

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

|                   |   |                        |
|-------------------|---|------------------------|
| IN THE MATTER OF: | : |                        |
|                   | : | CASE NO. CA2014-11-014 |
| H.G.              | : |                        |
|                   | : | <u>OPINION</u>         |
|                   | : | 5/11/2015              |
|                   | : |                        |

APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS  
JUVENILE DIVISION  
Case No. 2013-3010

Susan M. Zurfance Daniels, P.O. Box 589, 100 S. High Street, Suite 204, Hillsboro, Ohio 45133, attorney for child

Linda Cebula, c/o Clinton County Juvenile Court, 46 S. South Street, Wilmington, Ohio  
45177, Guardian Ad Litem

Holly M. Simpson, 6284 Taylor Pike, Blanchester, Ohio 45107, for appellant, D.G.

Aaron Aldridge, 130 E. Mulberry Street, Lebanon, Ohio 45036, for K.J.

Richard W. Moyer, Clinton County Prosecuting Attorney, William C. Randolph, P.O. Box 568, 1025 S. South Street, Suite 400, Wilmington, Ohio 45177, for appellee, Clinton County Children Services

**M. POWELL, P.J.**

{¶ 1} Appellant, the biological father of H.G. (Father), appeals a decision of the Clinton County Court of Common Pleas, Juvenile Division, granting permanent custody of H.G. to Clinton County Children Services (CCCS).

{¶ 2} H.G. was born on January 12, 2013. On February 5, 2013, CCCS filed a complaint alleging that H.G. tested positive for opiates at birth and remained hospitalized to receive treatment for drug withdrawal. Additionally, the complaint alleged that Mother abused heroin while pregnant, that she had tested positive for amphetamines, cocaine, and marijuana in November 2012, and that H.G.'s father was unknown. Thus, CCCS asked the juvenile court to adjudicate H.G. an abused child, and to grant a disposition of temporary custody to CCCS. An emergency custody hearing was held the same day, and the court ordered that H.G. be placed in the temporary custody of CCCS.

{¶ 3} At the adjudicatory hearing held in April 2013, the juvenile court found clear and convincing evidence that Father was H.G.'s biological father. Both parents withdrew their denials to the complaint, and each entered admissions that H.G. was an abused child. After CCCS provided evidentiary support for its allegations, the court adjudicated H.G. to be an abused child by clear and convincing evidence.

{¶ 4} At the dispositional hearing, also held in April 2013, the court found that CCCS had made reasonable efforts to prevent the continued removal of H.G. from his home, but ordered that he remain in the temporary custody of CCCS. Additionally, the court approved a case plan which required Father to (1) establish and maintain a consistent visitation schedule with H.G., (2) locate and maintain stable housing, (3) obtain and maintain stable employment, and (4) participate in and successfully complete age-appropriate parenting classes.<sup>1</sup>

{¶ 5} In January 2014, CCCS moved the juvenile court to conduct an annual review of H.G.'s case, and to extend the temporary custody order for a period of six months

---

1. The case plan also imposed several requirements on Mother. However, because Mother is not a party to the present appeal, this opinion will address only those details relevant to the juvenile court's decision to terminate Father's parental rights.

pursuant to R.C. 2151.415. In support of its motion, CCCS noted that Father had made "some progress" on the case plan. At the hearing in March 2014, CCCS and the Guardian ad Litem (GAL) presented reports on H.G.'s case. The court found that CCCS had made reasonable efforts to finalize the permanency plan for the child, and ordered that CCCS's temporary custody of H.G. be extended for six months.

{¶ 6} In June 2014, CCCS sought permanent custody of H.G. pursuant to R.C. 2151.413. A hearing on CCCS's motion was held on October 9, 2014. At the beginning of the hearing, Father made an oral motion to extend CCCS's temporary custody of H.G. for six additional months while he worked to complete his case plan. The court took the motion under advisement, and proceeded with the permanent custody hearing.

{¶ 7} At the permanent custody hearing, the court heard testimony from Sally Wheaton, the CCCS caseworker assigned to H.G.'s case. Wheaton testified that Father was incarcerated for trafficking cocaine when H.G. was first placed in temporary custody, but that visits between H.G. and Father were established in April 2013 and continued up to the permanent custody hearing. Wheaton indicated that Father attended only approximately two-thirds (86) of his 135 scheduled visits with H.G. between April 2013 and September 2014.

{¶ 8} Additionally, Wheaton noted that the visits began as two-hour supervised visits twice a week, and that they have not progressed to unsupervised visitation because "there has not been any connection, attachment, between [H.G.] and [Father] \* \* \* no bonding throughout this case." Specifically, Wheaton observed that H.G. cries when his foster parents bring him to the CCCS offices for visits with Father, that he doesn't react or smile when he sees Father, and that he turns his head when Father tries to hug or kiss him at the end of the visits. She testified that Father used to hold H.G. when he was an infant, that he would feed him and change his diaper, but that as H.G. progressed developmentally Father

would just sit and watch him without interacting.

{¶ 9} Wheaton further testified that once Father began to have his other infant son, B.G., present during the visits, Father would just hold and feed B.G. during the entire visit while H.G. played with toys by himself. She observed that Father has never celebrated H.G.'s birthday with him, or brought him presents for other special occasions, such as Christmas. She also noted that Father has never tried to otherwise assist in H.G.'s support by providing diapers, food, or financial assistance.

{¶ 10} By contrast, Wheaton testified that her observations of H.G.'s interactions with his foster family during her home visits suggested "he's part of that family." She stated that H.G. looks to his foster family for comfort, and is very loving towards them. She indicated the foster family takes him outside, plays with him, and celebrates important milestones with him. These observations were supported by testimony from H.G.'s foster father, who testified that "I'm dad to [H.G.]," and recounted the vacation H.G. took with the family to Tennessee, and other trips to various places such as Kings Island and the zoo. H.G.'s foster father stated with respect to H.G., "[e]verybody loves him \* \* \* he's family. That's the way we see it."

{¶ 11} The GAL's report and testimony were consistent with Wheaton's testimony regarding the relationship between H.G. and Father. The GAL testified that Father parented "very well" when H.G. was an infant, but when H.G. became more like a toddler Father did not participate in any of the interactive play that typically parents have with their young children. The GAL observed that Father didn't completely ignore H.G., but that Father wasn't engaging him, either.

{¶ 12} Father's testimony was, in some ways, at odds with the accounts provided by Wheaton and the GAL. Father acknowledged that he hears H.G. crying when H.G. is dropped off for their supervised visits, and that H.G. is often eager to leave when the visit is over. However, Father stated, "I don't believe fully that [Wheaton] was correct because I do

try to interact with [H.G.]." Father noted that H.G. stops crying once the visit begins, and that he does try to talk with H.G. a lot and to give him attention. He said that although CCCS staff has intervened three or four times to correct his parenting style, no one has ever informed him that he is not paying enough attention to H.G.

{¶ 13} Father also expressed his willingness to take more classes to correct any deficiencies in his parenting: "anything they ask to get my kids, I'll do." Yet, when asked why he was unable to attend 100 percent of his visits with H.G., Father explained, "there's been times I forgot to call and verify that I was going to be in \* \* \* but most often has been sicknesses and work."

{¶ 14} On October 28, 2014, the juvenile court filed an entry granting permanent custody to CCCS. In the entry, the court found by clear and convincing evidence that H.G. had been in the custody of CCCS for 12 or more months of a consecutive 22-month period, that he is thriving in his stable, secure environment, that a legally secure permanent placement cannot be assured without a grant of permanent custody to CCCS, and that Father's progress on the case plan was "simply too little, too late." Therefore, the court denied Father's motion to extend temporary custody and held that it was in H.G.'s best interest to permanently terminate Father's parental rights and grant permanent custody of H.G. to CCCS.

{¶ 15} Father now appeals, raising three assignments of error.

{¶ 16} Assignment of Error No. 1:

{¶ 17} THE TRIAL COURT ERRED IN DENYING THE FATHER'S MOTION FOR A SIX MONTH EXTENSION OF TEMPORARY CUSTODY.

{¶ 18} In his first assignment of error, Father contends the juvenile court did not properly consider the factors set forth in R.C. 2151.415(D)(1) when it denied Father's extension of temporary custody. In particular, Father suggests the court failed both to

consider his progress on his case plan and to provide him with an opportunity to remedy the concerns regarding his bond with H.G., which he asserts were raised only at trial. In addition, Father questions whether the trial court's denial of Father's request for a six-month extension was really in H.G.'s best interest.

{¶ 19} At the outset, we note that after the juvenile court grants an initial six-month extension of temporary custody, the subsection that governs the court's decision to further extend temporary custody is R.C. 2151.415(D)(2), not R.C. 2151.415(D)(1). R.C. 2151.415(D)(2) provides that a juvenile court may extend a temporary custody order for an additional period of up to six months, if it determines by clear and convincing evidence that (1) the additional extension is in the best interests of the child, (2) there has been substantial additional progress on the case plan since the original extension of temporary custody, (3) there has been substantial additional progress since the original extension of temporary custody toward reunifying the child with one of the parents or otherwise permanently placing the child, and (4) there is reasonable cause to believe the child will be reunified with a parent or otherwise permanently placed within the period of extension.

{¶ 20} Notably, the statute provides only that the juvenile court *may* extend the temporary custody order, not that it *must* do so. Hence, a juvenile court's decision to grant or deny an extension of temporary custody is reviewed under an abuse of discretion standard. See *In re G.P.*, 5th Dist. Stark Nos. 2013CA00126 and 2013CA00127, 2013-Ohio-4692, ¶ 49 (discussing R.C. 2151.415[D][1], which contains language similar to R.C. 2151.415[D][2]).

{¶ 21} R.C. 2151.415(D)(4) prohibits the juvenile court from ordering "an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed in shelter care, whichever date is earlier \* \* \*." In the present case, the relevant date was February 5, 2013, the date upon which CCCS filed the complaint alleging H.G. was an abused child, and the court ordered that H.G. be placed in

the temporary custody of CCCS. Thus, by the time Father moved the court to extend temporary custody on October 9, 2014, the court only had the authority to extend its temporary custody order for approximately four additional months.

{¶ 22} In the context of such a limited timeframe, we find the juvenile court did not abuse its discretion when it denied Father's motion for an extension of temporary custody. In the 13 months between April 2013 and May 2014, Father had failed to satisfy three of the four primary objectives of his case plan: he had not secured stable employment, he had not secured stable housing, and he had not established a consistent visitation schedule with H.G.<sup>2</sup> Although Father did secure stable employment and stable housing between June 2014 and October 2014, he nevertheless continued to miss approximately one-third of his scheduled visits with H.G. Moreover, CCCS caseworker Wheaton testified that Father's interaction with H.G. over the 18 months that H.G. was in temporary custody had not demonstrated Father was ready to host unsupervised visits with H.G., let alone provide a stable, permanent home life.

{¶ 23} In short, the juvenile court *did* consider Father's progress on his case plan, and found that it was "too little, too late." Moreover, it was not unreasonable for the trial court to conclude that Father would not be able to build a bond with H.G. in the four months remaining in the statutory period for temporary custody. Father had failed to develop a bond with H.G. during their visits over the preceding 18 months, and there was no evidence that his visits were any more effective in this regard after the original extension of temporary custody.

{¶ 24} Lastly, the juvenile court's finding that a grant of permanent custody to CCCS

---

2. Father claims that his visits with H.G. were consistent in that he was generally able to visit H.G. at least once each week. However, missing approximately one-third of all scheduled visits does not constitute a consistent visitation schedule.

was in H.G.'s best interest necessarily implied that an extension of temporary custody was not. For the reasons discussed below, we find no error in the court's best interest finding. Accordingly, Father's first assignment of error is overruled.

{¶ 25} Because the issues raised in Father's second and third assignments of error are so closely related, we address the two assignments together.

{¶ 26} Assignment of Error No. 2:

{¶ 27} THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY TO THE AGENCY WHEN THE AGENCY FAILED TO DILIGENTLY PURSUE REUNIFICATION.

{¶ 28} Assignment of Error No. 3:

{¶ 29} THE TRIAL COURT'S DECISION GRANTING PERMANENT CUSTODY OF H.G. TO THE AGENCY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 30} The right to parent one's children is a fundamental right. *Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054 (2000); *In re Hayes*, 79 Ohio St.3d 46, 48 (1997). Thus, except for some narrowly-defined statutory exceptions, the state must demonstrate that it has made reasonable efforts to reunify the family during the child-custody proceedings prior to the termination of parental rights. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, ¶ 43. Additionally, before a natural parent's constitutionally protected liberty interest in the care and custody of his 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. *Santosky v. Kramer*, 455 U.S. 745, 769, 102 S.Ct. 1388 (1982).

### **Reasonable Efforts to Reunify**

{¶ 31} The Ohio Supreme Court has found that R.C. 2151.414 does not require the juvenile court to make a determination whether reasonable efforts to reunify the family have been made in every R.C. 2151.413 motion for permanent custody. *In re C.F.*, 2007-Ohio-1104 at ¶ 43. However, if the children services 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.*

{¶ 32} Father notes that the primary reason CCCS moved for permanent custody was that he lacked a bond with H.G., yet he asserts the agency took no steps to address the problem. He contends that once CCCS determined he was no longer on the path to reunification due to his failure to form a bond with H.G., the agency should have added an element to his case plan to remedy the issue and facilitate reunification. Not to do so, Father believes, resulted in an unreasonable case plan. Thus, Father claims the agency failed to meet its affirmative duty to make reasonable efforts to reunite H.G. with his family.

{¶ 33} Notwithstanding Father's claim, the juvenile court made at least two reasonable efforts findings prior to the hearing on the permanent custody motion. In its June 2013 disposition entry, the court found that CCCS had made reasonable efforts to prevent the continued removal of H.G. from his home, including "case plan meetings, contacting the parents, establishing visitation schedules, referrals for services, and offers of transportation for case related activities." Later, in its March 2014 entry extending temporary custody, the court found that CCCS had made reasonable efforts to finalize a permanency plan for H.G., including "case management, monthly contacts with the [parents], establishing visitation schedules \* \* \*, and the provision of gas cards to the father for case related activities." These findings satisfy the reasonable efforts requirements articulated by the Ohio Supreme Court. See *In re C.F.*, 2007-Ohio-1104 at ¶ 45.

{¶ 34} In any event, the record reflects that CCCS made reasonable efforts to reunify H.G. with Father specifically as relates to bonding between the two. "Reasonable efforts" does not mean all available efforts. *In re K.L.*, 12th Dist. Clermont No. CA2012-08-062, 2013-Ohio-12, ¶ 18. Otherwise, there would always be an argument that one more additional service, no matter how remote, may have made reunification possible. *Id.* Here, in addition

to the provision of parenting classes, CCCS established a regular visitation schedule as a means to permit Father to bond with H.G. Nevertheless, Father failed to avail himself of this opportunity when he did not attend one-third of the scheduled visits, or engage with H.G. at the visits he did attend.

{¶ 35} Furthermore, there is nothing in the record to suggest that Father's case plan was unreasonable. The case plan established four main objectives Father was required to satisfy: (1) establish and maintain a consistent visitation schedule with H.G., (2) locate and maintain stable housing, (3) obtain and maintain stable employment, and (4) successfully complete age-appropriate parenting classes. These objectives were foundational in the sense that their achievement was essential to the establishment of a stable and permanent home for H.G. However, at the time CCCS filed its motion for permanent custody, Father had achieved only one of those objectives, the parenting class. As to the other three objectives, Father had failed to find stable employment and stable housing, and he had attended only approximately two-thirds of his scheduled visits.

{¶ 36} Where Father had failed to achieve three objectives foundational to a stable and permanent home for H.G., it was not unreasonable for CCCS not to amend his case plan to include additional objectives related to Father's parenting style.

#### **Statutory Standards in R.C. 2151.414**

{¶ 37} Clear and convincing evidence is that which produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *In re Weaver*, 79 Ohio App.3d 59, 64 (12th Dist.1992). When the degree of proof required to sustain an issue is "clear and convincing," a reviewing court must examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof. *In re L.J.*, 12th Dist. Warren No. CA2014-10-124, 2015-Ohio-1567, ¶ 22, citing *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954). 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 to warrant setting the judgment aside as contrary to the weight of the evidence. *In re Rodgers*, 138 Ohio App.3d 510, 519-520 (12th Dist.2000), citing *Cross* at 479.

{¶ 38} R.C. 2151.414(B)(1) establishes the two-part test a juvenile court must apply when considering a motion for permanent custody filed pursuant to R.C. 2151.413. *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, ¶ 31. First, 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 M.H.*, 12th Dist. Fayette No. CA2012-11-035, 2013-Ohio-1063, ¶ 17. Second, the court must find that any of the following apply: the child is abandoned; the child is orphaned; the child has been in 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)-(d).

{¶ 39} H.G.'s custodial history is clear, and the parties do not dispute that at the time of the permanent custody hearing, H.G. had been in the custody of CCCS for at least 12 months of a consecutive 22-month period. As the juvenile court noted in its decision granting permanent custody to CCCS, H.G. "remained continuously in the custody of CCCS from April 6, 2013, the statutory calculation date, through June 26, 2014, the date of the filing of the motion for permanent custody."<sup>3</sup> Hence, Father's challenge to the court's statutory findings focuses on the "best interest" analysis.

{¶ 40} In a best interest analysis under R.C. 2151.414(D)(1), the juvenile court must consider all relevant factors to a grant of permanent custody, including five enumerated

---

3. The "statutory calculation date" referred to by the juvenile court is "the earlier of the date the child is adjudicated pursuant to [R.C. 2151.28] or the date that is sixty days after the removal of the child from home." R.C. 2151.414(B)(1)(e). As H.G. was removed from his home on February 5, 2013, and was adjudicated abused on April 26, 2013, H.G. is considered to have entered the temporary custody of CCCS on April 6, 2013.

factors. *In re C.F.*, 2007-Ohio-1104 at ¶ 57. Among the "best interest factors" enumerated in the statute are the child's interaction and interrelationship with his parents, foster caregivers, and others who may significantly affect the child; the child's wishes, expressed either directly to the court or through a GAL; the custodial history of the child; and the child's need for a legally secure permanent placement and whether such a placement is attainable without granting permanent custody. R.C. 2151.414(D)(1)(a)-(d).<sup>4</sup> No one factor is to be given greater weight or heightened significance in the juvenile court's analysis. *In re Schaefer*, 2006-Ohio-5513 at ¶ 56.

{¶ 41} After reviewing the entire record, weighing inferences, and examining the credibility of witnesses, we find that sufficient credible evidence existed to support the juvenile court's determination that granting permanent custody to CCCS was in H.G.'s best interest. Moreover, there was no conflict in the evidence sufficient to suggest the juvenile court's judgment was against the weight of the evidence.

{¶ 42} With respect to H.G.'s interactions and interrelationships, CCCS caseworker Wheaton testified that Father had attended only approximately two-thirds of his scheduled visits, and had failed to form a bond with H.G. over the 18 months since the start of his case plan. By contrast, the evidence suggested that H.G. had formed a strong bond with his foster parents, and had become like part of the family. Additionally, Wheaton stated that Father's parenting skills were not developing along with the child, and that during recent visits Father had focused most of his attention on Father's infant son, B.G., while H.G. played by himself. Wheaton observed that H.G. cries when he arrives, plays by himself during the visits, and then is eager to go.

{¶ 43} Moreover, Father also testified that he has dozed off "a good handful of times"

---

4. The other enumerated factor is not applicable in the present case. None of the factors in R.C.2151.414(E)(7)-(11) apply with respect to Father. R.C. 2151.414(D)(1)(e).

during his visits with H.G., and admitted that CCCS has had to intervene "three or four" times to correct his parenting style. In addition, despite his weekly visits with H.G., Father did not celebrate H.G.'s birthday or holidays with him, and did not attempt to provide presents for such occasions. Father stated that if he wanted to get a hug or a kiss from H.G. before the end of the visit, he had to do so five or ten minutes before the end of their time together because H.G. was eager to leave once he sensed the visit was over.

{¶ 44} Although Father testified, contrary to the testimony of Wheaton and the GAL, that he interacted appropriately with H.G. during their visits together, the juvenile court implicitly resolved that dispute of fact in favor of CCCS. Deferring to the finder of fact on matters of credibility is "crucial in a child custody case, where there may be much evidence in the parties' demeanor and attitude that does not translate to the record well." *In re K.B.*, 12th Dist. Butler Nos. CA2014-02-042, CA2014-02-043, and CA2014-02-044, 2014-Ohio-3654, ¶ 66, quoting *Davis v. Flickinger*, 77 Ohio St.3d 415, 419 (1997). Therefore, we decline to reverse the trial court's resolution of the issue. Similarly, because the presumption in weighing the evidence is also in favor of the finder of fact, we decline Father's invitation to find the court did not sufficiently consider the relationship between H.G. and Father's infant son, B.G. See *In re C.Y.*, 12th Dist. Butler Nos. CA2014-11-231 and CA2014-11-236 thru CA2014-11-238, 2015-Ohio-1343, ¶ 25.

{¶ 45} There is also sufficient credible evidence in the record that the other best interest factors weighed in favor of permanent custody. The GAL's report indicated the GAL was concerned that Father's housing would not meet H.G.'s basic physical needs, and that his income was likewise insufficient to meet H.G.'s needs. The report also stated the GAL's belief that it was in H.G.'s best interest for CCCS to be granted permanent custody. Further, Wheaton testified that H.G. needs a legally secure permanent placement, and that he cannot be assured of such placement without a grant of permanent custody to CCCS. She

observed that a grant of permanent custody would promote permanency because H.G. would then be available for adoption. Moreover, both Wheaton and the GAL testified that H.G. has been in the continuous custody of CCCS for more than 20 months, and appears to be thriving in his stable and secure foster care placement.

{¶ 46} In summary, the juvenile court did not err in granting permanent custody to CCCS. The court made two determinations prior to the permanent custody hearing regarding CCCS's reasonable efforts to reunite H.G. with his family, CCCS demonstrated reasonable efforts to reunify H.G. with Father specifically as relates to bonding between the two, and Father failed to show that his case plan was unreasonable. Additionally, there is sufficient credible evidence in the record to support the juvenile court's findings, by clear and convincing evidence, that CCCS satisfied the statutory standards for permanent custody under R.C. 2151.414.

{¶ 47} For the foregoing reasons, Father's second and third assignments of error are overruled.

{¶ 48} Judgment affirmed.

S. POWELL and RINGLAND, JJ., concur.