

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

In re T.J., et al.	:	
	:	No. 107304
Minor Children	:	
	:	
Appeal by Mother	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: March 14, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD-16917710, AD-16917711, AD17918672

Appearances:

Stephanie B. Scalise, *for appellant.*

Michael C. O'Malley, Prosecuting Attorney, Michelle A.
Myers, Assistant Prosecuting Attorney, *for appellee.*

PATRICIA ANN BLACKMON, J.:

{¶ 1} Tr.J. (“Mother”) appeals from the trial court’s judgment granting permanent custody of her children, T.J., C.S., and B.J., to the Cuyahoga County Division of Children and Family Services (“CCDCFS”) and assigns the following error for our review:

I. The trial court erred by granting permanent custody of these Children to CCDCFS when the agency failed to refer a parent for case

plan services, failed to establish any connection between the marijuana use and its impact on parenting, and there was still time within the statutory structure for the parent to remedy the causes of removal.

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court's judgment. The apposite facts follow.

{¶ 3} On December 5, 2016, CCDCFS filed a complaint alleging that T.J. and C.S. were neglected, and the court awarded emergency custody to the agency on January 6, 2017. The complaint alleged that Mother: was not meeting the medical needs of C.S., who was born with a bowel condition; was leaving the children with various relatives without notifying the relatives of her whereabouts; was not providing for the children's basic needs; and had substance abuse issues. CCDCFS filed a case plan for Mother on January 12, 2017, which included completing a substance abuse assessment, substance abuse treatment, participating in a parenting program, and obtaining stable and appropriate housing.

{¶ 4} In March 2017, the court held a hearing and found that Mother had not completed substance abuse treatment or any of the other objectives recommended in her case plan. The court adjudicated T.J. and C.S. neglected, and temporary custody was granted to the agency in March 2017. On October 25, 2017, CCDCFS filed a motion to modify temporary custody to permanent custody.

{¶ 5} On December 11, 2017, Mother gave birth to B.J. At the time of the birth, Mother tested positive for marijuana, and emergency custody was awarded to CCDCFS on December 13, 2017. In B.J.'s case, CCDCFS sought permanent custody from the beginning. In February 2018, B.J. was adjudicated dependent, and

dispositional hearings were held for all three children on May 16 and May 17, 2018. On May 24, 2018, the court found that Mother was not consistent with her case plan in relation to: establishing paternity, drug and alcohol assessment, substance abuse treatment, housing, random drug screens, and meeting the basic needs of the children. The court granted permanent custody to CCDCFS. It is from this order that Mother appeals.

Standard of Review

{¶ 6} An agency may obtain permanent custody of a child in two ways. *In re J.M-R.*, 8th Dist. Cuyahoga No. 98902, 2013-Ohio-1560. First, an agency may obtain temporary custody and then file a motion to modify to permanent custody. *See* R.C. 2151.413. Second, an agency may file a complaint for permanent custody as an original action. *See* R.C. 2151.27(C) and 2151.353(A)(4). In the case at hand, C.S. and T.J. are the subjects of a motion to modify temporary custody to permanent custody, while B.J. is the subject of a complaint for permanent custody. We review both situations under the following standard.

R.C. 2151.414 established a two-part test for courts to apply when determining a motion for permanent custody to a public services agency. The statute requires the court to find, by clear and convincing evidence, that (1) granting permanent custody of the child to the agency is in the best interest of the child under R.C. 2151.414(D), 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 22-month period. R.C. 2151.414(B)(1).

In re J.M-R. at ¶ 26.

Testimony

{¶ 7} At the dispositional hearings, the following evidence was presented. Jamessa Motley testified that she is a Child Protection Specialist in Extended Services with CCDCFS, and she is the case worker for T.J., who was two years old at the time of the hearing; C.S., who was one year old; and B.J., who was almost six months old. All three children have different biological fathers, although paternity has not been established for any of them. CCDCFS opened its case against Mother in November 2016, and Motley has been the case worker since December 2016. T.J. and C.S. have been in CCDCFS's custody since January 2017, and B.J. has been in the agency's custody since the child's birth in December 2017.

{¶ 8} Motley testified that when she first received this case, she "was unable to locate mother for approximately two months." Motley's initial concern was Mother's medical neglect of C.S., who "was born with a bowel condition that required surgery shortly after birth, and follow-up care upon his discharge from the hospital." According to Motley, she was also concerned because the children were not living with Mother. "They were being just left with relatives who also were not aware of what the circumstances were regarding [C.S.'s] medical needs, so no one was meeting his needs." Motley testified that Mother's "whereabouts were not consistently known, and then we received the information about her substance abuse." According to some of Mother's relatives, "[Mother] was just kind of bouncing from place to place."

{¶ 9} Motley testified that she was “finally able to meet with” Mother in March 2017, and the initial case plan had a goal of reunification of the children with Mother. The case plan included the following objectives to reach this goal: “obtaining and maintaining stable and appropriate housing, to address her substance abuse concerns by first completing a drug assessment, and then following any and all recommendations to that, as well as a parenting program to address the concerns of decision-making with regards to caring for the children.” Additionally, paternity needed to be established for all three children so that CCDCFS could attempt to locate the fathers.

{¶ 10} Asked if CCDCFS was able to make referrals for services to assist Mother with her case plan, Motley answered as follows:

[Mother] initially was working with a gentleman — I cannot remember his name offhand — that she stated was assisting her in receiving services. However, she was in and out of the picture frequently.

There was [sic] a lot of issues with not being able to locate her. There were a lot of issues with phone numbers. She’d give us a phone number at one point in time. Shortly after that, that’s not a working phone number.

It was very hard to keep track of her and where she was. There were also issues because we didn’t know where she was staying either. So we can’t exactly put a referral in for a Community Collab when we don’t know where she’s actually residing to begin.

{¶ 11} Motley testified that, at the time of the hearing, she did not know what Mother’s current housing situation was.

She provided me an address a couple of months ago, and a co-worker and I went out to that address. Upon arriving there a gentleman opened the door. I asked if she was there. He said that she doesn’t live there.

I explained that she told me that she did, and he said that she does not live there. She comes there from time to time, but she does not reside there.

So I left. And shortly after I left, I received a call from her asking why I had shown up to the house, and I explained I usually do a visit to see where you're staying. If you say this is where you're staying, I need to verify that.

And she told me that she does in fact live there, but he didn't know who I was so he wasn't going to tell anyone that she was there.

{¶ 12} Motley further testified that she identified herself to this gentleman as Mother's case worker and showed him her county identification badge.

{¶ 13} As to Mother's alleged substance abuse, Motley testified that Mother "had previously gone through inpatient drug treatment twice and was not successful with it * * *." Motley referred Mother for a substance abuse assessment, but Mother failed to attend the appointment. Motley further requested random drug screens for Mother.

This has been an ongoing concern because she has not been consistent with going for me when requested.

We ask that you go within 24 hours of receiving the phone call or whatever type of contact asking to complete the screens, and this has been an ongoing issue that she's not been able to do.

There's been several incidents where she's lost her ID or when asked to go, she did not go for several days. So she has not been consistent with following through.

And most recently, she has gone, but her screens have been positive [for] marijuana.

{¶ 14} Motley testified that at the time of the hearing, Mother had not achieved sobriety. According to Motley, Mother's most recent positive drug screens

were February 23, 2018 and April 19, 2018, which was approximately three months and one month prior to the dispositional hearings. “She is reported to be attending Recovery Resources in an outpatient treatment program; however, since her admission to starting the program in March, her marijuana levels have actually increased * * * when they tested her.” Motley received a letter from Recovery Resources dated April 12, 2018 regarding Mother, which stated, in part, as follows:

As of 4-12-2018 [Mother] has successfully completed 12 of the required 32 sessions at Recovery Resources. Overall, [Mother] has displayed minimal participation, but is willing to participate when prompted.

Urine screens are conducted at least twice a week. [Mother] has submitted positive urine screens for marijuana * * * which indicates carboxy-THC levels as 545 on 3-14-2018.

Client continued to test positive for THC in the next lab confirmation on 4-10-2018 which indicates carboxy-THC levels increased to 923, evidence of continued use.

{¶ 15} Other than Recovery Resources, Mother has not engaged in any other substance abuse services during the pendency of this case. Motley further testified that no referrals were made for Mother to attend parenting programs, “because we would like to see the parent sober before we refer them to a parenting program so they can actually understand and benefit from the services that are being provided.”

{¶ 16} Accordingly to Motley, Mother started a parenting program at Beech Brook, although this was not via a CCDCFS referral. A representative from the program confirmed to Motley that Mother attended seven out of nine of the classes; however, “[t]hey don’t give any progress opinions on whether she’s benefitting or anything of that nature.” This representative also told Motley that Mother “would

be appropriate for another parenting program that they had that's called Steps which actually works with them to understand milestones and boundaries and things of that nature with children her children's age."

{¶ 17} On cross-examination, Mother's attorney asked Motley why mental health was not a part of Mother's case plan. Motley testified that there was no mental health diagnosis for Mother and she denied having mental health issues. Counsel introduced into evidence medical records from B.J.'s birth that stated that Mother had "a history of depression." Motley testified that she did not refer Mother for a mental health assessment because "I couldn't even get mom to do the first drug assessment."

{¶ 18} Motley next testified about whether CCDCFS explored less restrictive alternatives to terminating Mother's parental rights. "Initially, we were trying to work with the children's maternal great-grandmother as a potential placement. The concern was that she is married and though she did follow through with the background check and the fingerprinting, her husband was not willing to do so. So as a result of that, we were not able to place the children with her."

{¶ 19} CCDCFS also considered Mother's sister, C.J., for placement of the children. At the time that emergency custody of T.J. and C.S. was given to CCDCFS, there was evidence that C.S. had been staying with C.J. Motley had concerns about this, because C.S. was "significantly more disheveled" than T.J., who had been staying with another relative.

He was dirty. He has severe eczema that had not been cared for which resulted in a scab that was running the length of his forehead, around the back of his head above his ear to his neck that was not being addressed properly. We actually had to bathe him at the hospital and change him out of all the clothes that we picked him up in because the clothes were so filthy and they had such an odor to them.

{¶ 20} Motley further testified that it was not clear exactly who C.S. was living with at the time the agency took permanent custody of the children because they were picked up at a daycare.

{¶ 21} According to Motley, C.J. was not initially interested in permanent custody of the children. However, in February or March 2017, “she came into the picture stating that she did have an interest.” C.J. self-reported to CCDCFS that she used marijuana, and as a result, C.J. had a substance abuse assessment where it was recommended that she submit to random drug screens. Similar to Mother, C.J. was inconsistent with completing the drug screens. When she did complete the screens, C.J.’s results were mostly negative, although she tested positive for marijuana in April 2018, approximately one month prior to the dispositional hearings.

{¶ 22} Motley further testified that C.J. provided inconsistent or conflicting information to CCDCFS. For example, she said that she could not submit to various drug tests because her car was not working; however, Motley knew that C.J.’s driver’s license was suspended at the time. Additionally, although the home in which C.J. was living was appropriate for the children, it did not match the Cleveland Metropolitan Housing Authority (“CMHA”) address that she listed to receive

government assistance. Motley reported the discrepancy to the CMHA fraud department.

{¶ 23} Motley next testified about Mother's visitation with the children while they were in the temporary custody of CCDCFS. Visits were scheduled every Friday for two hours. "For a period of time mom was very sporadic with her visitation. She has significantly increased within the last couple months." Motley explained that Mother had to confirm that she would attend a visitation "by noon the day prior to the visit," because her inconsistency in showing up was becoming problematic. As to the substance of the visits, Motley testified that Mother "interacts with the children to an extent. There haven't been any safety concerns or anything during the visits with mom."

{¶ 24} According to Motley, all three children are currently residing in the same foster home, this home has been their only placement, and the foster parents have interest in adopting all of them. Motley testified that the children are "very well bonded" with the foster parents and "[t]here have not been any concerns with their ability to care for the children." On cross-examination, Motley testified that she addressed minor issues with the foster parents, such as C.S.'s shoes being too big for him and T.J. exhibiting "some aggressive behavior."

{¶ 25} Keara Mullen, who is a social worker for the public defender's office, testified that she has been working with Mother since March 20, 2018. Mullen testified as to Mother's "case plan compliance." According to Mullen, Mother was scheduled to graduate from the intensive outpatient substance abuse program

through Recovery Resources “in the next week.” Mother told Mullen that she had been attending sessions five days a week for three hours a day. Mother was also attending parenting classes, with “one more class” to go, and she obtained employment at Dunkin Donuts.

{¶ 26} Mullen testified that she and Mother discussed Mother’s visitation with her children. “She had a big smile and she said it was going very well, and she was happy to see her children.”

{¶ 27} Mullen testified that, in her experience with chemical dependency social work, when she sees a client who is completing substance abuse treatment, yet still testing positive for drugs, “that in the past I’ve actually made recommendations for psychiatric evaluations or further assessment.” Mullen elaborated: “Mostly because with substances, there’s a high prevalence of dual issues, comorbid dual diagnosis issues, that can come up that aren’t always caught in the initial assessment * * *.”

{¶ 28} Mullen testified that, upon Mother’s request, she completed a home visit to C.J.’s house on March 29, 2018. C.J., her daughter, and two other children “were watching TV and everyone seemed happy and clean. And then the house itself was to me very appropriate, clean, and acceptable. * * * It was a very pleasant environment. I found it to be clean, safe, sanitary, tidy, especially for having three kids there at the time. It was, you know, very tidy and a pleasant environment.”

{¶ 29} On cross-examination, Mullen testified that all her information was self-reported by Mother and C.J. Mullen has not spoken with any service providers or anyone else to verify the information that Mother and C.J. provided to her.

{¶ 30} C.J. testified that she is Mother's sister and she treats Mother's children as her own. She had a relationship with T.J. and C.S. until CCDCFS took custody of them, and she did not really build a bond with B.J., because he was taken as soon as he was born. However, she went with Mother to "every other Friday visit" with the children. At these visits, C.J. would "play with the kids, read books to them, sing our A-B-Cs, dance, and just family stuff every chance we get with them." C.J. further testified that she was asking for legal custody of Mother's children.

{¶ 31} C.J. testified that, although she is not formally employed, she does "hair some." She lives on the west side of Cleveland and has for the past three to four years. C.J.'s lease for this house was entered into evidence, and it was established that CMHA is not involved in this rental. Asked about a CMHA property on the east side that she was associated with, C.J. testified that she moved from a "conflict" and "drama" area on the east side to a house on the west side so she could enroll her daughter in a good school. According to C.J., she was still waiting for CMHA to find her a place on the west side. However, under advisement from the court that she had a right to remain silent given the fraud allegation by Motley, C.J. testified that, despite moving from the CMHA property three or four years ago, she did not contact CMHA until "two months ago" and they "okayed [her] unit today."

{¶ 32} C.J.'s recollection of her interactions with Motley differs from Motley's recollection. According to C.J., she told Motley she was interested in custody of the children the day the agency took them away. C.J. testified that Motley "wrote down as a complaint" that she was not compliant with drug screens after C.J. did not "drop because she called me at a bad time." According to C.J., "I kept calling her so I could come in and drop my urine, but she never answered after I missed that first one. So she never answered after that." Furthermore, asked if Motley ever came to her home, C.J. replied "No."

{¶ 33} On cross-examination, C.J. was asked again if Motley had ever been to her home. She replied, "To my knowledge, I don't remember her coming out to my house other than when she came and got the boys." When Mother's attorney showed C.J. the document she signed acknowledging the home visit on November 13, 2017, C.J. testified, "Now I do remember her coming out that time, and she made me sign a paper. She never checked the house."

{¶ 34} C.J. further testified that the guardian ad litem ("GAL") has never seen her interact with the children because C.J. failed to show up for the visit the GAL arranged on April 6, 2018.

{¶ 35} Patricia Lanzy, who is the children's GAL in the case at hand, testified about a report she submitted in December 2017. The GAL was appointed to this case in December 2016, and she first met with the children at their great-grandmother's house. The GAL had several visits with Mother and the children, and in her opinion, Mother loves her children. The GAL spoke with Mother about stable

housing, indicating that she may be eligible for CMHA assistance. The GAL also visited with the children in their foster home, and “the children seemed to be bonded with the foster parents as well. I found the foster home to be appropriate.” The GAL further testified that “the foster parents are interested in adoption for the children. They told me that on several occasions.”

{¶ 36} The GAL testified as follows about her recommendation in this case:

In the report I recommended permanent custody should be granted to the Agency because the children were in need of a stable home and they needed their basic needs to be met.

At this time I don’t feel that the mom has the ability for what the children need for their basic needs.

The mom did explain to me that she was living with her boyfriend and his mother, and she didn’t have room for the children.

The aunt, because she hasn’t complied completely with the Agency as far as the drug testing, her drug testing came back positive, in my report I said if the children — if permanent custody was granted and the children would be eligible for adoption, that the adoption agency could make a better determination as to the foster parents.

I know they are interested in adoption, and if the aunt was interested in adoption, I felt that the adoption agency could make a better determination.

{¶ 37} The GAL agreed that Motley and CCDCFS have not referred Mother for services, including housing, parenting, and mental health concerns. The only referral that was made was for a substance abuse assessment, and as of the time of the hearings, Mother still had not completed this assessment. The GAL testified that it was her understanding that the agency would not make any referrals until Mother addressed her substance abuse issues. The GAL noted that Mother was 20 years old

at the time of the hearings, and it was unclear to the GAL if any services would benefit Mother, or if she just needed to “mature.” The GAL stated that Mother “does care about her children,” but she moved around to the point that the GAL “really didn’t know where she was living most of the time.”

Analysis

Best Interest of the Children — R.C. 2151.414(D) Factors

{¶ 38} In determining the best interest of the children, “the court shall consider all relevant factors, including, but not limited to, the following”:

{¶ 39} Under factor (a), the court should consider the interaction and relationship of the children with their family, including their foster parents. In the case at hand, the court found that all three fathers abandoned the children. Mother appears to love her children, although she has not consistently met their basic needs. Specifically, the court found that “Mother has demonstrated a lack of commitment towards the child[ren] by failing to provide an adequate permanent home for the child[ren] and regularly support the child[ren]. Mother is unwilling to provide shelter or to prevent the child from suffering emotional, mental neglect as evidenced by [her] unwillingness to successfully complete the case plan so she can provide care for the child[ren].” Mother’s sister, C.J., also appears to provide some support to the children, although this was inconsistent. The foster parents are bonded with the children, and they have interest in adopting all three of them.

{¶ 40} Under factor (b), the court should consider the wishes of the children. In the case at hand, the children were all too young to express their wishes and they

were represented by a GAL. The GAL did not testify as to the children's wishes, but we are mindful that T.J., the oldest child, was two years old at the time of the hearings.

{¶ 41} Under factor (c), the court should consider the custodial history of the children. At the time of the dispositional hearings in this case, T.J. and C.S. had been in CCDCFS's temporary custody for just over 16 months. B.J. had been in the agency's custody for just over five months, or from when he was two days old.

{¶ 42} Under factor (d), the court should consider the children'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." The children in this case are in the infant-to-toddler age range. Their need for a legally secure permanent placement is high. CCDCFS attempted to achieve this without granting permanent custody to the agency by providing Mother with objectives and a case plan, as well as exploring the possibility of other maternal relatives taking custody. The children's great-grandmother's husband was unwilling to permanently care for the children, and the agency determined that the children's aunt, C.J., was not a viable option.

{¶ 43} The court concluded that, "based upon the testimony and evidence presented, the recommendation of the Guardian ad Litem for the child[ren] and after considering all relevant factors, including but not limited to each of the factors listed [in] R.C. 2151.414(D) * * *, than an order of Permanent Custody is in the

child[ren]’s best interest.” We find that this conclusion is supported by clear and convincing evidence in the record.

Whether the Children Cannot be Placed With Mother Within a Reasonable Period of Time or Should not be Placed with Mother — R.C. 2151.414(E) Factors

{¶ 44} Pursuant to R.C. 2151.414(E), when determining whether the children can or should be placed with Mother, the court should use a clear and convincing evidence standard to consider all relevant evidence, including 15 delineated statutory factors. If the court determines that one or more of the factors exist, the court should find that the children “cannot be placed with either parent within a reasonable time or should not be placed with either parent.” We will review only the factors pertinent to the case at hand.

{¶ 45} Factor (1) states that “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 continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home.” In the case at hand, the court found that Mother was not consistent with her case plan, despite the agency’s reasonable efforts toward the goal of reunification. As a result, the court concluded that the children “cannot be placed with [Mother] within a reasonable time or should not be placed with [M]other.”

{¶ 46} Mother argues on appeal that she was making progress on her case plan “despite the admission by CCDCFS that no referrals had been made for housing

or parenting services.” However, this court has held that a case plan is a means to an end, and “[s]imply because a parent complies with the requirements of his or her case plan does not mean that the parent has sufficiently remedied the conditions that caused the child to be removed from the parent’s custody.” *In re J.H.*, 8th Dist. Cuyahoga No. 105078, 2017-Ohio-7070, ¶ 46. In the case at hand, Motley explained why she did not refer Mother to services other than a substance abuse assessment, which Mother failed to complete. Motley reasoned that Mother would not benefit from services while she was still using drugs. Furthermore, Mother had no housing secured at the time of the hearings and she was not meeting the basic needs of her children.

{¶ 47} Factor (2) states that “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 * * *.” In the case at hand, the court found that Mother “has a chemical dependency problem.” Although the court did not elaborate in the severity of the problem, the issue was central to the testimony presented at the hearings. Mother tested positive for drugs at B.J.’s birth, Mother failed to take the basic first step of completing a substance abuse assessment, and Mother tested positive for drugs at multiple urine screens, including at two while she was in an outpatient drug treatment program. Throughout the pendency of this case, Mother has never provided an adequate permanent home for the children. In fact, the testimony shows that she did not have an adequate permanent home for herself.

{¶ 48} Factor (4) states that the “parent has demonstrated a lack of commitment toward the child[ren] 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[ren].” The court in this case found that Mother failed to support her children. Although she visited with her children on a somewhat consistent basis, there is no evidence in the record that the children ever lived with Mother or that she ever provided them with their basic needs. Before T.J. and C.S. were put in temporary custody of the agency, they lived with Mother’s relatives. B.J. was taken into custody two days after he was born, straight from the hospital.

{¶ 49} Although the court need find only one R.C. 2151.414(E) factor exists to conclude that the children cannot or should not be placed with Mother, the court in this case analyzed the three factors noted above in making its determination. The court’s findings that Mother failed to achieve any of the objectives in her case plan, failed to remedy the conditions that caused the children to be removed from her care, continued to abuse drugs, and failed to maintain any type of housing — let alone an adequate and permanent home appropriate for her children — are supported by clear and convincing evidence in the record.

{¶ 50} Upon review, we find there is clear and convincing evidence in the record to support the two-part test found in R.C. 2151.414 regarding granting permanent custody of the children to the agency. Accordingly, Mother’s sole assigned error is overruled.

{¶ 51} 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.

PATRICIA ANN BLACKMON, JUDGE

**EILEEN T. GALLAGHER, P.J., and
EILEEN A. GALLAGHER, J., CONCUR**