicating that mother had not completed case plan services; that father had not established paternity; that father had a substance abuse problem, specifically heroin; and that although father completed a substance-abuse treatment program, he had relapsed.

{¶ 5} On May 22, 2019, the guardian ad litem ("GAL") for the children filed a report and recommendation for a grant of permanent custody to CCDCFS. The GAL raised a number of concerns regarding the condition of the children upon their arrival in the foster home, including signs of abuse, being underweight, and having educational and developmental-delay issues. The GAL indicated that the children's needs were being met in the foster home, their interactions were healthy and appropriate, and the foster parents wished to adopt all the children. The GAL noted ongoing concerns regarding mother, including a number of mental health issues, substance abuse issues, the children's home schooling, and the children not getting immunizations. The GAL noted that father had allegedly not been in the children's lives since the youngest child was born, had alleged mental health issues, and had unresolved criminal cases involving drug-related charges and domestic violence. The GAL indicated that neither mother nor father had substantially complied with

case plan services or shown that they had benefitted from any services that may have been completed.

{¶ 6} A hearing was held on May 29, 2019. Neither parent appeared for the hearing. The trial court denied the request of father's trial counsel for a continuance.

{¶ 7} The social worker of record testified the circumstances that caused the children to be removed from their home included concerns that the children were left at home unattended, the children were found left outside alone, mother's drug paraphernalia was accessible, and the home was unclean and unsafe. The social worker testified to mother's case plan services, which included parenting, housing, and substance abuse. Although mother engaged in substance abuse services, she failed to comply with a number of agency requests and she failed to provide urine screens to verify sobriety. Also, she did not allow the social worker to verify if the conditions of the home had improved.

{¶ 8} Although the social worker did not have contact with father, she did have contact with his father, who had some contact with him. The social worker was informed that father was in a sober-living facility, but no additional information was provided. When the social worker called to verify if father was in the treatment facility he was in previously, she was informed he was not there.

{¶ 9} The social worker testified that father is the "alleged father," that he had not made any efforts to establish paternity of the children, that he has a substance abuse issue with heroin, that he had not provided any information to verify that he is in treatment, and that he had outstanding warrants for his arrest.

There also were concerns of domestic violence and physical abuse of the children. The social worker indicated that the children disclosed that they had been the victims of abuse.

{¶ 10} The social worker testified that neither parent had visited with the children since they were placed in custody. The alleged paternal grandparents had visited with the children on one occasion; however, they did not reach out for further visits. Although the alleged paternal grandfather had expressed some interest as to placement, he had his own medical concerns and was not sure if he could financially care for the children.

{¶ 11} The social worker indicated that the children were in foster care and were doing very well in their foster home. The foster parents were interested in adopting the children. The social worker conceded that the agency had not sought any extensions in temporary custody.

{¶ 12} The GAL testified to his belief that a grant of permanent custody was in the best interest of the children. He referred to his report and recommendation and noted the conditions under which the children were taken into custody and their bond with the foster parents. He also testified that he did not believe an extension was warranted because there was no substantial progress on the case plan.

{¶ 13} At the conclusion of the hearing, the trial court denied father's trial counsel's oral motion to extend temporary custody. The court granted permanent custody of the children to CCDCFS and terminated the parental rights and responsibilities of mother and the "alleged father."

{¶ 14} Father timely filed this appeal. He raises three assignments of error for our review.

Law and Argument

{¶ 15} Under his first assignment of error, father claims he was denied due process of law when the trial court proceeded without him at the permanent custody hearing.

{¶ 16} We review the trial court's denial of a motion for continuance for an abuse of discretion. *In re J.C.*, 8th Dist. Cuyahoga No. 106272, 2018-Ohio-2234, ¶ 10. An appellate court may find that a trial court abused its discretion only 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). Pursuant to Juv.R. 23, "[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties." Furthermore, R.C. 2151.414(A)(2) requires that a juvenile court hold a hearing on a public children services agency's motion for permanent custody no later than 120 days after the agency files a motion for permanent custody, though a reasonable continuance may be granted "for good cause shown."

{¶ 17} Father argues that his trial counsel requested a continuance of the permanent-custody hearing because father was in a drug-treatment facility, that no other continuances had been requested, that the children had been in the custody of CCDCFS for less than six months, and that he should have been afforded time to complete his inpatient treatment. However, the request for a continuance was not

made until the time of the permanent-custody hearing after father failed to appear. Father failed to appear at proceedings throughout the case, his attorney had no firsthand knowledge of whether father was in a drug-treatment facility, and there was no independent verification that father was actually in a treatment facility.

{¶ 18} As this court has previously recognized, a parent's right to be present at a custody hearing is not absolute and although courts must ensure that due process is provided, "a parent facing termination of parental rights must exhibit cooperation and must communicate with counsel and with the court in order to have standing to argue that due process was not followed in a termination proceeding." *In re C.K.*, 8th Dist. Cuyahoga No. 108313, 2019-Ohio-4167, ¶ 20, quoting *In re Q.G.*, 170 Ohio App.3d 609, 2007-Ohio-1312, 868 N.E.2d 713, ¶ 12 (8th Dist.). Any potential prejudice to a party denied a continuance must be weighed against a trial court's "right to control its own docket and the public's interest in the prompt and efficient dispatch of justice." *In re C.K.* at ¶ 20, quoting *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981). The record reflects that father was represented by competent counsel and that a continuance would have inconvenienced the witnesses, opposing counsel, and the GAL, who were present and ready to proceed with the hearing.

{¶ 19} After examining the record in this case, we conclude that the trial court properly exercised its discretion in denying the requested continuance. Father's first assignment of error is overruled.

{¶ 20} Under his second assignment of error, father claims that the trial court abused its discretion by denying his motion for extension of temporary custody. However, as CCDCFS argues, there was no need for an extension in this matter since the order of temporary custody was good for one year from when the underlying complaint was filed. *See* R.C. 2151.353(G). The complaint was filed on September 4, 2018, and the permanent-custody hearing was held on May 29, 2019. Thus, had the court found permanent custody was not in the children’s best interest, the court could have simply denied the agency’s motion and continued the existing order of temporary custody. We find no abuse of discretion and overrule father’s second assignment of error.

{¶ 21} Under his third assignment of error, father argues that the trial court abused its discretion when it determined that an award of permanent custody to CCDCFS was in the children’s best interest.

{¶ 22} R.C. 2151.414(B) provides that permanent custody of a child may be awarded to a children services agency if the court finds, by clear and convincing evidence, that (1) it is in the best interest of the child to grant permanent custody of the child to the agency, and (2) that any of the conditions listed in R.C. 2151.414(B)(1)(a)-(e) apply. In each child’s case, the trial court found the “child is abandoned” and father concedes that the condition listed in R.C. 2151.414(B)(1)(b) was satisfied since he had not visited with the children for 90 days. He focuses his argument on the best-interest determination.

{¶ 23} In determining the best interest of a child, R.C. 2151.414(D)(1) directs the trial court to consider “all relevant factors,” including, but not limited to the following: (1) the interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster parents, and out-of-home providers, and any other person who may significantly affect the child; (2) 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; (3) the custodial history of the child; (4) 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 (5) whether any of the factors set forth in R.C. 2151.414(E)(7) to (11) apply. R.C. 2151.414(D)(1)(a)-(e). In conducting a best-interest analysis under R.C. 2151.414(D), “[t]he court must consider all of the elements in R.C. 2151.414(D) as well as other relevant factors. There is not one element that is given greater weight than the others pursuant to the statute.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56.

{¶ 24} The trial court stated in each decision that it considered the above factors in making its determination, and the record reflects that the trial court considered all relevant factors for the best-interest determination. At the time the children were placed in custody, they were living under horrific circumstances. The record reflects that father had abandoned the children and never established paternity of the children.¹ Neither parent had visited with the children since they

¹ The issue of standing has not been raised.

were placed in the custody of CCDCFS, nor had they substantially complied with their case plan. The children had been in the custody of the agency for over eight months at the time of the hearing, and both the social worker and the GAL recommended an award of permanent custody to the agency. The children were in need of a legally secure placement and were receiving appropriate care in the same adoptive foster home. The trial court made a number of findings pertaining to both mother and father that were supported by the record. In addition, the trial court found the allegations of the agency's motion had been proven by clear and convincing evidence.

{¶ 25} Although father claims the trial court should have continued temporary custody to allow him the opportunity to engage in and complete case plan services, the best-interest determination focuses upon the child, not the parent. “[A] juvenile court is not required to extend temporary custody if it finds that a child’s best interest would not be served by an extension[.]” *In re Da.B.*, 8th Dist. Cuyahoga No. 105886, 2018-Ohio-689, ¶ 17. Upon our review, we find that there is competent, credible evidence in the record supporting the trial court’s best-interest determination. Father’s third assignment of error is overruled.

Conclusion

{¶ 26} Upon our review of the record, we find the trial court’s decision in each child’s case was supported by competent, credible evidence and was not against the manifest weight of the evidence. We affirm the trial court’s decisions awarding

permanent custody of each child to CCDCFS and terminating the parental rights of mother and father.

{¶ 27} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

{¶ 28} 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.

SEAN C. GALLAGHER, JUDGE

EILEEN T. GALLAGHER, P.J., and
LARRY A. JONES, SR., J., CONCUR