

[Cite as *In re N.C.*, 2015-Ohio-2969.]

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

IN RE: N.C., B.C., H.C., A.C.,
J.C. and E.C.

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C.A. CASE NO. 26611

T.C. NO. 2003-2701, 2003-2702
2003-2703, 2003-2704,
2008-7449, 2008-7450

(Civil Appeal from Common Pleas
Court, Juvenile Division)

OPINION

Rendered on the 24th day of July, 2015.

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FROELICH, P.J.

{¶ 1} Mother appeals from a judgment of the Montgomery County Court of Common Pleas, Juvenile Division, which granted permanent custody of her six children to Montgomery County Children Services (MCCS). Although the judgment pertained to all six children, Mother appeals the trial court's judgment only with respect to three of the children: H.C., A.C., and J.C.

{¶ 2} For the following reasons, the judgment of the trial court will be affirmed.

{¶ 3} At the time of the 2014 hearing on permanent custody, Mother had six children: N.C., a 15-year-old boy; B.C., a 13-year-old boy; H.C., a 12-year-old girl; A.C., an 11-year-old boy; J.C., an 8-year-old boy; and E.C., a 6-year-old boy. The children's father has not sought custody and is not involved in this appeal.

{¶ 4} Mother's first interaction with MCCS was in March 2003, when the children she had at that time (N.C., B.C., H.C., and A.C., the oldest of whom was then less than four years old) were found to have been home alone unsupervised for several hours. Mother claimed to have left the children with their father. MCCS filed a dependency complaint, and Mother agreed to protective supervision, which continued until August 2003.

{¶ 5} In August 2008, MCCS filed a complaint for neglect and dependency with respect to the children, in which it stated that the home conditions, Mother's substance abuse and poor mental health, domestic violence, and lack of supervision were endangering the children. MCCS sought temporary custody of all six children. Mother admitted to feeling "stressed and overwhelmed" by dealing with the children; she dealt with her stress by using alcoholic beverages as a "stress reliever," even when the children

were in her care. She also admitted to regular violent encounters with the children's father, often in front of the children, when the father would visit on the weekends, and she exhibited signs of physical injuries. The court granted interim temporary custody of the three eldest children to their paternal grandmother and granted temporary custody of the three youngest children to MCCS. Temporary custody of H.C. was subsequently transferred from the paternal grandmother to MCCS; N.C. and B.C. went from the care of their grandmother to a brief period in the temporary custody of their father, but they eventually were also placed in the temporary custody of MCCS.

{¶ 6} Temporary custody of the children was extended in October 2009 and March 2010. In June 2010, MCCS requested that legal custody of the children be returned to Mother, with protective supervision. In July 2010, legal custody of the two youngest children, J.C. and E.C., was granted to a maternal uncle, and custody of B.C. and A.C. was granted to Mother. N.C. and H.C. were returned to Mother's legal custody in October 2010. Protective supervision was conducted until January 2011. In May 2011, J.C. and E.C. were also returned to Mother's custody.

{¶ 7} In February 2012, MCCS filed another motion for temporary custody of the six children or, in the alternative, for a period of protective supervision. This request arose after B.C. was taken to Children's Medical Center for ingesting unknown medications he found in an adult step-brother's pocket. B.C. was filthy and expressed concern about the cost of the food at the hospital, because his mother did not have any money. The hospital staff also witnessed Mother attempt to hit B.C. in response to his question about the cost of the food. When the staff attempted to talk with Mother about B.C.'s discharge plan, she refused to discuss it because she was sleepy. Mother asked

the staff to return after she had taken a nap.

{¶ 8} In an interview with a caseworker, Mother admitted that she had taken all of the children off of their medications because she disliked their effects and had terminated counseling. Mother also admitted that she was no longer taking her own medications or attending counseling. When the caseworker completed a walk-through of the family's home, she observed soiled carpets and furniture, with "piles of dog feces as well as smashed dog feces" on the carpet, and with some of the children sleeping on a mattress placed directly on the carpet. Further, Mother admitted that the beds were infested with bed bugs. The caseworker confirmed that the children sometimes walk 2-3 hours to get to school because the family oversleeps and Mother does not have money or other means to get them to school. Sometimes the children turn around before getting to school, and they had high rates of absenteeism.

{¶ 9} MCCS's motion for temporary custody was granted and the children were placed in foster care. Temporary custody was extended in May and November 2013.

{¶ 10} In January 2014, MCCS filed a motion for permanent custody of the six children. In April 2014, Mother filed a motion for legal custody of H.C., A.C., and J.C. (the third, fourth, and fifth children, chronologically). Following a hearing in April 2014, the magistrate granted MCCS's motion for permanent custody of all six children and overruled Mother's motion for legal custody of three of the children. Mother filed objections to the magistrate's decision. The trial court overruled Mother's objections, overruled her motion for legal custody, and adopted the magistrate's decision granting permanent custody to MCCS.

{¶ 11} Mother raises one assignment of error, which states:

The trial court erred in granting permanent custody to Montgomery County Children Services because Montgomery County Children Services failed to prove by clear and convincing evidence that permanent custody was in the best interest of the children at issue in this appeal.

{¶ 12} Mother contends that the trial court's award of permanent custody of the children to MCCA was against the manifest weight of the evidence because she was bonded with the children, had remedied the issues that caused the removal of the children, had "substantially complied" with the case plan, and could provide a legally secure placement for the children. She focuses her argument on H.C., A.C., and J.C., the children of whom she sought legal custody, and suggests that any concerns about her ability to parent the other children are not relevant.

{¶ 13} R.C. 2151.414 establishes a two-part test for courts to apply when determining a motion for permanent custody to a public children services agency. The statute requires the court to find, by clear and convincing evidence, that: (1) granting permanent custody of the child to the agency is in the best interest of the child; and (2) either the child (a) cannot be placed with either parent within a reasonable period of time or should not be placed with either parent if any one of the factors in R.C. 2151.414(E) are present; (b) is abandoned; (c) is orphaned and no relatives are able to take permanent custody of the child; or (d) has been in the temporary custody of one or more public or private children services agencies for twelve or more months of a consecutive twenty-two month period. R.C. 2151.414(B)(1); *In re S.J.*, 2d Dist. Montgomery No. 25550, 2013-Ohio-2935, ¶ 14, citing *In re K.M.*, 8th Dist. Cuyahoga No. 98545, 2012-Ohio-6010,

¶ 8.

{¶ 14} R.C. 2151.414(D) directs the trial court to consider all relevant factors when determining the best interest of the child, including but not limited to: (1) the interaction and interrelationship of the child with the child's parents, relatives, foster parents and any other person who may significantly affect the child; (2) the wishes of the child; (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; (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; and (5) whether any of the factors in R.C. 2151.414(E)(7) through (11) are applicable. R.C. 2151.414(D); *In re S.J.* at ¶ 15. R.C. 2151.414(E)(7) through (11) include whether the parent has been convicted of any of a number of listed offenses; whether the parent has repeatedly withheld medical treatment or food; whether the parent has placed the child at substantial risk of harm two or more times due to substance abuse and has rejected treatment two or more times or refused to participate in treatment; whether the parent has abandoned the child; and whether the parent has had parental rights previously terminated.

{¶ 15} A trial court's decision on termination "will not be overturned as against the manifest weight of the evidence if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established." (Citations omitted.) *In re A.U.*, 2d Dist. Montgomery No. 22264, 2008-Ohio-186, ¶ 15. Furthermore, "issues

relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact.” *In re A.J.S.*, 2d Dist. Miami No. 2007 CA 2, 2007-Ohio-433, ¶ 22. The “rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984); *In re J.Y.*, 2d Dist. Miami No. 07-CA-35, 2008-Ohio-3485, ¶ 33.

{¶ 16} Mother acknowledges that the children had been in the temporary custody of MCCS for twelve or more months of a consecutive twenty-two-month period preceding MCCS’s motion for permanent custody. Thus, we will focus on the best interest of the children, and we need not discuss the second part of the test set forth in R.C. 2151.414. Mother contends that MCCS did not establish, by clear and convincing evidence, that it was in the children’s best interest to award permanent custody to MCCS.

{¶ 17} The evidence presented at the hearing was as follows.

{¶ 18} S.H., the foster mother of H.C., A.C., and J.C., testified that the children had lived with her for more than six months at the time of the hearing. All of the children were on IEPs and were doing well in school. H.C.’s IEP helped her by “slow[ing] things down a bit.” A.C. had been diagnosed with attention deficit hyperactivity disorder (ADHD) and had the reading level of a first grader, although he was in the fourth grade. A.C. was “anti school” when he came into S.H.’s care and “didn’t want anything to do with learning,” but some adjustments in his medication have made it easier for him to focus, have improved his retention of information, and have made him feel pride in his

performance at school. A.C.'s "depressive behaviors" have diminished to the point that he was taken off of medication for depression.

{¶ 19} J.C. is "very smart," and his IEP relates more to behavioral concerns than academic ones. J.C. is in counseling and on medication. He was diagnosed with oppositional defiant disorder "moving into" a conduct disorder, with some concern that he might become anti-social by adulthood. He has anger issues and "feels guilty about being happy." According to S.H., J.C. returns from visitation with "the weight of the world on his shoulders," unhappy, angry, and misbehaving. After one telephone call with Mother, J.C. cried, tried to hit S.H., and "beat his face on the door" until it was swollen. On another occasion, J.C. beat his face on a wall after Mother made statements to the children that she would drive off of a bridge if she did not get her children back. According to S.H., J.C. has been told not to trust anyone outside his family, and he has a difficult time opening up to others.

{¶ 20} S.H. testified that her foster children have commented about being cared for and having fewer worries in the foster home. A.C. has commented about not having to worry about waking up "with a bug in your ear in the morning." S.H. testified to her belief that the children love their mother but hope for better lives for themselves.

{¶ 21} L.B., the foster mother of the other three children, also testified at the hearing. Two of those children have been diagnosed with and take medication for ADHD. One of the children takes four drugs and attends weekly counseling; he was repeating kindergarten because he is so far behind developmentally. L.B. testified that the children had made significant progress since coming to her home. Like S.H., she reported that the children acted out and exhibited bad behavior after visiting with Mother,

and E.C. sometimes even became physically ill. B.C. reported having been allowed to drive a van (at age 13) while he was with Mother.

{¶ 22} Anne Polasko, a licensed social worker and in-home therapist, had done some counseling with the family. She testified that, during visitations that she observed, Mother had blamed MCCS or the children for “getting her in trouble” by misbehaving. Polasko testified that Mother could handle the children at visits 80% of the time, but other times she yelled and used profanity, and one time she “thrust [E.C] into a couch.” The children reported domestic violence between their father and Mother. They also reported that Mother’s boyfriend bought and used drugs with Mother’s money.

{¶ 23} Polasko also worked one-on-one with H.C. Polasko testified that H.C. had oppositional defiant disorder. When Polasko first began to work with H.C., H.C. expressed a desire to return to Mother’s care, and H.C. clearly felt love and loyalty toward Mother. Over time, however, H.C. began to think about her own future and to struggle with the idea of returning to Mother’s home. H.C. felt conflicted in trying to reconcile her love and loyalty toward Mother with the opportunities that would be available to her if she stayed in foster care or was adopted.

{¶ 24} Psychologist Rhonda Lilley evaluated Mother in August 2013 and observed a visitation with the children in December 2013. At the time of her evaluations, Dr. Lilley was aware of MCCS’s concerns about Mother’s mental health, her parenting, the conditions in her home, and her possible substance abuse. Dr. Lilley was also aware of the family’s extensive history with MCCS.

{¶ 25} Mother reported to Dr. Lilley that she (Mother) had previously been diagnosed with depression and bi-polar disorder. Based on her own assessments, Dr.

Lilley diagnosed Mother with a mood disorder and “characteristics of a personality disorder with borderline and some histrionic traits.” Dr. Lilley described “borderline and histrionic traits” as difficulty dealing with authority figures, boundaries, and limits and a focus on one’s own needs more than those of others, including one’s children. A personality test conducted by Dr. Lilley also led her to believe that Mother was at risk for substance abuse.

{¶ 26} According to Dr. Lilley, Mother expressed no concern about her own parenting, despite her extensive history with MCCS. Mother minimized concerns about such issues as animal feces in her home, the children not getting to school, and her methods of punishing and playing with the children, and she expressed disagreement with MCCS’s assessment that her home was inadequate to meet the children’s needs. Dr. Lilley testified that this lack of awareness or insight into her own circumstances reduced the potential for positive change. With respect to her understanding of why some of the children had expressed a preference for foster care, Mother stated that she viewed the foster care environment “more as bribery and manipulation [of the children] rather than stability and security.”

{¶ 27} After observing Mother with the children, Dr. Lilley described the visit as “chaotic” and observed that Mother had trouble setting limits, especially with the youngest child, E.C. The older children helped a lot in caring for the younger children during the visit, and one of the older children commented that E.C. did much better in the foster home than he did with Mother. During the visit, Mother questioned some of the children about their desires to come home to live with her; she did not react to their comments if they said they wanted to remain in foster care, but her disappointment and sadness were

apparent. The children were very attached to Mother, especially the oldest ones, although she had difficulty managing them.

{¶ 28} Dr. Lilley opined that borderline traits and borderline personality disorders such as those exhibited by Mother are among “the more difficult for intervention.” She testified that dialectical behavior therapy (DBT) has shown some promise in treating such disorders, but that it is a very intensive process involving regular therapy for one to two years and that this type of therapy is not available in the Dayton area. Dr. Lilley believed that the therapy Mother had received was “beneficial” and “positive,” but it was not DBT therapy and she did not believe that its frequency and intensity were comparable to DBT or were enough to accomplish “personality and structure change.”

{¶ 29} Dr. Lilley identified “significant mental health and personality issues” which impacted Mother’s “ability to provide a stable caring environment for her children” and contributed to her history of substance abuse. Dr. Lilley thought that Mother would be able to provide “limited structure, limited enrichment, [and] limited consistency” for the children. Dr. Lilley was “very guarded” about the possibility of Mother improving her mental health to the point that she would be able to cope with all of the children in her home, especially in the absence of DBT or other intensive therapy. At the time of the hearing, Dr. Lilley did not think that Mother had made “significant gains” in “personality growth or involvement in treatment” or that it was in the children’s best interest to return to Mother’s care.

{¶ 30} Dr. Lilley expressed her view that, if Mother had two years of intensive therapy, there would be the possibility that she could parent some of the children, but even this was uncertain. Mother would have an easier time parenting the older children,

but those children had expressed their desire to stay in foster care. Dr. Lilley did not recommend reunification with J.C. or E.C., because those children exhibited the greatest behavioral problems, with which Mother was unequipped to cope. H.C. had vacillated about whether she wanted to stay in foster care or return to Mother, but the child seemed to value stability, and Dr. Lilley recommended that she remain in foster care. With respect to A.C., Dr. Lilley recommended following the recommendation of A.C.'s therapist. If any of the children were returned to Mother's care, Dr. Lilley saw the need for in-home intervention for a period of at least six months.

{¶ 31} Finally, the MCCS caseworker, Toni Penewit, testified at the hearing. Penewit had reviewed the case plan objectives with Mother and felt that Mother understood them. The objectives were: 1) learn to manage stress through therapy and demonstrate what she learned, 2) maintain stable and clean housing, 3) visit with the children and supervise them appropriately during visits, 4) participate in family therapy, 5) maintain income, and 6) complete parenting and psychological assessments and follow the recommendations made as a result of those assessments.

{¶ 32} Penewit testified that Mother had obtained employment as a home health aide, that she has a house that she has been keeping clean, and that she had been visiting with the children regularly. Penewit had no concerns regarding substance abuse at the time of the hearing. When Penewit was assigned to the case in 2012, Mother was not receiving any mental health services and was not taking her medication consistently, in order "to make it last longer." Mother was exhibiting a lot of mood swings and trouble controlling her anxiety; she had trouble waking in the morning, and could not stay awake at night, and was angry and depressed. In mid-2013, Mother started taking medication

regularly, and she became more “relaxed,” less depressed, and more stable. Mother had taken the medication consistently from mid-July 2013 until the hearing in April 2014, except for a couple of weeks when she missed doctor appointments. According to Penewit, the change in Mother’s behavior was very apparent during the weeks that she missed her medication.

{¶ 33} Penewit testified, however, that even when Mother was on her medication, some “concerning behaviors” were observed. There were instances of yelling and excessive sleeping when the children were in her care for visits, and Penewit recounted the incident in which Mother pushed E.C. into the couch.

{¶ 34} Mother attended therapy to discuss issues related to the children and stress management. She had originally attended therapy twice per month, but was attending only once per month by the time of the hearing. It was not the “intense DBT therapy” recommended by Dr. Lilley.

{¶ 35} Mother completed a parenting class in the summer of 2013, prior to the time of her assessment by Dr. Lilley. Penewit testified that Mother could “verbalize that she learned things in the parenting class,” but Penewit did not observe any changes in Mother’s parenting after the class. Similarly, Mother could verbalize what she had learned about stress management, but she did not seem to be implementing those techniques when she became frustrated with the children. Mother engaged in verbal arguments with the children; she also made the children feel guilty about not wanting to come home and about receiving things from their foster families.

{¶ 36} During summer visits with the children at Mother’s home, the older boys reported that they were allowed to wander the neighborhood and did not spend much

time at the house. Mother still yelled at the children, but Penewit stated that recent visits had only involved A.C., J.C., and H.C, and that Mother did not yell at them very much. (B.C. and N.C. had chosen not to visit, and E.C.'s visits had also been discontinued due to Mother's difficulty in managing him.) Penewit also noted that, during the period when the children had been returned to Mother's custody, B.C. had ingested prescription medications, and the hospital staff had expressed concerns about Mother's behavior at the hospital and her administration of follow-up care. According to Penewit, Mother's mental health therapy was ongoing, but the issue was still an area of concern.

{¶ 37} Penewit stated that all of the children were adoptable and that both foster families were open to adoption. She stated that the two older boys and the youngest boy wanted to stay with their foster families, while J.C. wanted to go to Mother's home; A.C. and H.C. had "swayed back and forth" but most recently had stated that they wanted to stay with their foster family.

{¶ 38} Penewit testified that MCCS thought the children were all adoptable and that the foster families were open to adoption. MCCS did not believe that reunification with Mother was possible in the foreseeable future because of "ongoing concerns" and Mother's poor parenting choices. Penewit noted that the children had been in the care of MCCS for four of the previous five years.

{¶ 39} The guardian ad litem did not testify at the hearing, but did submit several reports; she recommended that permanent custody of all the children be granted to MCCS. The guardian ad litem noted that in-home visitation with the children, which was attempted with three children at a time in 2013, "shed light on several concerns regarding the safety and well-being of the [c]hildren while in Mother's care." As examples, the

guardian ad litem cited that one of the children was bitten by a dog three times and that Mother allowed B.C. to steer her van while she sat in the driver's seat. As a result of these and other inappropriate behaviors, visitations were moved back to MCCS. Other problems observed by the guardian ad litem included Mother's telling the children to lie, blaming the children for causing her problems, making threats against the guardian ad litem, hitting the children in front of the guardian ad litem, the children's excessive knowledge of adult issues, including sexual issues, Mother's failure to take her medications consistently, and her refusal to accept responsibility for things and her blaming of others.

{¶ 40} With respect to H.C., A.C., and J.C., the guardian ad litem expressed her view that each of the children was doing well in foster care and was happy there, but that the children were reluctant to express their positive feelings toward foster care in front of their mother. The guardian ad litem also discussed some of the challenges the foster family has had with the children, which include sneakiness and lying, uncontrolled behavior, crying, not listening, and acting out after visits with Mother. The family instituted a rule that phone calls with Mother must be on speaker phone so that the conversation can be heard by the foster mother, because of instances of counterproductive and upsetting conversations with Mother. The guardian ad litem testified that some of the problems that existed as far back as 2003 continue to exist, such as Mother's failing to give the children medication during visits (when there were in-home visits), giving the children too much responsibility, reprimanding the children for things they said to the guardian ad litem or other personnel involved in the case, or encouraging the children to withhold information, and blaming others for problems in the household.

The guardian ad litem recommended that MCCS be granted custody of all six children.

{¶ 41} Although Mother had made progress in some aspects of her case plan objectives, all of the witnesses who testified at trial expressed concern about her ability to parent even some of the children in an effective and healthy manner. There was some evidence that Mother's own mental health had been relatively stable for a period of several months prior to the hearing, but Dr. Lilley described Mother as having fundamental problems that would be difficult to fully address, and Mother had not received the kind of intensive therapy (DBT or any other type) which would have made a significant impact on her condition. Mother continued to exhibit instability, blaming of others, focus on herself, trouble setting boundaries, and a tendency to be overwhelmed which were indicative of the personality disorder with borderline traits. Mother had attended parenting and stress management classes, but she had not demonstrated any improvement in her parenting as a result. Moreover, the three children at issue in this appeal face their own medical, mental, and educational challenges.

{¶ 42} In overruling Mother's objections and adopting the magistrate's recommendation of permanent custody, the trial court observed that, although there is a bond between Mother and her children, Mother has serious mental health issues and a history of failing to manage them effectively. This situation created significant uncertainty for the children. Mother also "refuses to accept responsibility." Under these circumstances, the trial court concluded that Mother would not be able to provide a secure, permanent placement for the children that "fosters growth, stability, and security." After analyzing all of the statutory factors related to the best interest of the children, the court concluded that the children were "in desperate need of a legally secure, permanent

placement” which could not be provided by Mother. Based on the evidence presented, the trial court reasonably concluded, by clear and convincing evidence, that granting permanent custody of H.C., A.C., and J.C. to MCCS was in the best interest of the children.

{¶ 43} The assignment of error is overruled.

{¶ 44} The judgment of the trial court will be affirmed.

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DONOVAN, J. and WELBAUM, J., concur.

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