

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

IN THE MATTER OF:

I.B.

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CASE NO. CA2014-12-244

OPINION

4/6/2015

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JN2011-0319

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S. POWELL, P.J.

{¶ 1} Appellant, the biological mother of I.B., appeals from a decision of the Butler County Court of Common Pleas, Juvenile Division, granting permanent custody of her daughter to appellee, the Butler County Department of Job and Family Services, Children

Services Division (BCDJFS). For the reasons outlined below, we affirm.

{¶ 2} On July 19, 2011, BCDJFS filed a complaint alleging I.B., appellant's then ten-year-old daughter, was a dependent child. It is undisputed that at the time the complaint was filed both the child's mother and father were incarcerated. I.B. was then placed in the temporary custody of her paternal relatives, during which time she was adjudicated a dependent child by stipulation of her father. Thereafter, on November 18, 2011, the juvenile court's temporary custody decision was modified, wherein temporary custody of I.B. was changed to BCDJFS.

{¶ 3} After BCDJFS was granted temporary custody, and once appellant was released from prison, the juvenile court adopted a case plan relative to appellant. However, although initially complying with her required case plan services, on January 10, 2013, appellant, an admitted recovering heroin addict who has been diagnosed as bipolar, was sentenced to serve 18 months in prison after she pled guilty to third-degree felony robbery. Several days later, on January 16, 2013, I.B.'s father passed away due to a heart condition. Besides an additional six-month placement with her paternal relatives, I.B. remained in the temporary custody of BCDJFS at all times. This includes several unsuccessful foster placements, one of which was disrupted due to a later unsubstantiated claim of sexual abuse, as well as at least two extended hospitalizations due to I.B.'s expressed suicidal ideation.

{¶ 4} Because the matter had been pending for some time, on February 6, 2014, BCDJFS filed a motion requesting permanent custody of I.B. A three-day permanent custody hearing on the matter was then conducted before a juvenile court magistrate. As part of this hearing, the magistrate heard extensive testimony from appellant, the child's guardian ad litem, as well as several case workers. The magistrate also conducted an in camera interview with I.B. Following this hearing, the magistrate issued its decision finding it was in

the child's best interest to grant permanent custody to BCDJFS. Appellant filed objections to the magistrate's decision, which the juvenile court denied, thereby affirming and adopting the magistrate's decision in its entirety.

{¶ 5} Appellant now appeals from the juvenile court's decision granting permanent custody of her daughter to BCDJFS, raising three assignments of error for review. For ease of discussion, appellant's first and second assignments of error will be addressed together.

{¶ 6} Assignment of Error No. 1:

{¶ 7} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY GRANTING [BDJFS'S] MOTION FOR PERMANENT CUSTODY.

{¶ 8} Assignment of Error No. 2:

{¶ 9} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY GRANTING THE STATE'S MOTION FOR PERMANENT CUSTODY.

{¶ 10} In her first and second assignments of error, appellant argues the juvenile court's decision granting permanent custody of her daughter to BCDJFS was not in the child's best interest when considering the factors provided under R.C. 2151.414(D)(1). In support of this claim, appellant argues the juvenile court's decision was not supported by clear and convincing evidence and was otherwise against the manifest weight of the evidence. We disagree.

{¶ 11} Before a natural parent's constitutionally protected liberty interest in the care and custody of her child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *In re A.W.*, 12th Dist. Fayette No. CA2014-03-005, 2014-Ohio-3188, ¶ 11, citing *Santosky v. Kramer*, 455 U.S. 745, 759, 102 S.Ct. 1388 (1982). An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re M.B.*, 12th Dist. Butler Nos.

CA2014-06-130 and CA2014-06-131, 2014-Ohio-5009, ¶ 6; *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶ 16 (7th Dist.). Thus, a reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re S.U.*, 12th Dist. Clermont No. CA2014-07-055, 2014-Ohio-5748, ¶ 10. Clear and convincing evidence is "that measure or degree of proof which is more than a mere "preponderance of the evidence," but not to the extent of such certainty as is required "beyond a reasonable doubt" in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, ¶ 42, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶ 12} Pursuant to R.C. 2151.414(B)(1), a court may terminate parental rights and award permanent custody to a children services agency if it makes findings pursuant to a two-part test. *In re G.F.*, 12th Dist. Butler No. CA2013-12-248, 2014-Ohio-2580, ¶ 9. Initially, the court must find that the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D). *In re D.K.W.*, 12th Dist. Clinton No. CA2014-02-001, 2014-Ohio-2896, ¶ 21. Next, the court must find that any of the following apply: the child is abandoned; the child is orphaned; the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; or where the preceding three factors do not apply, the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re E.B.*, 12th Dist. Warren Nos. CA2009-10-139 and CA2009-11-146, 2010-Ohio-1122, ¶ 22. Only one of those findings must be met for the second prong of the permanent custody test to be satisfied. *In re T.D.*, 12th Dist. Preble No. CA2009-01-002, 2009-Ohio-4680, ¶ 15.

{¶ 13} In this case, the juvenile court found by clear and convincing evidence that I.B.

had been in the temporary custody of BCDJFS for more than 12 months of a consecutive 22-month period preceding the filing of BCDJFS's motion for permanent custody on February 6, 2014. Appellant does not dispute this finding. Rather, as noted above, appellant merely disputes the juvenile court's finding that granting permanent custody of her daughter to BCDJFS was in the child's best interest when considering the factors provided under R.C. 2151.414(D)(1).

{¶ 14} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing:

[T]he court shall consider all relevant factors, including, but not limited to the following:

- (a) The interaction and interrelationship of the 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;
- (b) 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;
- (c) 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 * * *;
- (d) 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;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶ 15} With respect to R.C. 2151.414(D)(1)(a), the juvenile court found that both I.B.'s mother, appellant herein, and father, who subsequently passed away due to a heart condition, were incarcerated at the time BCDJFS filed its dependency complaint. The juvenile court further found appellant's contact with her daughter had been sparse due to appellant's recurring incarceration, which included an 18-month stint in prison following her

guilty plea to third-degree felony robbery. The juvenile court also found I.B. had multiple unsuccessful foster placements, one of which was disrupted due to a later unsubstantiated claim of sexual abuse, as well as at least two extended hospitalizations due to her expressed suicidal ideation. Nevertheless, the juvenile court noted I.B. exhibited a strong bond to her mother and that the pair interacted appropriately during their supervised and unsupervised visitations.

{¶ 16} In consideration of R.C. 2151.414(D)(1)(b), the juvenile court noted that it had conducted an in camera interview with I.B., thereby gauging her wishes and concerns, something which the juvenile court explicitly stated it took into consideration when making its permanent custody decision. The juvenile court further noted that the child's guardian ad litem had recommended permanent custody be awarded to BCDJFS. As part of her recommendation, the guardian ad litem noted I.B. had initially reported wanting to return to her family. However, following her mother's incarceration and father's death, the guardian ad litem reported I.B. had changed her mind and did not want to be returned to her mother, a decision she again changed after visiting with appellant. According to the guardian ad litem, "the emotional ride that [I.B. has] been on and the almost constant changing of living arrangements over the past three years has to have been difficult for her and certainly has affected her thinking."

{¶ 17} With regard to R.C. 2151.414(D)(1)(c), the juvenile court found I.B. was removed from the custody of her mother and father and placed in the temporary custody of her paternal relatives from July 19, 2011 to November 16, 2011, during which time she was adjudicated a dependent child by stipulation of her father. The juvenile court further found I.B. was then placed in the temporary custody of BCDJFS from November 16, 2011 until May 31, 2013, spending time in several foster homes and a group home facility, when she was once again placed with her paternal relatives until January 24, 2014. I.B. was then returned

to the temporary custody of BCDJFS, which remained unchanged up to and including when BCDJFS filed its motion requesting permanent custody on February 6, 2014. As noted above, this constitutes clear and convincing evidence that I.B. had been in the temporary custody of BCDJFS for more than 12 months of a consecutive 22-month period.

{¶ 18} In addition, in consideration of R.C. 2151.414(D)(1)(d), the juvenile court found the testimony of the witnesses and exhibits presented at trial, as well as the custodial history and prior entries, made it clear that I.B. was in need of a legally secure placement. In so holding, the juvenile court reiterated the fact that I.B. had been in custody of BCDJFS or her paternal relatives for nearly three years, with appellant spending approximately two of those three years in prison. The juvenile court further noted that appellant had failed to complete her case plan, had no residence of her own, was unemployed, and had no car or valid driver's license. As the juvenile court stated, "[h]er plan for the future is to live in the home of a friend, go to school, and work part time if she can find a job." The juvenile court also noted that no suitable relative had indicated a desire to take custody of I.B., and that, pursuant to R.C. 2151.414(D)(1)(e) and (E)(10), appellant had effectively abandoned her daughter by failing to have any contact with her in approximately four months.

{¶ 19} Based on these findings, the juvenile court determined that it was in I.B.'s best interest to grant permanent custody to BCDJFS. In reaching this decision, the juvenile court concluded by stating, in pertinent part, the following:

It might theoretically be possible for mother [to] address her mental health issues, her substance abuse issues, her parenting issues, and her housing and income issues and become, at some time in the future, a parent who is able to provide for the safety and stability of her child. However, mother has been absent from this child's life for at least 23 of the last 35 months of this child's life. Mother has just been released from prison, she has no home of her own, no job, no car, and cannot offer any stability for [her daughter]. Mother did not complete all of the case plan services which were developed in order to assist [her] in addressing the issues that brought this case to the court in the

first place. Mother has not shown this [court] that she is able to provide for this child now, and based on mother's history, it is not likely that mother will be able to do so in the foreseeable future.

{¶ 20} After carefully reviewing the record in this case, we find the juvenile court's findings are supported by sufficient, credible evidence and are otherwise not against the manifest weight of the evidence. Nevertheless, appellant argues the juvenile court's decision was not in her daughter's best interest when considering the strong bond between them. However, although we agree that a strong bond between appellant and her daughter may very well exist, that is but one factor to be considered when determining the best interest of a child in a permanent custody proceeding under R.C. 2151.414(D)(1). The same is true regarding the child's wishes for it is well-established that "R.C. 2151.414(D) does not give one factor 'greater weight than the others.'" *In re C.G.*, 10th Dist. Franklin Nos. 13AP-632 and 13AP-653, 2014-Ohio-279, ¶ 37, quoting *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, ¶ 56; *In re D.R.*, 12th Dist. Butler No. CA2009-01-018, 2009-Ohio-2805, ¶ 14.

{¶ 21} Again, just as the juvenile court found, the record firmly establishes that appellant has had minimal contact with her daughter due to her recurring incarceration during the nearly three years this case had been pending. This includes an 18-month prison stint following appellant's guilty plea to third-degree felony robbery. The record also indicates appellant, an admitted recovering heroin addict who has been diagnosed as bipolar, did not complete her required case plan services, has no residence of her own, is unemployed, and has no car or valid driver's license. Therefore, after a thorough review of the record, we find no error in the juvenile court's decision finding it was in I.B.'s best interest to be placed in the permanent custody of BCDJFS. Accordingly, appellant's first and second assignments of error are overruled.

{¶ 22} Assignment of Error No. 3:

{¶ 23} THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT BY

ALLOWING INADMISSIBLE HEARSAY.

{¶ 24} In her third assignment of error, appellant argues the juvenile court erred by admitting the social summaries prepared by BCDJFS at the permanent custody hearing because the documents contained prejudicial hearsay. This court, however, has already rejected this exact argument finding no error where "the trial court determined that the summaries contained hearsay and specifically stated it would disregard this hearsay." *In re A.F.*, 12th Dist. Butler No. CA2011-12-233, 2012-Ohio-2958, ¶ 33; *In re K.B.*, 12th Dist. Butler Nos. CA2014-02-042, CA2014-02-043, and CA2014-02-044, 2014-Ohio-3654, ¶ 83; *In re J.G.G.*, 12th Dist. Butler No. CA2014-10-215, 2015-Ohio-822, ¶ 12. Such is the case here as the juvenile court explicitly stated on the record that the social summaries would be "admitted subject to not considering any hearsay contained therein." Therefore, because the juvenile court specifically stated that it would disregard any hearsay information that may be part of the social summaries prepared by BCDJFS, we find the juvenile court did not err by admitting the social summaries into evidence. Appellant's third assignment of error is overruled.

{¶ 25} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.