

[Cite as *In re Jackson*, 2004-Ohio-542.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
HANCOCK COUNTY**

IN THE MATTER OF:

CASE NUMBER 5-03-25

**CYERENITY JACKSON,
ALLEGED DEPENDENT CHILD**

OPINION

**(TORRENCE JACKSON,
FATHER-APPELLANT)**

**(MONIQUE JACKSON,
MOTHER-APPELLANT)**

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court, Juvenile Division.**

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: February 9, 2004

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Cupp, J.

{¶1} Appellants, Torrence and Monique Jackson (hereafter referred to jointly as “Appellants”), appeal a judgment of the Hancock County Common Pleas Court, Juvenile Division, granting permanent custody of their child, Cyerenity Jackson, to the Hancock County Department of Job and Family Services: Children’s Protective Services Unit (“CPSU”). Appellants claim that the trial court’s decision was not supported by sufficient clear and convincing evidence. Additionally, Torrence claims the trial court erred by not finding that CPSU had failed to exercise due diligence in the creation and execution of his case plan. Having reviewed the entire record, we hold that there was clear and convincing evidence supporting the trial court’s judgment, and that the trial court did not err in finding that CPSU had exercised its required due diligence. Accordingly, we

overrule both parties' assignments of error and affirm the decision of the trial court.

{¶2} Cyerenity Jackson was born on June 22, 2002 to Torrence and Monique Jackson. That same day, Monique tested positive for marijuana. Two days later, Cyerenity was placed with CPSU. At an August 22, 2002 hearing, Cyerenity was found to be a dependent child and temporary custody was awarded to CPSU. In January of 2003, Appellants had their parental rights involuntarily terminated with regards to Cyerenity's siblings, Keyera and Skyler Jackson. Subsequently, CPSU filed for permanent custody of Cyerenity, and a hearing was held on the matter on July 14 and 15, 2003. The trial court found that Cyerenity had been in CPSU's custody for twelve or more months of a consecutive twenty two month period, and that she could not be placed with either parent within a reasonable time or should not be placed with the her parents pursuant to R.C. 2151.414(B)(1)(a). Accordingly, CPSU was awarded permanent custody of Cyerenity on July 21, 2003.

{¶3} From this judgment Appellants appeal, collectively presenting three assignments of error for our review. Because Monique's sole assignment of error and Torrence's first assignment of error deal with the sufficiency of the evidence, both will be addressed together.

Torrence Jackson's Assignment of Error I

The lower court erred in granting permanent custody to Hancock County Job and Family Services – C.P.S.U. because the evidence was not supported by the clear and convincing standard.

Monique Jackson's Assignment of Error I

The trial court erred in granting the motion of Hancock County Job and Family Services: Children's Protective Services Unit and in placing the child in the permanent custody of the Hancock County Job and Family Services: Children's Protective Services Unit, as the Court's decision was not supported by clear and convincing evidence and is against the manifest weight of the evidence.

{¶4} In their first assignment of error, Appellants claim that the evidence at trial was insufficient to support the trial court's judgment awarding CPSU permanent custody of Cyerenity Jackson. Specifically, they assert that the evidence is insufficient to prove clearly and convincingly that it was in Cyerenity's best interests to be placed in CPSU's permanent custody, and that she could not be placed with either parent within a reasonable time.

{¶5} Preliminarily, it is important to note that a parent's right to raise his or her child is an "essential" and "basic civil right."¹ "Parents have a 'fundamental liberty interest' in the care, custody, and management of their children."² The rights and interests of a natural parent are not, however, absolute.³ If a court finds that permanent custody is appropriate under the circumstances of a particular case and all of the due process and statutory safeguards have been followed, the rights of a parent may be properly divested.⁴

{¶6} R.C. 2151.413 permits an agency that has been granted temporary custody of a child who is not abandoned or orphaned to move for permanent

¹ *In re Murray* (1990), 52 Ohio St.3d 155, 157; *Stanley v. Illinois* (1972), 405 U.S. 645, 651.

² *In re Murray*, 52 Ohio St.3d at 157, citing *Santosky v. Kramer* (1982), 455 U.S. 745, 753.

³ *In re Palmer* (1984), 12 Ohio St.3d 194, 196, certiorari denied 105 S.Ct. 918.

⁴ *Id.*

custody. R.C. 2151.414(B) provides that permanent custody may be granted if the court determines that CPSU has proved, by clear and convincing evidence, that such action will serve the best interests of the child, and that any of the factors listed in division (B)(1) apply.

{¶7} Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to facts sought to be established.⁵ It is an intermediate degree of proof, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases.⁶ When, "the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof."⁷ Thus, we are required to determine whether the evidence was sufficient for the trial court to make its findings by a clear and convincing degree of proof.

{¶8} To determine whether permanent custody is in the best interests of the child, the court must consider the following non-exclusive list of factors:

- (1) 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;**
- (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;**
- (3) The custodial history of the child, including whether the**

⁵ *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, citing *Cross v. Ledford* (1954), 161 Ohio St. 469, 477.

⁶ *Id.*

⁷ *Cross*, 161 Ohio St. at 477.

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 ending on or after March 18, 1999;
(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;
(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.⁸

{¶9} The trial court herein considered all of the above factors and found that it was in Cyerenity's best interest to grant CPSU permanent custody. Appellants claim that the trial court's finding was improper, because there was testimony showing Cyerenity had a good relationship with her parents. They claim that under the first factor this evidence should have weighed in favor of Appellants. However, there was ample evidence against Appellants concerning the remaining four factors. The guardian ad litem recommended that CPSU be given permanent custody. Cyerenity had been in the temporary custody of CPSU since a few days after her birth. There was testimony regarding her immediate need for a permanent placement and Appellants' inability to provide her with an adequate living environment. Further, Appellants previously had their parental rights of Cyerenity's siblings involuntarily terminated. R.C. 2151.414(E)(11) states that the court should consider as a factor whether the parents have had their parental rights with respect to other siblings involuntarily terminated.

⁸ R.C. 2151.414(D).

{¶10} After having reviewed the entire record, we hold that there was clear and convincing evidence supporting the trial court's finding that it was in Cyerenity's best interest to have permanent custody granted to CPSU.

{¶11} In addition to determining whether permanent custody was in Cyerenity's best interest, the trial court was required to find that at least one of the factors in R.C. 2151.414(B)(1) was present. Herein, the trial court relied upon two of the R.C. 2151.414(B)(1) factors. The trial court found that Cyerenity had been in the temporary custody of CPSU for twelve or more months of a consecutive twenty-two month period, and that she could not be placed with either parent within a reasonable time.

{¶12} In her brief, Monique correctly asserts that it was improper for the trial court to find that Cyerenity had been in CPSU's custody for twelve or more months under R.C. 2151.414, which states:

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

Cyerenity was adjudicated a dependent child exactly sixty days after her birth, and she was not removed from her home until two days after her birth. Therefore, under the statutory law, the trial court should have found that she entered CPSU's custody on August 22, 2002. Because the trial court's judgment entry granting CPSU permanent custody was filed in July of 2003, less than twelve months after Cyerenity should have been legally considered in custody, it was improper for the

trial court to hold that Cyerenity had been in CPSU's custody for at least twelve months. Thus, the trial court's decision to grant CPSU permanent custody would have been in error if it had been based solely upon the amount of time Cyerenity had been in temporary custody.

{¶13} However, R.C. 2151.414(B)(1) only requires that the court find *one* of the factors to be present. The trial court herein based its findings on two separate (B)(1) factors. Accordingly, because we have already found that the trial court could not have properly found that Cyerenity had been in CPSU's custody for twelve months, we must decide whether the trial court's finding that Cyerenity could not be placed with either parent within a reasonable time was supported by clear and convincing evidence.

In determining whether a child can be placed with either parent within a reasonable time or cannot be placed with either parent, the court is required to consider all relevant evidence.⁹ If the court finds by clear and convincing evidence that one or more of the factors in R.C. 2151.414(E) are present, then “the court *shall* enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.”¹⁰ As discussed above, factor (E)(11), the previous involuntary termination of Appellants' parental rights, was present and supported by the evidence produced at trial. Accordingly, we find that there was clear and convincing evidence supporting the court's

⁹ R.C. 2151.414(E).

¹⁰ *Id.* (Emphasis added).

finding that Cyerenity could not be placed with either parent within a reasonable time.

{¶14} Having reviewed the entire record, we hold that the trial court's judgment granting CPSU permanent custody of Cyerenity was supported by clear and convincing evidence. Accordingly, we overrule Appellants' first assignments of error and affirm the decision of the trial court.

Torrence Jackson's Assignment of Error II
The court erred in granting permanent custody to Hancock County Job and Family Services – C.P.S.U. because they did not use due diligence and good faith in services.

{¶15} In his second assignment of error, Torrence claims that CPSU failed to exercise due diligence and good faith in the implementation of his case plan. Accordingly, he claims that it was error for the trial court to grant CPSU's petition for permanent custody of Cyerenity.

{¶16} R.C. 2151.419 normally imposes a duty on the part of CPSU to make reasonable efforts to reunite parents with their children where the agency has removed the children from the home.¹¹ However, there is an exception to this requirement where the parents have previously had their parental rights involuntarily terminated with regards to a sibling of the child.¹² As discussed above, Torrence's parental rights with respect to Cyerenity's siblings had previously been terminated. Therefore, the statute exempts CPSU from the reasonable effort requirement of R.C. 2151.419.

¹¹ *In re Brown* (1994), 98 Ohio App.3d 337, 344.

¹² R.C. 2151.419(2)(e).

{¶17} Although CPSU was not required to do so under the circumstances, it appears from a review of the record that the case plan was, in fact, a reasonable effort designed to reunite Cyerenity with her parents. The requirements of the case plan were designed to give Cyerenity a safe and stable home to live in and were reasonable. Requirements of the case plan included mental health and substance abuse counseling, parent education classes, cooperation with CPSU, a safe home environment for Cyerenity that included child proofing and no domestic violence, and parental attendance at all of Cyerenity's medical appointments, which were to be scheduled by the foster parents. Despite the seemingly logical and minimal nature of these requirements, Torrence argues specifically that two aspects of the case plan were unfair.

{¶18} First, he claims that it was impossible for him to participate in substance abuse and mental health counseling with Century Health. Torrence had previously been involved with counseling through Century Health and had failed to pay for the charges he incurred. On his first visit under the case plan herein, he was told that he would have to pay his old bill before scheduling new sessions. However, there was testimony from a Century Health employee that Century Health was willing to work with people who were delinquent in payments so that they could continue counseling sessions. Further, future appointments were scheduled for Torrence, which he missed without excuse. Moreover, testimony was presented that CPSU would have helped Torrence with any future payments he might incur with Century Health because of the case plan. In spite of this, the

record is void of Torrence ever seeking any of these alternatives or actively attempting to find a solution to the problem. The evidence shows that it was not Torrence's old bills that kept him from attending the Century Health counseling session, but rather his own desire not to attend.

{¶19} Torrence also maintains that he was unable to attend Cyerenity's medical appointments because CPSU failed to inform him of when the medical appointments were. However, it is clear from both the testimony and the case plan that it was Torrence's responsibility to keep track of when the medical appointments were. Further, there was no evidence entered showing that Torrence had ever contacted the case worker or any other individual concerning any possible future medical appointments.

{¶20} Because Torrence had previously had his parental rights involuntarily revoked with regards to Cyerenity's siblings, CPSU was under no statutory duty to make reasonable efforts to reunite Cyerenity and Torrence. However, it is clear from a review of the case plan that CPSU did make a reasonable effort to reunite Cyerenity with her family. Accordingly, we overrule Torrence's second assignment of error and affirm the decision of the trial court.

{¶21} Having found no error prejudicial to the appellants herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment affirmed.

SHAW, P.J., and BRYANT, J., concur.