

[Cite as *In re L.M.*, 2015-Ohio-1667.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

IN RE:

L.M.

:
: Appellate Case No. 26391
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: Trial Court Case No. 2013-0436
:
: (Civil Appeal from Montgomery
: County Juvenile Court)
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OPINION

Rendered on the 1st day of May, 2015.

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FAIN, J.

{¶ 1} Appellant L.T. appeals from a judgment of the Montgomery County Court of

Common Pleas, Juvenile Division, granting legal custody of her child, L.M., to the child's maternal grandmother. Because there is competent, credible evidence in the record upon which the juvenile court could rely in determining that an extension of temporary custody was not warranted, and that granting legal custody to the maternal grandmother is in the child's best interest, we conclude that the juvenile court did not abuse its discretion.

{¶ 2} Accordingly, the judgment of the juvenile court is Affirmed.

I. The Course of Proceedings

{¶ 3} L.T. is the natural mother of L.M.¹ In January 2013, Montgomery County Children Services (MCCS) filed a complaint alleging L.M. to be dependent and neglected, due to concerns concerning the unsanitary conditions of L.T.'s housing, and information that L.T. permitted several adult males to stay in the home. There were also allegations of drugs being sold from, and prostitution going on in, the house. Finally, the complaint alleged that the child had been sexually abused by a man in the house with her when L.T. was not present. Interim temporary custody with protective supervision of the child was granted to the child's maternal grandmother, P.H. The child was adjudicated neglected and dependent on May 30, 2013, and temporary legal custody was awarded to P.H.

{¶ 4} On November 21, 2013, MCCS filed a motion to extend temporary custody. Alternatively, the motion sought to award legal custody to P.H. A hearing was conducted on March 5, 2014, following which the magistrate entered a decision granting legal custody to P.H. L.T. filed objections, which were overruled by the juvenile court.

¹ The child's natural father is not a party to this appeal.

The magistrate's decision was adopted by the juvenile court as its judgment.

{¶ 5} L.T. appeals.

II. The Juvenile Court Did Not Abuse its Discretion in Finding that the Child Could Not Be Reunited with her Mother within a Reasonable Time, and in Finding that it Was in the Best Interest of the Child to Be Placed in the Legal Custody of her Grandmother

{¶ 6} L.T.'s sole assignment of error states as follows:

THE TRIAL COURT'S FINDING THAT [L.T.'S] CHILD CANNOT BE PLACED WITH HER WITHIN A REASONABLE TIME AND FOR THE BEST INTEREST OF THE CHILD IS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

{¶ 7} L.T. contends that the evidence does not support the decision of the juvenile court to grant legal custody to P.H., and that the court should have, instead, granted an extension of temporary custody. In support, she claims that she had made progress on her case plan objectives. She further claims that the child's best interest is not served by the award of legal custody to the maternal grandmother.

{¶ 8} R.C. 2151.415(D)(1) authorizes the trial court to extend temporary custody for six months only if it finds, by clear and convincing evidence, that such an extension is in the best interest of the child, and that "there has been significant progress on the case plan of the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise permanently placed within the period of extension."

{¶ 9} The juvenile court found that L.T. had not made significant progress on her

case plan. Thus, the court found that the requirements of R.C. 2151.415(D)(1) had not been met, thereby necessitating a denial of the motion for an extension of temporary custody. We conclude that there was clear and convincing evidence to support this finding.

{¶ 10} The record shows that a case plan was established for L.T., requiring her to complete a parenting/psychological assessment, complete parenting classes, obtain and maintain stable income and housing, and undergo substance abuse and mental health treatment. L.T. completed the parenting/psychological assessment. She also completed the parenting class; however, L.T. was unable to utilize any skills learned from the class. Regardless, this portion of the case plan was considered complete.

{¶ 11} With regard to income, L.T. was unemployed. She had filed an application for Social Security Disability Income, but her case was still pending at the time of the hearing. MCCS referred her to employment agencies and the Job Center, but L.T. did not follow through with any opportunities presented for work. A previous application for Social Security benefits had been denied. There was no evidence in the record that L.T. was not capable of working.

{¶ 12} While L.T. lived in a townhome, which she kept in decent condition with regard to cleanliness after the inception of this case, the portion of the case plan requiring stable housing was considered incomplete, because numerous unrelated persons were constantly coming and going from the residence. L.T. and these people would sit and smoke and drink in the presence of L.M. At one point, four separate individuals were observed sleeping on the floor. Also, L.T. admitted that she permitted an unrelated male to sleep in L.M.'s bedroom, but claimed that she would have L.M. sleep with her during

those times. L.M. claimed that men would touch her inappropriately when her mother was not present. L.T. stated that she did not believe L.M.'s allegations, because no one was prosecuted.

{¶ 13} L.T. was referred to substance abuse treatment, due to the fact that her mother and the case workers smelled alcohol on her breath during visitations. L.T. tested positive for alcohol. She began treatment at Day-Mont, but attended once per month or less until June 2013, when she stopped attending. She started attending sessions again in November 2013, but was only attending one session per week rather than the recommended two. L.T. admitted that she continues to "drink on occasion." Tr. p. 67. Furthermore, the day before the hearing, the case worker went to L.T.'s home and observed a liter bottle of beer that was two-thirds empty.

{¶ 14} There was also evidence that L.T. was not complying with mental health treatment. She was prescribed medication for depression, but admitted that she did not take it regularly as prescribed. Again, the treatment facility, which was treating both the substance abuse and mental health problems concurrently, recommended that she attend two weekly sessions, but she only attended one per week.

{¶ 15} The evidence supports the juvenile court's finding that L.T. had not made significant progress on the case plan. Therefore, we conclude that the court did not abuse its discretion in denying the motion for a six-month extension of temporary custody.

{¶ 16} We next turn to the court's decision to award legal custody to the maternal grandmother. R.C. 2151.011(B)(19) defines "legal custody" as follows:

A legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the

child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

{¶ 17} A court may grant legal custody of a dependent child to an individual if the court finds, by a preponderance of the evidence, that legal custody is in the best interest of the child. *In re Starks*, 2d Dist. Darke No. 1646, 2005-Ohio-1912, ¶ 15. On appeal, we will not reverse an award of legal custody absent an abuse of discretion. *Id.*, ¶ 17. The term “abuse of discretion” implies that the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 18} The evidence demonstrates that L.T. is not bonded with the child. Before the child was removed from the home, she would be left unattended while L.T. and her friends imbibed alcohol and smoked. After the child was removed, L.T. did not engage with the child, and even fell asleep, during visitations. The evidence supports a finding that the child is not comfortable visiting with L.T. outside the presence of P.H. Conversely, the child and P.H. are bonded and their interactions are appropriate. The record reveals that even before the onset of this case, the child stayed with P.H. on most weekends. P.H. is highly involved in the child's mental health counseling and schooling. The child's Guardian Ad Litem testified that the child wishes to live with P.H.

{¶ 19} Furthermore, prior to the removal, the child was performing poorly in school,

had issues with truancy, and was held back in kindergarten. The child also exhibited behavior problems. While living with P.H., the child's behavior and grades at school have improved. Her reading level has increased. And she is active in several extracurricular activities that she enjoys. The evidence supports a finding that following visitation with L.T., the child's behavior at school deteriorates.

{¶ 20} The child has been enrolled in mental health counseling since her removal from the mother's home, due to the allegations of sexual abuse by one of L.T.'s male friends. The evidence indicates that the child suffers from Post Traumatic Stress Disorder as a result of the abuse. Her therapist indicated that returning the child to L.T. would be detrimental to the child, since L.T. does not believe the child's allegations of abuse. The evidence demonstrates that the child's mental health status has improved since her removal from the home. P.H. is engaged in, and supportive of, L.M.'s mental health therapy, and she helps the child implement her therapy in her everyday life.

{¶ 21} The evidence also supports a finding that L.T. has issues with depression and alcohol abuse which she does not believe are a problem and for which she does not adequately engage in treatment. The month before the final hearing, she was observed to smell of alcohol. The day before the hearing, a large bottle of beer, most of which had been consumed, was observed in her home. L.T. had not stopped having unrelated people stay in her home.

{¶ 22} We conclude that the record contains adequate evidence upon which the juvenile court could rely in finding that the child's best interests were best served by awarding legal custody to P.H.

{¶ 23} The sole assignment of error is overruled.

I. Conclusion

{¶ 24} L.T.'s sole assignment of error having been overruled, the judgment of the juvenile court is Affirmed.

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DONOVAN, J., and HALL, J., concur.

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