

COURT OF APPEALS  
TUSCARAWAS COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

M. K. and M. K.

Dependent Children

JUDGES:

Hon. John W. Wise, P.J.  
Hon. Patricia A. Delaney, J.  
Hon. Craig R. Baldwin, J.

Case No. 2015 AP 01 0002

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common  
Pleas, Juvenile Division, Case No. 14 JN  
00096

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

April 20, 2015

APPEARANCES:

For Plaintiff-Appellee

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*Wise, P. J.*

{¶1} Appellant-Mother Alicia Daugherty appeals the December 15, 2014, Judgment Entry entered by the Tuscarawas County Court of Common Pleas, Juvenile Division, which terminated her parental rights, privileges and responsibilities with respect to her minor children, and granted permanent custody of the children to Appellee Tuscarawas County Job and Family Services.

{¶2} This case comes to us on the expedited calendar and shall be considered in compliance with App.R. 11.2(C).

#### STATEMENT OF THE CASE AND FACTS

{¶3} Appellant-Mother Alicia Daugherty and Father Justin Keeran are the biological parents of M.K. (dob 3/31/12) and M.K. (dob 11/28/13).

{¶4} On March 26, 2014, Tuscarawas County Job and Family Services ("TCJFS") filed a complaint, alleging M.K., age 2, and M.K., age 4 months, were dependent children and seeking temporary custody of the children.

{¶5} Following an adjudicatory hearing on April 23, 2014, the trial court found the children to be dependent.

{¶6} The trial court conducted a dispositional hearing on May 20, 2014. At the hearing the trial court found that it was in the best interests of the children to remain in the temporary custody of TCJFS and adopted the case plan.

{¶7} At a review hearing on August 27, 2014, the trial court found that while Appellant-mother had commenced some services, she was still in the early stages of drug treatment and still needed housing. TCJFS verified that Appellant-mother began attending a 5 days per week Goodwill Parenting program on August 4, 2014, that she was maintaining her appointments with Quest Recovery, and that she had a psychological assessment scheduled with Phoenix Rising. Appellant-mother was also

drug tested at this hearing, and the test results were negative.

{¶8} On October 2, 2014, TCJFS filed a motion to suspend Appellant-mother's visitation alleging that she had tested positive for drugs,

{¶9} On October 30, 2014, TCJFS filed a motion for permanent custody. A trial was scheduled for December 2, 2014, but was continued to December 10, 2014.

{¶10} On December 2, 2014, Appellant-mother was drug tested by the court. The drug screen was positive for drugs.

{¶11} Mother failed to appear at the permanent custody trial on December 10, 2014.

{¶12} By Judgment Entry filed December 15, 2014, the trial court granted TCJFS' motion for permanent custody,

{¶13} It is from this entry Appellant-mother appeals, assigning the following as error:

{¶14} "I. THE TRIAL COURT ERRED IN AWARDING PERMANENT CUSTODY TO JOB AND FAMILY SERVICES AS SAID DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE."

I.

{¶15} In her sole Assignment of Error, Appellant-mother contends the trial court erred in awarding permanent custody of the minor children to TCJFS as TCJFS failed to prove by clear and convincing evidence the children could not be placed with Parents in a reasonable amount of time, and that an award of permanent custody was in the children's best interest. We disagree.

{¶16} R.C. §2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. §2151.414(A)(1) mandates the trial court schedule a hearing and provide notice upon the filing of a motion for permanent custody

of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

**{¶17}** Following the hearing, R.C. §2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (a) the child is not abandoned or orphaned, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents; (b) the child is abandoned; (c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

**{¶18}** In determining the best interest of the child at a permanent custody hearing, R.C. §2151.414(D) mandates the trial court must 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 parents 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; and (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.

**{¶19}** Therefore, R.C. §2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. §2151.414(B)(1)(a) through (d) is present before proceeding to a determination

regarding the best interest of the child.

**{¶20}** If the child is not abandoned or orphaned, the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. §2151.414(E), the trial court must consider all relevant evidence before making this determination. The trial court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the factors enumerated in R.C. §2151.414(E)(1) through (16) exist with respect to each of the child's parents.

**{¶21}** As set forth in our statement of the facts and case, *supra*, we find there was competent, credible evidence Appellant-mother failed to remedy the problems which caused the removal of the children from the home, those problems being drug and alcohol use by both parents and lack of stability of housing and employment. (T. at 3).

**{¶22}** Appellant-mother initially engaged in case plan services from August, 2014 through September, 2014, but failed to comply after that time. (T. at 12-13). Appellant-mother had only one visit with the children in September, 2014, before she tested positive for cocaine. (T. at 5, 12). On December 2, 2014, the date on which the permanent custody trial was initially scheduled, Appellant-mother tested positive for cocaine, alcohol, marijuana and opiates. (T. at 13). Appellant-mother then failed to appear at the permanent custody hearing December 10, 2014.

**{¶23}** Father never visited the children, barely participated in the case plan and his current whereabouts are unknown. (T. at 4).

**{¶24}** With respect to the best interest finding, the evidence revealed the children are happy and are doing well in foster care and the foster parents wish to adopt both of them. (T. at 13).

**{¶25}** Based upon the foregoing, we find the trial court's findings that the

children could not be placed with Parents within a reasonable time, and an award of permanent custody, was in the children's best interest, were not against the manifest weight of the evidence, and were based upon sufficient evidence. We further find the trial court did not abuse its discretion in granting permanent custody to TCJFS.

**{¶26}** Appellant-mother's sole Assignment of Error is overruled.

**{¶27}** For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, Tuscarawas County, Ohio, is affirmed.

By: Wise, P. J.

Delaney, J., and

Baldwin, J., concur.

JWW/d 0408