

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: :
R.G., : No. 12AP-748
(B.M., : (C.P.C. No. 09JU-10-14390)
Appellant). : (REGULAR CALENDAR)

D E C I S I O N

Rendered on March 12, 2013

Robert J. McClaren, Franklin County Children Services, for appellee.

William T. Cramer, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

BROWN, J.

{¶ 1} B.M. ("mother"), appellant, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which the court granted the motion of Franklin County Children Services ("FCCS"), appellee, for permanent custody with regard to R.G., mother's son.

{¶ 2} Mother has four children, the youngest of which is R.G. R.G. was born in January 2009. Mother had the other three children during the term of a prior marriage that ended in divorce. Mother gave up the third child for adoption. When the other two children were three or four years old, their father picked them up for visitation and never returned them.

{¶ 3} FCCS received a referral for R.G. in August 2009, after R.G.'s father had been physically abusive toward mother, resulting in injury to both mother and R.G. FCCS

filed a complaint on October 30, 2009, alleging R.G. was neglected and dependent. A guardian ad litem ("GAL"), Brandon Novosad, was appointed. R.G. was subsequently adjudicated as dependent, and temporary custody was granted to FCCS. A case plan was established. Two extensions of temporary custody were granted to permit the parties to complete their case plans.

{¶ 4} On June 16, 2011, FCCS filed a motion for permanent custody. On the first day of trial, April 25, 2012, mother did not appear due to a medical emergency, and father voluntarily decided not to contest FCCS' motion. The trial was continued until June 25, 2012, and mother appeared at that hearing. After a trial, the court issued a judgment on August 15, 2012, in which the court granted FCCS' motion for permanent custody. Mother appeals the judgment of the trial court, asserting the following assignments of error:

[I.] The juvenile court's finding that permanent custody is in the best interest of the child is not supported by clear and convincing evidence.

[II.] The agency failed to demonstrate that it made reasonable efforts to reunify the family.

{¶ 5} Mother argues in her first assignment of error that the trial court's decision regarding the best interest factors in R.C. 2151.414(D) was not supported by clear and convincing evidence. A trial court's determination in a permanent custody case will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Andy-Jones*, 10th Dist. No. 03AP-1167, 2004-Ohio-3312. Judgments supported by some competent, credible evidence going to all essential elements of the case are not against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), paragraph one of the syllabus.

{¶ 6} A decision to award permanent custody requires the trial court to take a two-step approach. First, pursuant to R.C. 2151.414(B)(1), a trial court must find whether any of the following apply:

(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.

{¶ 7} Once the trial court finds that one of the circumstances in R.C. 2151.414(B)(1)(a) through (d) apply, the trial court then must determine whether a grant of permanent custody is in the best interest of the child. FCCS must prove by clear and convincing evidence that an award of permanent custody is in the child's best interest. R.C. 2151.414(B)(1). Clear and convincing evidence is that degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the facts to be established. *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. It is more than a mere preponderance of the evidence but does not require proof beyond a reasonable doubt. *Id.*

{¶ 8} With regard to the first step of the permanent custody analysis, mother does not contest that the trial court correctly determined that the child had been in the custody of FCCS for 12 months or more of a consecutive 22-month period prior to the hearing. Thus, R.C. 2151.414(B)(1)(d) has been satisfied.

{¶ 9} Mother contests only the trial court's findings regarding the best interest factors. R.C. 2151.414(D) provides that, in determining the best interest of the child, the

court must 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 caregivers, 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 GAL, with due regard for the maturity of the child, (3) 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 12 or more months of a consecutive 22-month period, (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 to the agency, and (5) whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child. The factors set forth in R.C. 2151.414(E)(7) through (11) include: (1) whether the parents have been convicted of or pled guilty to various crimes, (2) whether medical treatment or food has been withheld from the child, (3) whether the parent has placed the child at a substantial risk of harm due to alcohol or drug abuse, (4) whether the parent has abandoned the child, and (5) whether the parent has had parental rights terminated with respect to a sibling of the child.

{¶ 10} In her brief, mother does not specifically identify which factors she contests but presents several arguments regarding the trial court's findings on certain issues. However, mother's arguments relate to only two of the best interest factors, R.C. 2151.414(D)(1)(a) and (d).

{¶ 11} With regard to R.C. 2151.414(D)(1)(a), which looks at the child's interaction and interrelationship with others, mother first argues that everyone agreed that she had a strong bond with R.G. and that the visits went well. We agree that the evidence demonstrated there was a bond between R.G. and mother and visits were appropriate. However, the trial court pointed out several negative issues with regard to the relationship between R.G. and mother that mother fails to acknowledge. The court cited psychologist Meleesa Hunt's testimony that mother had difficulty during visitations in several respects. The record supports the trial court's findings. Hunt testified that mother did not recognize cues that R.G. was giving her, such as she insisted on feeding and taking photographs of R.G. when he was clearly not interested in doing so, and Hunt had to redirect mother to

move on to other activities because R.G. would get upset. Hunt also testified that mother was not able to lead the child in an activity upon request.

{¶ 12} Furthermore, the trial court pointed out problems with mother's in-home parenting classes. The record supports the trial court's findings. Carol Johnson, mother's former caseworker, testified that, although mother participated in in-home parenting classes, they were stopped after four months because mother was not making progress and there were concerns about possible domestic violence in the home. As the trial court found, Johnson stated that, during one of the at-home parenting skills sessions, mother left R.G. with the worker, and when she did not return, the worker found mother outside smoking and arguing with M.C., mother's boyfriend. Johnson explained that, although mother did well in the one-hour visitations, she had difficulty engaging with R.G. for the four hour in-home sessions.

{¶ 13} Also relevant to this factor, mother argues that the psychologist testified that she only had minor personality disorders that were unlikely to affect her ability to parent. However, the trial court found that mother's inability to respond to the child's cues was due to her narcissistic personality disorder and interest in satisfying her own needs instead of the child's. The trial court's finding was based upon Hunt's testimony that although mother did not suffer from any significant mental health issues, she had narcissistic traits. Hunt described mother as "very, very self-focused – very self-absorbed." Hunt also said mother had elevated but moderate histrionic traits and self-defeating traits, and she had significant elevation in the mild range for anxiety. It is true that Hunt stated that having anxiety and being self-absorbed, in and of themselves, would not make the person an unsuitable parent, but we agree with the trial court that these characteristics may be considered in determining the overall best interest of the child. Therefore, although the witnesses all agreed that mother had a bond with R.G., the evidence also supported the trial court's conclusion that mother had trouble focusing on R.G.'s care for long periods, had difficulty reading R.G.'s cues, and had narcissistic traits that hampered her ability to care for R.G. Mother had ample time to work on these problems but apparently was unable to improve them. Taking all of these factors into account, the evidence weighs more strongly in favor of granting permanent custody to FCCS with regard to R.C. 2151.414(D)(1)(a).

{¶ 14} Mother's remaining arguments fall under R.C. 2151.414(D)(1)(d), which looks at the child's need for a legally secure placement. Mother first argues that she had stable housing and stable income. Although the trial court did find that mother has social security income, the court stated she has housing issues. The trial court found mother's testimony not credible that she had moved from her last housing unit due to bugs and roaches, when FCCS presented an exhibit showing that she was evicted from those premises on March 16, 2012. The court concluded that, although mother had acquired new housing as of the time of trial, she had not proven she had acquired stable housing for a reasonable period.

{¶ 15} On the housing issue, mother testified that she lived at one address for one year, the next address for eight months, a motel for two weeks until her new apartment was ready, and then an apartment for three weeks prior to trial. She said she left her previous apartment because of roaches and it was unsafe. Johnson, mother's former caseworker, agreed that mother had stable housing. However, the GAL, did not believe mother had taken the steps necessary for stability in the home. The GAL said he would have liked to have seen mother's housing situation stabilize. He did not know if he would characterize it as stable housing because she had just moved recently.

{¶ 16} Based upon this testimony, we agree with the trial court to the extent that mother had been in her current residence for only a few weeks at the time of trial so it was difficult to term her housing stable. Her prior housing situations were relatively stable, save the two weeks she spent in a motel. We do not necessarily view her housing situation as unstable, but we can find no error in the trial court's conclusion that mother had failed to prove she had acquired stable housing. Overall, this factor does not weigh in favor of mother, but does not weigh heavily against her either.

{¶ 17} Mother further contests the trial court's mention of "drug issues." The trial court found that mother has used cocaine, crack, and marijuana in the past; has avoided a second drug and alcohol assessment; and has been non-compliant with drug screenings since June 29, 2010. Mother claims that her drug abuse is in her past. Mother asserts although her initial drug screens were positive, it was because R.G.'s father smoked marijuana while she lived with him, and all of the subsequent tests were clean with no

indication of ongoing drug abuse. Mother also points out that she obtained a drug and alcohol assessment early in the process and there was no recommendation for treatment.

{¶ 18} We agree with the trial court's assessment of the evidence. Mother admitted in her testimony that she used marijuana and crack cocaine four to six months prior to R.G.'s birth. Mother's arguments that she tested clean for drugs after the initial tests and there was no indication of ongoing drug abuse fall flat. Hunt testified that she could not get a clear drug history for mother. Johnson testified that mother completed only 24 of 102 drug screens ordered. Johnson personally reminded mother that she was required to complete the drug screens and also reminded her in bi-monthly letters. Of the 24 completed screens, 10 were clean and 14 were positive for drugs. Johnson testified that any missed drug screen is considered a positive test, so mother's claim that she never tested positive after the initial 14 tests is disingenuous. Furthermore, Latricia Henry, mother's caseworker, testified mother had not completed an alcohol and drug assessment. Taken as a whole, we agree with the trial court that mother has drug issues that weigh against the best interests of R.G.

{¶ 19} As for the case plan, mother argues that the caseworker admitted that she completed nearly all of her case plan. Mother asserts that the only substantial piece that was not completed was the domestic violence assessment. She claims there was little evidence of any ongoing domestic violence. She also points out that she severed ties with R.G.'s father, and there was no actual evidence of domestic violence with M.C. On this issue, the trial court pointed out that both the provider for the in-home parenting sessions and the intake workers for the mental health center were concerned mother was being abused based upon bumps, bruises, and a black eye, as well as M.C.'s overbearing personality during appointments.

{¶ 20} Again, the testimony at trial supports the trial court's views. The case plan called for a domestic violence assessment, and mother never received such. Mother testified that FCCS did not tell her how and where to get a domestic violence assessment. She said she was aware of the domestic violence assessment requirement, but she did not believe it was her responsibility to figure out how to get it done. She said she tried to call her caseworker to get the information for the assessment, but she always received her voicemail. However, Johnson testified that she discussed the domestic violence referral

with mother in person and in written letters, but mother never followed through with obtaining the assessment.

{¶ 21} Furthermore, the domestic violence assessment was important to the case plan, as there had been incidents of past domestic violence with R.G.'s father and renewed concerns regarding M.C. There was much testimony presented raising legitimate concerns about M.C.'s aggressive and hostile behavior. Hunt testified that, after mother became upset and inconsolable during testing, she escorted mother out of her office to talk to M.C., and M.C. became aggressive and demanded to know why Hunt was following mother. When Hunt told M.C. that this was mother's evaluation and not his, he became more agitated. M.C. and mother went outside the building and were yelling, and after 45 minutes, mother returned to Hunt's office. Additionally, after Hunt completed her parent/child observation, mother became upset, loud, and agitated after Hunt asked her some questions. M.C. heard mother from the lobby and came into Hunt's office. Hunt told M.C. to leave because it was not his evaluation, but M.C. disagreed. She eventually told them that the building was closing, and they had to leave, but they refused. After Hunt said she would call the police, M.C. left. Thereafter, M.C. was not allowed to return to the office building. Mother's and M.C.'s behavior concerned Hunt because it would not be good for the welfare of a young child. Johnson testified as to similar concerns regarding M.C.'s behavior. She said that in-home parenting classes were stopped after four months based, in part, upon the provider's concern regarding domestic violence in the home. Johnson said that during one of the in-home parenting sessions, mother left R.G. for an extended period and was found outside arguing with M.C. Johnson testified she was concerned about M.C. being violent toward mother. She said mother appeared at various times with bumps, bruises, and a black eye. Johnson also testified that at least two service providers were thwarted in their attempt to complete services with mother due to M.C.'s interruptions. Although we agree that there was no firm evidence that mother was the victim of physical abuse, the trial court raised a legitimate concern about domestic violence based upon the testimony.

{¶ 22} Viewing all of the evidence presented on whether R.G. is in need of a legally secure placement under R.C. 2151.414(D)(1)(d), we believe the evidence weighs more in favor of finding the need exists. Mother's housing stability was unclear at the time of trial,

she had experienced drug issues in the past coupled with approximately 80 missed drug screens since 2010, and she failed to complete a domestic violence assessment, which was significant given her past abuse involving R.G.'s father and the currently volatile relationship with M.C. When considering all of the factors, including the others analyzed by the trial court, we cannot find the trial court's judgment was against the manifest weight of the evidence. The court's judgment is supported by some competent, credible evidence going to all essential elements of the case. Therefore, mother's first assignment of error is overruled.

{¶ 23} Mother argues in her second assignment of error that the agency failed to demonstrate that it made reasonable efforts to reunify the family. Mother asserts that the domestic violence component was arguably the most important aspect of the case plan and the only aspect of the case plan that mother failed to complete, but FCCS merely told mother to get her domestic violence assessment at North Central Mental Health ("North Central"), which told her that it did not conduct domestic violence assessments, and no other guidance from FCCS was forthcoming. Mother contends it is not fair or proper for the agency to refer her to an entity that refuses to do the required assessment and then do nothing more.

{¶ 24} "When the state intervenes to protect a child's health or safety, '[t]he state's efforts to resolve the threat to the child before removing the child or to permit the child to return home after the threat is removed are called "reasonable efforts." ' " *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, ¶ 28, quoting Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U.Pub.Int.L.J. 259, 260 (2003).

{¶ 25} Pursuant to R.C. 2151.419(A)(1), there are certain instances where an agency must prove that it made reasonable efforts. However, the Supreme Court of Ohio has held that " '[b]y its plain terms, the statute [requiring reasonable efforts] does not apply to motions for permanent custody brought pursuant to R.C. 2151.413, or to hearings held on such motions pursuant to R.C. 2151.414.' " *In re C.F.* at ¶ 41, quoting *In re A.C.*, 12th Dist. No. CA2004-05-041, 2004-Ohio-5531, ¶ 30. *See also In re S.S.*, 10th Dist. No. 05AP-204, 2005-Ohio-4282, ¶ 16-17.

{¶ 26} However, "[t]his does not mean that the agency is relieved of the duty to make reasonable efforts." *In re C.F.* at ¶ 42. The Supreme Court of Ohio instructs that "[a]t various stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification." *Id.* "If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time." *Id.* at ¶ 43.

{¶ 27} Here, FCCS filed its motion for permanent custody, pursuant to R.C. 2151.413, and the juvenile court heard the matter, pursuant to R.C. 2151.414, thereby eliminating the requirement to prove "reasonable efforts," as set forth in R.C. 2151.419 at the permanent custody hearing. However, although a finding of "reasonable efforts" was not required at the permanent custody hearing in this matter, the juvenile court was required to find that FCCS made "reasonable efforts" at prior stages in the case. In the August 26, 2010 findings of fact and conclusions of law, the magistrate found FCCS had made reasonable efforts to reunify under R.C. 2151.419. In addition, in the February 3, 2011 findings of fact and conclusions of law, the magistrate found that FCCS made reasonable efforts to reunify under R.C. 2151.419. Accordingly, the juvenile court previously found that FCCS made "reasonable efforts" pursuant to R.C. 2151.419.

{¶ 28} Although not required, the trial court also made a finding of "reasonable efforts" in its present judgment. This finding was consistent with the testimony and evidence presented at the hearing. Initially, contrary to mother's contention, Johnson testified that North Central did, in fact, provide domestic violence assessments for clients. Thus, this was an issue of credibility. Notwithstanding, Johnson stated that she discussed the domestic violence referral with mother in person and in letters. If mother was under the belief that North Central did not provide domestic violence assessments, she should have taken a more active role in determining where she could receive such an assessment. Her claim that she tried to contact FCCS regarding finding someone to provide the assessment rings hollow when it is considered that she had three years to complete the assessment. Mother should have taken more initiative to alert children services that she could not obtain an assessment, knowing the importance of the domestic violence assessment and that her failure to get such an assessment threatened her custody of R.G.

See In re Giffin, 4th Dist. No. 97CA29 (Nov. 7, 1997) (a parent must reasonably be expected to take some initiative in alerting a children services agency that help is needed), citing *In re Sliker*, 4th Dist. No. 92 CA 2 (Jun. 25, 1992). For these reasons, we must reject mother's arguments and overrule her second assignment of error.

{¶ 29} Accordingly, mother's first and second assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.
