

[Cite as *In re McGiffin*, 2005-Ohio-6528.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HOCKING COUNTY

In the Matter of: :
: :
: Case No. 05CA13
Faith McGiffin (D.O.B. 7-21-1999) :
Hope McGiffin (D.O.B. 11-8-2002)¹ :
Dalton McGiffin (D.O.B. 3-21-2003) : DECISION AND
: JUDGMENT ENTRY
: File-Stamped Date: 12-6-05

APPEARANCES:

John Wallace, Logan, Ohio, for appellant.

Larry E. Beal, Prosecuting Attorney, and David A. Sams, Assistant Prosecuting Attorney, Logan, Ohio, for appellee.

Kline, J.:

{¶1} Chris McGiffin (hereinafter “Father”) appeals the judgment of the Hocking County Court of Common Pleas, Juvenile Division, awarding permanent custody of his three minor children to Hocking County Children Services (hereinafter “HCCS”). Father argues that the trial court’s judgment was against the manifest weight of the evidence. Because the judgment entry does not show that the trial court engaged in an analysis of the factors codified in R.C. 2151.414(E),

¹ We note that Hope McGiffin’s birth date, as listed here, is likely incorrect. According to these dates, Hope and Dalton were born within four and a half months of one another. However, the complaint, judgment entry, and notices of appeal state the birth dates as we have recited them here

we are unable to provide meaningful review and sustain this assigned error. Father also argues that the trial court erred by granting permanent custody when HCCS failed to timely file a case plan, and without finding that HCCS engaged in reasonable efforts aimed at reunification. We find that HCCS was not required to provide either service unless the award was predicated upon R.C. 2151.414(E)(1). Because the trial court's judgment entry does not show that it engaged in an analysis pursuant to R.C. 2151.414(E), we are unable to provide meaningful review and sustain this assigned error. Accordingly, we reverse the judgment of the trial court and remand this cause for further proceedings consistent with this opinion.

I.

{¶2} In September 2004, HCCS received a referral from Licking County Children Services (hereinafter "LCCS") that Celeste Allbery (hereinafter "Mother") and her five minor children were currently residing in Hocking County, in the home of Robyn White. HCCS caseworkers visited White's home, wherein they found White, her boyfriend, and the five minor children. White informed the caseworkers that Mother was also in the home, but hiding. Eventually Mother appeared, spoke with a caseworker and admitted to abusing drugs and being unable

to care for her children. HCCS requested that Mother submit to a drug test, which she did. The drug test results were positive for cocaine.

{¶3} HCCS filed for emergency temporary custody, which the trial court granted. After a shelter care hearing, which Mother attended, four of the children—Faith, Hope, Dalton, and Grace McGiffin (hereinafter “the McGiffin children”)—were placed in the temporary custody of HCCS, and Josiah Allbery was placed in the temporary custody of Robyn White, his paternal step-grandmother, with HCCS providing protective supervision. At the time, Father was serving a prison sentence for felony failure to pay child support.²

{¶4} HCCS filed complaints alleging that the children were dependent pursuant to R.C. 2151.04(C) and requesting orders for permanent custody as the initial disposition. The trial court set the original hearing on the matter for December 20, 2004. However, the trial court continued that hearing until February 7-9, 2005 due to the following paternity issue: Mother was married to Eric Gallagher, the father of her sixth child³, during the time she gave birth to each of the McGiffin children, thus making him their putative father.⁴ However, Father, Mother’s paramour, claimed paternity for these children. The trial court ordered

² This conviction was in relation to Father’s failure to pay child support for children unrelated to this case.

³ The sixth child, Dillon Gallagher, is not relevant to this case. He was born after Josiah Allbery, but before Faith McGiffin. His paternal grandmother is now his legal custodian.

⁴ Mother is still married to Eric Gallagher.

paternity tests, which were set for December 29, 2004. Accordingly, HCCS moved to continue the hearing until after completion of the paternity tests in order to allow it to determine the proper parties for the action. The trial court granted this motion, without objection. The paternity tests later confirmed that Father was the biological parent of Faith, Hope, and Dalton McGiffin, but excluded any possibility that he fathered Grace McGiffin.⁵

{¶5} On February 4, 2005, HCCS filed a case plan, well after the time period prescribed in R.C. 2151.412(C). Father did not enter a formal objection to this failure, but did cross-examine HCCS employees about it. HCCS admitted that there was no valid excuse for this failure, but argued it was harmless error because reunification was not a goal.

{¶6} The trial court conducted hearings on this matter on February 7-9, 2005; April 19, 2005; and May 6, 2005. On February 9, the trial court ordered the hearing adjourned and continued because one of the attorneys in the matter fell ill and had to be hospitalized.⁶ None of the parties objected to this continuance, and the hearing continued on April 19, 2005. The record does not reveal why the final hearing date did not occur until May 6, 2005.

⁵ It was later determined that Corey Tucker, Mother's brother-in-law, is Grace's biological father and he voluntarily and permanently relinquished his parental rights. The record also reflects that Josiah Allbery's biological father is John White, who is currently serving an eleven-year prison term in Texas.

⁶ The record does not reveal the name of the attorney, or which party the attorney represented.

{¶7} On June 16, 2005, the trial court permanently terminated Father's parental rights and granted permanent custody of the children to HCCS. The judgment entry recites the trial court's factual findings from the testimony and evidence presented at the hearing, but fails to identify the statutory basis for its order. On July 14, 2005, the trial court issued another journal entry that found that HCCS engaged in reasonable efforts toward reunification and that an order for permanent custody was in the children's best interest. However, the trial court did not identify the statutory basis for its best interest finding.

{¶8} Father appeals and raises the following assignments of error: "THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY WHEN HOCKING COUNTY CHILDREN'S SERVICES FAILED TO SATISFY THE TIME PERIOD REQUIRMENT OF ORC. SECT. 2151.412(C) RESULTING IN PREJUDICE TO NATUAL (sic.) FATHER'S RIGHTS. II. THE TRIAL COURT ERRED IN NOT REQUIRING HOCKING COUNTY CHILDREN'S SERVICES TO USE REASONABLE EFFORTS TO REUNIFY THE CHILDREN WITH THEIR FATHER. III. THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY BECAUSE HCCS DID NOT MEET THE REQUISITE BURDEN OF PROOF AND THE JUDGMENT WAS NOT SUPPORT BY THE MANIFEST WEIGHT OF THE EVIDENCE."

II.

{¶9} In the interest of clarity, we examine Father's three assignments of error out of order. In his third assignment of error, Father argues that clear and convincing evidence does not support the trial court's judgment granting permanent custody of his three minor children to HCCS. We agree, but on the basis that the trial court's judgment entry does not show that it considered the proper statutory factors necessary for an order. Thus, we are unable to provide meaningful review and sustain this assigned error.

{¶10} Ohio law provides for two means by which an authorized agency may seek to obtain permanent custody of a child. The agency may first obtain temporary custody and then subsequently file a motion for permanent custody, or the agency may request permanent custody as part of its original abuse, neglect, or dependency complaint. See R.C. 2151.413, R.C. 2151.27(C), and R.C. 2151.353(A)(4). In order to grant permanent custody in its initial disposition, the trial court must determine that permanent custody is in the best interest of the child pursuant to R.C. 2151.414(D), and that the child cannot be placed with either of his

or her parents within a reasonable time for at least one of the reasons enumerated in R.C. 2151.414(E).

{¶11} R.C. 2151.414(D) sets forth five factors that a trial court must consider in determining a child's best interest. That provision provides: "In determining the best interest of a child * * * the court shall consider all relevant factors, including, but not limited, to the following: (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 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."

{¶12} R.C. 2151.414(E) sets forth sixteen factors that the trial court must consider in determining whether a child can be placed with his or her parents

within a reasonable time, or should not be placed with either parent. A trial court need only find one of these factors in order to award permanent custody to an authorized agency. See R.C. 2151.414(E).

{¶13} We acknowledge that a court is not required, in its judgment entry, to expressly recite the factual findings relating to each statutory factor. See *In re Myers*, Athens App. No. 02CA50, 2003-Ohio-2776, ¶23, citing *In re Malone* (May 11, 1994), Scioto App. No. 93CA2165; *In re Dyal*, Hocking App. No. 01CA12, 2001-Ohio-2542, fn. 3, quoting *In re Day* (Feb. 15, 2001), Franklin App. No. 00AP-1191. However, it is axiomatic that the trial court’s judgment entry must show that it considered the appropriate factors and engaged in the appropriate analysis. See *In re Smith*, Ashtabula App. No. 2002-A-0098, 2002-Ohio-800, ¶13 (“There must be some indication in the record that the magistrate or juvenile court considered all five factors found in R.C. 2151.414(D) before making its decision”), citing *In re Jacobs* (Aug. 25, 2000), 11th Dist. No. 99-G-2231. This is true for the factors contained in both R.C. 2151.414(D) and (E).

{¶14} Here, the trial court did engage in a best interest of the child analysis, pursuant to R.C. 2151.414(D), as that provision related to the children and placement with their Father. In its judgment entry, the trial court notes that Father’s behavior “during the past seven years developed a pattern that requires a

legally secure permanent placement that cannot be achieved without a granting of permanent custody.” That finding comports with R.C. 2151.414(D)(4), and, when competent, credible evidence in the record supports it, is adequate despite the trial court’s failure to identify the facts that support this conclusion.

{¶15} However, the trial court did not engage in the analysis required by R.C. 2151.414(E). The judgment entry does reflect the trial court’s factual findings in regards to Father, but it fails to identify R.C. 2151.414(E), as is required for a valid order that permanently terminates parental rights. Interestingly, the trial court did make an explicit finding pursuant to R.C. 2151.414(E)(12) in relation to Josiah Allbery’s natural father. But that finding is the only indication that the trial court engaged in the mandatory R.C. 2151.414(E) analysis, and it is not applicable to Father’s case. Without any evidence that the trial court engaged in the proper analysis for an award of permanent custody, the judgment cannot withstand scrutiny as we are unable to provide meaningful review. Accordingly, we sustain Father’s third assignment of error.

III.

{¶16} Because Father’s first and second assignments of error are interrelated, we address them together. In his first assignment of error, Father argues that the trial court erred by granting permanent custody when HCCS failed

to timely file a case plan as required by R.C. 2151.412(C). Father argues that this failure prejudiced his case because the case plan serves as notification of the corrective measures a parent must take to achieve reunification with their children. In his second assignment of error, Father argues that the trial court erred by granting permanent custody to HCCS without requiring proof that the agency engaged in reasonable efforts to reunite him with the children, as required by R.C. 2151.419.

{¶17} R.C. 2151.412(C) provides, in pertinent part: “Each public children services agency and private child placing agency that is required by division (A) of this section to maintain a case plan shall file the case plan with the court prior to the child’s adjudicatory hearing but no later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care.”

{¶18} Pursuant to R.C. 2151.419(A)(1), before granting permanent custody to a public children’s services agency, the trial court must determine whether the agency made reasonable efforts to prevent the continued removal of the children from the home. Although a children services agency should make a good faith effort to reunite a dependent child with a biological parent, such a reunification plan is not required where it would be futile to implement one. *In re Leitwein*,

Hocking App. No. 03CA18, 2004-Ohio-1296, ¶30; *Elmer v. Lucas Cty. Children Serv. Bd.* (1987), 36 Ohio App.3d 241, 244.

{¶19} We have previously held that the children services agencies do not have a duty to continue reunification efforts after filing the complaint for permanent custody. See *In re Ward* (Aug. 2, 2000), Scioto App. No. 99CA2677; *In re Lewis*, Athens App. No. 03CA12, 2003-Ohio-5262. In *Ward*, we noted that “[i]t is axiomatic that a parent’s statutory right to a reunification plan does not apply in the context of actions seeking permanent custody.” *Id.*, quoting *In re Cooperman* (Jan. 19, 1995), Cuyahoga App. No. 67239, citing *In re Pachin* (1988), 50 Ohio App.3d 44, 47-48. Thus, a trial court “can award permanent custody to a children services agency even though little or no efforts are made to return the child to his or her home if the evidence supports a finding that it is in the child’s best interest and that the child should not be returned to the parents.” *Id.*, citing *In re Scott* (Aug. 22, 1997), Marion App. No. 9-97-N, citing *In re Kwanza Lee Stevens* (July 16, 1993), Montgomery App. No. 13523. However, if “R.C. 2151.414(E)(1) is a basis for granting permanent custody as the initial disposition, an agency must have given the parent a case plan and an opportunity to correct the situation that caused the removal.” *Id.*, citing *In the Matter of James C., et al.* (Aug. 20, 1999), Lucas App. No. L-98-1258.

{¶20} Because HCCS sought an award of permanent custody as the initial disposition, they were not required to file a case plan or engage in reasonable efforts to achieve reunification, unless the basis for the award was predicated upon R.C. 2151.414(E)(1). Here, the trial court did not identify the general factors prescribed by R.C. 2151.414(E) as the basis for its general order. Therefore, the trial court's judgment entry is not sufficiently detailed to allow this court to conduct a meaningful review of these assigned errors. Accordingly, we sustain Father's first and second assignments of error.

IV.

{¶21} In conclusion, the trial court did not show in its judgment entry that it engaged in the requisite statutory analysis. Absent this, we cannot provide meaningful review to determine whether the trial court's judgment is against the manifest weight of the evidence, or whether a timely filed case plan and reasonable efforts at reunification were required for a valid order. Accordingly, we reverse the trial court's judgment and remand this cause for further proceedings consistent with this opinion.

**JUDGMENT REVERSED
AND CAUSE REMANDED.**

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED and the cause remanded to the trial court for further proceedings consistent with this opinion and that the Appellant recover of Appellee costs herein taxed.

The Court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking County Court of Common Pleas, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this Entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, P.J.: Concur in Judgment and Opinion.
McFarland, J.: Dissents.

For the Court

BY: _____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.