[Cite as *In re H.K.*, 2010-Ohio-4194.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

IN THE MATTER OF: H.K.	**:**	**O P I N I O N**
	:	**CASE NO. 2010-T-0066**

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 2008 JC 132.

Judgment: Affirmed.

James R. Eskridge, Megargel & Co., L.P.A., 231 South Chestnut Street, Ravenna, OH 44266 (For Appellant, Holly King).

Susan Porter Collins, Trumbull County Children Services Board, 2282 Reeves Road, N.E., Warren, OH 44483 (For Appellee, Trumbull County Children Services Board).

John M. Rossi, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (Guardian ad litem for Minor, H.K.).

Laura O. Berzonski, P.O. Box 251, Cortland, OH 44410 (Guardian ad litem for Appellant, Holly King).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Holly King, seeks review of the judgment of the Trumbull County Court of Common Pleas, Juvenile Division, which terminated her parental rights and granted permanent custody of her child, H.K., to the Trumbull County Department of Job and Family Services ("TCDJFS"). We affirm the decision of the trial court.

{¶2} Appellant is the biological mother of H.K., born September 15, 2008. H.K. was born premature, weighing only two pounds, 12 ounces. H.K. was hospitalized for approximately one month after her birth.

{¶3} A complaint was filed alleging H.K. to be a dependent child. The complaint alleged that TCDJFS "received referral information on September 15, 2008 that the mother had given birth to a premature baby girl. The infant only weighed two pounds, twelve ounces at birth. The mother had no prenatal care. Further, the Agency received information that the mother had lost Permanent Custody of other children in at least two other states." The complaint also alleged that "[t]he concerns reported in these states have been medical neglect, drug usage, criminal activity, mental health issues regarding the mother, hygiene issues and transience. The parents have not visited with the baby regularly while hospitalized. *** In addition, the parents have not maintained contact with the Agency."

{¶4} On December 11, 2008, H.K. was adjudicated to be dependent by stipulation of the parties. Genetic testing was ordered to establish parentage, and the case plan went into effect. The case plan ordered appellant to (1) complete a psychological evaluation and follow all recommendations of the evaluation; (2) complete a drug and alcohol assessment and follow all recommendations of that assessment; (3) participate in random drug screens; (4) complete a parenting class program and demonstrate learned techniques during visitations; (5) visit with the child regularly at the agency; (6) sign releases of information to name any possible relatives for placement; and (7) maintain stable housing.

{¶5} On February 23, 2009, the trial court conducted a parentage hearing. The alleged biological father named by appellant was ruled out through genetic testing. Appellant was to assist TCDJFS in identifying the biological father of H.K.

{¶6} TCDJFS filed a motion for permanent custody of H.K. on March 26, 2009, and a hearing was held on said motion on August 17, 2009. A magistrate's decision was issued on September 11, 2009, terminating appellant's parental rights. Appellant filed timely objections, and the trial court issued a decision overruling appellant's objections. The judgment entry granting permanent custody of H.K. to TCDJFS was issued on April 29, 2010. It is from that judgment that appellant filed a timely appeal.

{¶7} Because appellant's first and second assignments of error concern the trial court's permanent custody decision, we address them in a consolidated analysis. On appeal, appellant alleges:

{¶8} "[1.] The trial court erred in granting the motion for permanent custody as such decision was against the manifest weight of the evidence and resulted in a manifest miscarriage of justice.

{¶9} "[2.] The trial court erred in granting the motion for permanent custody when it determined that the Trumbull County Child Services Board established by clear and convincing evidence that the mother suffered from factors established under O.R.C. 2151.414(E)(2) to so severe of an extent that she was unable to [provide] an adequate permanent home for the child within one year after the court held the permanency hearing on this matter."

{¶10} We recognize that the termination of parental rights is "*** the family law equivalent of the death penalty ***." *In re Phillips*, 11th Dist. No. 2005-A-0020, 2005-

Ohio-3774, at ¶22, citing *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, at ¶14. This court has stated that a parent is entitled to "fundamentally fair procedures in accordance with the due process provisions under the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution." *In re Sheffey*, 167 Ohio App.3d 141, 2006-Ohio-619, at ¶21.

{¶11} R.C. 2151.414 sets forth the guidelines for ruling on a motion for permanent custody and provides, in part:

{¶12} "(B)(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

{¶13} "(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."

{¶14} This court has previously held:

{¶15} "The standard of proof required under R.C. 2151.414 is clear and convincing evidence. *** 'Clear and convincing evidence is that evidence "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established."' *** The standard of clear and convincing evidence is higher than that of proof by a preponderance of the evidence but is not as high as the standard of proof beyond a reasonable doubt. ***" *In re Cather*, 11th Dist. Nos. 2002-P-0014, 2002-P-0015, & 2002-P-0016, 2002-Ohio-4519, at ¶27. (Internal citations omitted.)

{¶16} "'[W]e will not reverse a juvenile court's termination of parental rights and award of permanent custody to an agency if the judgment is supported by clear and convincing evidence.'" *In Re: J.S.E.*, 11th Dist. Nos. 2009-P-0091 & 2009-P-0094, 2010-Ohio-2412, at ¶25. (Citations omitted.)

{¶17} The trial court found that H.K. could not be placed with appellant within a reasonable time frame or should not be placed with appellant. To establish that a child cannot be placed with a parent within a reasonable time frame, a court must determine, by clear and convincing evidence, that at least one of the statutory factors is applicable under R.C. 2151.414(E). "'The existence of a single factor will support a finding that a child cannot be placed with either parent within [a] reasonable period of time.'" Id. at ¶40. (Citations omitted.)

{¶18} In the case sub judice, the trial court found the following sections in R.C. 2151.414(E) applicable:

{¶19} "(1) 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 continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

{¶20} "(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or 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 pursuant to division (A) of this section ***;

{¶21} "***

{¶22} "(4) 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;

{¶23} "***

{¶24} "(10) The parent has abandoned the child.

{¶25} "(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 *** or 2151.415 *** of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and

the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

{¶26} "***

{¶27} "(16) Any other factor the court considers relevant."

{¶28} The trial court further entered findings as to why each subsection was applicable to the complaint to terminate parental rights in this case.

{¶29} Under her first and second assignments of error, appellant takes issue primarily with the trial court's findings under R.C. 2151.414(E)(1) and (2).

{¶30} Under R.C. 2151.414(E)(1), those findings were as follows:

{¶31} "(a) Established paternity – The first alleged father tested 0% and was excluded by DNA. The second named father cannot be found. Neither Mark Harris nor any other male has come forward to establish paternity and pay support.

{¶32} "(b) Addressed mental health concerns – Mother has not established a counseling relationship with mental health professionals and organization. As a result, the issues of mental health and poor judgment as they relate to child care cannot be addressed.

{¶33} "(c) Addressed parenting concerns – Mother tests poorly on her parenting abilities, and a long term commitment to counseling and medicine has not begun. Parenting Classes alone have been tried, and were unsuccessful in changing her abilities. She cannot demonstrate what she was taught.

{¶34} "(d) Established safe, independent housing – Mother is dependent upon a third party who has committed domestic violence on her. Both she and the baby need a safe home.

{¶35} "(e) Stopped using drugs – Only in the past month has mother stopped using marijuana."

{¶36} Under R.C. 2151.414(E)(2), the trial court's findings were as follows:

{¶37} "Mother has an IQ of 55. She has a 3-4th grade level of reading. She functions at a 9 or 10 year old level.

{¶38} "Mother is on Social Security Disability for mild retardation and bipolar. She is slightly manic, and can be subject to anger outbursts that she cannot control. The combination with her personality has created parenting issues and poor judgment that caused the mother to lose Permanent Custody in other states.

{¶39} "Therapeutic process and continuity could address the problem. But, she expresses trust issues with counselor. Without trust, the therapeutic process cannot begin.

{¶40} "Medicine could have an immediate affect [sic] if used regularly and if there is an individual commitment to use it. Mother has not demonstrated this.

{¶41} "Mother's mental health makes her an easy target of domestic violence. The Guardian Ad Litem for the baby expresses concern that she maintains a home with an abuser….which puts mother and young children at risk.

{¶42} "Despite mother taking parenting classes, her parenting abilities were still low after a test. It was noted in the 2005 Florida proceedings that mother lacked the

capacity to care for a young child. Florida took Permanent Custody of two brothers of [H.K.] based upon mother's inability to function as a parent."

{¶43} Appellant challenges both the weight and sufficiency of the evidence. Appellant argues that the trial court erred in relying upon the testimony of Dr. Charles Thorn, a psychologist, as his testimony was "outdated and biased." Appellant contends that Dr. Thorn is under contract with TCDJFS and, therefore, a conflict is present. Further, appellant notes that although Dr. Thorn acknowledged a diagnosis of bipolar disorder could be successfully treated, he did not re-evaluate appellant after her initial diagnosis to "determine if she had made any progress." Appellant also maintains that the trial court erred in determining that her mental health diagnosis is chronic in nature such that it cannot be addressed and managed within one year after the hearing for permanent custody. We disagree.

{¶44} Dr. Thorn conducted a psychological assessment of appellant. The testimony of Dr. Thorn reveals that while appellant was diagnosed with bipolar disorder in 2009, it was Dr. Thorn's impression that appellant has had this "diagnosis *** for quite awhile." Dr. Thorn noted that appellant has probably had bipolar disorder for approximately ten years. Dr. Thorn testified that bipolar disorder "requires close supervision of psychiatrists, counselors," and it "requires a great deal of care." With regard to her treatment, Dr. Thorn testified that appellant "has a great deal of difficulty trusting individuals, and I think that the trust issue would make it difficult for a therapeutic relationship to develop." In fact, appellant's caseworker, Colleen Lyden, testified that she had discussed Dr. Thorn's report with appellant; however, appellant

informed Ms. Lyden that she did not want to engage in counseling, nor did she want "to be on medication."

{¶45} Dr. Thorn noted that appellant has an IQ of 55, a diagnosis of mental retardation, and the social intelligence of a nine or ten year old. Dr. Thorn testified that without continuous treatment and compliance with medication, "[s]pontaneous remission of mental retardation and bipolar disorder is very likely."

{¶46} The trial court found that R.C. 2151.414(E)(2) applied, noting appellant's diagnoses of mental retardation and bipolar disorder. The trial court observed appellant's lack of compliance with the therapeutic process and lack of commitment to use medication to treat her bipolar disorder. The trial court also found that appellant's "mental health make[s] her an easy target of domestic violence." "The Guardian Ad Litem for the baby expressed concern that she maintains a home with an abuser which puts mother and young children at risk." The trial court also found that the 2005 proceedings in Florida paralleled this proceeding in that, despite taking a parenting class, appellant's parenting abilities were still low after the test and she lacked the capacity to care for a young child.

{¶47} Appellant also argues that she complied with the case plan by attending and graduating from the parenting class program. Although appellant completed the parenting classes, the evidence reveals that appellant was unable to demonstrate what she was taught in the parenting classes. Under R.C. 2151.414(E)(1), the trial court found that appellant tested poorly on her parenting abilities and the classes were unsuccessful in changing her parenting abilities.

{¶48} Ms. Lyden testified that appellant showed cause for concern "during the visitations as she reference[d] any type of agitation on the part of the child by her own needs." Further, appellant failed to verbalize with H.K. throughout the parenting classes, failed in her attempts to calm H.K. when she was agitated, and failed to demonstrate understanding with regard to the needs of H.K.

{¶49} After a review of the record, we find the trial court's judgment granting TCDJFS' motion for permanent custody was supported by credible evidence to meet the statutory standard. Appellant's first and second assignments of error are without merit.

{¶50} Appellant's third assignment of error alleges:

{¶51} "The trial court relied upon inadmissible and prejudicial facts when relying on the fact that defendant-[appellant] voluntarily surrendered three other children to permanent custody."

{¶52} Under this assigned error, appellant argues that the trial court erred in making the following finding under R.C. 2151.414(E)(16):

{¶53} "Mother has five other children besides [H.K.]. Mother lost custody to all of them. Two were lost to Involuntary Custody in Florida. The other[s] were lost in Missouri on a Voluntary Surrender. The 2005 Florida proceedings for siblings *** mirror these Ohio proceedings *** poor to zero bonding between mother and child, and no capacity to care for the child's needs."

{¶54} Appellant argues that while the trial court may consider involuntary surrender, as it is an enumerated factor under R.C. 2151.414(E)(11), the trial court

erred in considering the voluntary surrender of appellant's three children in Missouri. We disagree.

{¶55} R.C. 2151.414(E)(16) provides that the trial court may consider "[a]ny other factor [it] considers relevant" when deciding whether a child cannot be placed with either parent within a reasonable time or should not be placed with either parent. Evidence that appellant had previously surrendered three other children in the state of Missouri is relevant to the trial court's determination of whether appellant's parental rights to H.K. should be terminated. See *In Re: Thompson* (Jan. 10, 2001), 9th Dist. No. 20201, 2001 Ohio App. LEXIS 55, at *5.

{¶56} Appellant's third assignment of error is without merit.

{¶57} Based upon the foregoing, we overrule appellant's first, second, and third assignments of error. Accordingly, we affirm the judgment of the Trumbull County Court of Common Pleas, Juvenile Division.

DIANE V. GRENDELL, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.