

[Cite as *In re D.L.*, 2004-Ohio-5407.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

IN RE: D.L., et al. : CASE NO. CA2003-12-314
: O P I N I O N
: 10/11/2004
:

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case Nos. JN2001-0205, JN2001-0206 and JN2001-0207

Warren H. Wolter, 9854 Tall Timber Drive, Cincinnati, OH 45241,
for appellant, Jackie Hollon

Robin N. Piper, Butler County Prosecuting Attorney, Michael A.
Oster, Jr., Government Services Center, 315 High Street, 11th
Floor, Hamilton, OH 45012-0515, for appellee, Butler County
Children Services Board

Adolph Olivas, 350 N. Second Street, Hamilton, OH 45011,
guardian ad litem

POWELL, J.

{¶1} Appellant, Jackie Hollon, appeals the decision of the
Butler County Court of Common Pleas, Juvenile Division,
granting permanent custody of her three children to the Butler
County Children Services Board ("BCCSB"). We affirm the
juvenile court's decision.

{¶2} Appellant is the biological mother of two boys, D.L.
and M.L., and one girl, J.L. At the time of the permanent cus-
tody hearing, D.L. was nine years old, J.L. was eight years

old, and M.L. was seven years old. In March 2001, the three children were removed from appellant's care by BCCSB. Appellant and the three children were living with appellant's mother at the time. BCCSB had received a referral alleging that appellant had physically abused the children. When BCCSB and a Butler County Sheriff's Deputy arrived at the home of appellant's mother, the children were playing unsupervised and did not know where their mother was. BCCSB took temporary custody of the children and placed them in foster care.

{¶3} BCCSB subsequently filed a complaint alleging that the three children were "dependent." After a hearing in May 2001, the juvenile court determined that the children were "dependent." BCCSB then developed a case plan for appellant with the goal of eventually reunifying her with her children. Pursuant to the case plan, appellant was required to undergo a psychological evaluation, undergo a substance abuse evaluation, attend parenting classes, and maintain a stable income. Appellant was required to follow the recommendations of the psychologists and substance abuse counselors who evaluated her. Appellant was permitted to visit with her children for two hours, once per week.

{¶4} In July 2003, after it determined that appellant had not made significant progress on her case plan nor demonstrated that she could effectively care for her children, BCCSB filed a motion for permanent custody in the juvenile court. After a

hearing, the juvenile court granted BCCSB's motion in November 2003.¹ Appellant now appeals, assigning one error as follows:

{¶5} "THE TRIAL COURT'S DECISION PLACING CUSTODY WITH THE BCCSB IS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE."

{¶6} Pursuant to R.C. 2151.414(B)(1), a trial court may grant permanent custody of a child to a state agency if the court finds, by clear and convincing evidence, that it is in the child's best interest to do so, and that any one of the following circumstances apply:

{¶7} "(a) 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;

{¶8} "(b) The child is abandoned.

{¶9} "(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶10} "(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 ***."

{¶11} In making its best interest determination, the trial court must consider all relevant factors, including, but not limited to, the following factors enumerated in R.C. 2151.-414(D):

{¶12} "(1) The interaction and interrelationship of the

1. The biological father of the three children was served with BCCSB's motion for permanent custody, but did not appear. The juvenile court terminated his parental rights and he did not appeal.

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;

{¶13} "(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;

{¶14} "(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 twelve or more months of a consecutive twenty-two month period ***;

{¶15} "(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;

{¶16} "(5) Whether any of the factors in divisions (E) (7) to (11) of this section apply in relation to the parents and child."

{¶17} An appellate court's review of a trial court's decision finding clear and convincing evidence is limited to whether sufficient, credible evidence exists to support the trial court's determination. In re Starkey, 150 Ohio App.3d 612, 2002-Ohio-6892, at ¶16. A reviewing court will reverse a finding by the trial court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. In re Rodgers (2000), 138 Ohio App.3d 510, 519-520.

{¶18} The juvenile court analyzed the best interest factors in R.C. 2151.414(D) and determined that permanent custody with the state was in the best interest of all three children. Under the first best interest factor, the court analyzed the evidence related to the children's interaction and interrelationship with their caregivers. The court noted that appellant's interaction at the visitations was appropriate, though appellant was not as active as other parents. The court found that D.L. and M.L. had bonded well with their current foster family, though they had been with that family only for a short time. Due to behavioral problems, J.L. had difficulty bonding with her foster family at first. However, with the support of her foster parents and counselors, she began to show affection for her foster parents and an ability to better get along with others. The court noted that both the foster family caring for D.L. and M.L. and the foster family caring for J.L. were considering adoption.

{¶19} Under the second factor, the court noted that it had not met with the children in camera concerning their wishes. However, the court stated that the children's guardian ad litem recommended granting BCCSB's permanent custody motion.

{¶20} Under the third factor, the court discussed the children's custodial history. The court noted that the children had been in the temporary custody of BCCSB for 29 consecutive months, ever since their initial removal in March 2001.

{¶21} Under the fourth factor, the court discussed the

children's need for legally secure placement. First, the court discussed the various needs of the children. J.L. has had numerous behavioral problems, which occasionally produce violent outbursts. She is regularly seeing a counselor regarding those issues. D.L. and M.L. are on a waiting list for counseling regarding the issues surrounding their removal from appellant's care. All three children attend speech therapy sessions.

{¶22} Still analyzing evidence related to the fourth factor, the court noted that appellant had not completed the requirements of her case plan as ordered by the court. The court stated that appellant had not achieved stability in her life, had not completed recommended counseling, and had refused to take medication prescribed for a mood disorder. Due to the various needs of the children and appellant's lack of consistency and stability in her life, the court found that legally secure placement could not be achieved without granting permanent custody to BCCSB.

{¶23} After thoroughly reviewing the record, we find that there is sufficient, credible evidence to support the juvenile court's decision regarding the best interest of the children. The testimony of appellant, the children's foster parents, a psychologist who evaluated appellant, a BCCSB caseworker, a BCCSB case aid, and a BCCSB foster care specialist supports the juvenile court's decision. The evidence supports the juvenile court's concern that appellant has not sufficiently dealt with

psychological and substance abuse issues that hinder her ability to effectively parent. By appellant's own testimony, she smoked marijuana for 17 years, testing positive as recently as May 2002. She testified that she quit around the time of that positive test, but then used cocaine for "about a year." She quit recommended rehab programs for reasons such as "she did not get along with" the counselor, and that a program was for mentally ill people and not her. Appellant herself admits that she needs outpatient substance abuse treatment.

{¶24} Given the various needs of the children, the length of time the children have been in BCCSB's custody, the guardian ad litem's recommendation, and, most importantly, appellant's inability to address her psychological and substance abuse issues, we find that there is sufficient, credible evidence in the record supporting the juvenile court's best interest determination. Because the children had been in the custody of BCCSB for approximately 29 months at the time the permanent custody motion was filed (well over the "twelve or more months of a consecutive twenty-two month period" requirement of R.C. 2151.414[B][1][d]), the juvenile court had the statutory authority to grant permanent custody to BCCSB. See In re Mercurio, Butler App. No. CA2003-05-109, 2003-Ohio-5108, at ¶27. We find no error in the juvenile court's decision. Appellant's sole assignment of error is overruled.

{¶25} Judgment affirmed.

YOUNG, P.J., and WALSH, J., concur.

