

COURT OF APPEALS  
FAIRFIELD COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

E.J. AND D.J.

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 15-CA-3,  
15-CA-4

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Juvenile  
Division, Case Nos. AB20130074 and  
AB20130073

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 8, 2015

APPEARANCES:

For Appellee - Child Protective Services

For Appellant - Father

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*Hoffman, P.J.*

{¶1} In Fairfield App. No. 15CA3, Appellant Sean Jafarzadeh (“Father” ) appeals the January 5, 2015 Decision as to Motion for Permanent Custody entered by the Fairfield County Court of Common Pleas, Juvenile Division, which terminated his parental rights, privileges and responsibilities with respect to his minor son, E.J., and granted permanent custody of the boy to Appellee Fairfield County Child Protective Services (“the Agency”). In Fairfield App. No. 15CA4, Father appeals the same Decision as it relates to his other minor son, D.J.

#### STATEMENT OF THE CASE AND FACTS

{¶2} Father and Tasha Jafarzadeh (“Mother”)<sup>1</sup> are the biological parents of E.J. (dob 9/25/2002) and D.J. (dob 12/13/2004). In February, 2013, the Agency became involved with the family due to the arrest of both parents for manufacturing meth in their home with the children. On March 6, 2013, Parents signed a Voluntary Agreement of Care which placed the children in the temporary custody of the Agency. On April 5, 2013, the Agency filed complaints, alleging E.J. and D.J. were dependent children and seeking temporary custody of the boys. Following a request, the trial court approved a 30-day extension of the Voluntary Agreement of Care on May 6, 2013. The trial court conducted a shelter care hearing on May 28, 2013, and placed E.J. and D.J. in the temporary custody of the Agency. Both parents were convicted and sentenced to prison during the course of the proceedings.

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<sup>1</sup> Mother is not a party to this Appeal.

{¶3} The trial court found the children to be dependent minors and continued temporary custody with the Agency. Parents did not contest the finding of dependency or the placement of the children in the temporary custody of the Agency. The children were initially placed with a cousin, but had been in foster placement since April 12, 2013.

{¶4} On July 1, 2014, the Agency filed a motion for permanent custody. Christina McGill, guardian ad litem for both children, filed her report on October 27, 2014. The trial court conducted a hearing on the motion on November 4, 2014.

{¶5} Prior to the commencement of the hearing, Mother requested a continuance based upon her intention to move into housing on November 11, 2014, which had been previously delayed. The Agency opposed the continuance, arguing the children's need for permanency. The trial court denied the continuance, citing the children's need for permanency. The trial court noted Mother had been released from prison in April, 2014, and, at that time, her case plan required her to obtain safe and stable housing, but she had failed to do so.

{¶6} Father's case plan required him to undergo a drug and alcohol assessment and follow all recommendations; meet with the drug court coordinator; work the 12-step program; obtain stable housing and employment; attend parenting sober classes; participate in the children's counseling as therapeutically recommended; sign releases; and submit to random drug screens. Between February 18, 2013, and May 3, 2013, Father had zero negative tests, seven positive tests, and six missed tests. The positive screens were mainly positive for marijuana, with one screen being positive for marijuana and oxycodone. Father did not complete the drug and alcohol assessment

prior to being sent to prison. At the time of the hearing, Father had been incarcerated for 19 months and was not scheduled to be released until April 24, 2015. Father maintained contact with the children through cards and letter as well as telephone conversations, but visitation was not allowed by the prison. Prior to his incarceration, Father had supervised visitation with the children, which the case worker described as appropriate.

{¶7} Mother's case plan required her to undergo a drug and alcohol assessment and follow all recommendations; attend support meetings, obtain a sponsor, and work the 12-step program; meet with the family drug court coordinator, and, if approved for the program, follow all treatment recommendations; obtain and maintain safe and stable shelter; obtain and maintain a legal source of income; participate in the children's counseling as therapeutically recommended; sign releases; and parenting education. Prior to being sent to prison, between February 11, 2013, and April 11, 2013, Mother had seven positive drug screens, four missed screens, and one unreadable screen. The positive drops were mainly positive for opiates, morphine, and marijuana. Mother was unable to undergo a drug and alcohol assessment, or meet with the family drug court coordinator prior to being sent to prison.

{¶8} When Mother was released from prison in April, 2014, she reengaged in her case plan services. Mother had 53 negative drug screens and two missed screens following her release from prison. Mother attended a drug and alcohol education group. Mother was working the 12-step program, attending meetings, and had obtained a sponsor. Since her release from prison, Mother was living with her mother, but the landlord would not allow Mother and the children to reside in the home. Mother was on

the wait list for housing at Pearl House. Mother had not obtained employment. Mother began individual counseling in July, 2014, but had not attended since September 15, 2014. Mother continued to associate with an individual named Laura with whom she used drugs and alcohol. Mother's caseworker had multiple conversations with Mother regarding her relationship with Laura and the problems such a relationship presented.

**{¶9}** Via Decision as to Motion for Permanent Custody filed January 5, 2015, the trial court terminated Parents' parental rights, privileges, and responsibilities, and granted permanent custody of E.J. and D.J. to the Agency. The trial court found E.J. and D.J. could not and should not be placed with Parents within a reasonable time, and it was in the children's best interest to grant permanent custody to the Agency.

**{¶10}** It is from this decision Father appeals, in Fairfield App. No. 15CA3, raising the following assignments of error:

**{¶11}** "I. THE TRIAL ERRED AND ABUSED ITS DISCRETION IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD BE IN THE BEST INTERESTS OF E.J. TO PERMANENTLY TERMINATE THE PARENTAL RIGHTS OF HIS PARENTS AND HIM IN THE PERMANENT CUSTODY OF FAIRFIELD COUNTY CHILD PROTECTIVE SERVICES.

**{¶12}** "II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND BY CLEAR AND CONVINCING EVIDENCE THAT E.J. COULD NOT BE PLACED WITH HIS MOTHER WITHIN A REASONABLE TIME OR SHOULD NOT BE PLACED WITH HIS MOTHER.

**{¶13}** "III. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED COUNSEL'S REQUEST FOR A CONTINUANCE BASED UPON MOTHER BEING DENIED A FAIR OPPORTUNITY TO OBTAIN HOUSING."

**{¶14}** It is from the same decision Father appeals, in Fairfield App. No. 15CA4, assigning as error:

**{¶15}** "I. THE TRIAL ERRED AND ABUSED ITS DISCRETION IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD BE IN THE BEST INTERESTS OF D.J. TO PERMANENTLY TERMINATE THE PARENTAL RIGHTS OF HIS PARENTS AND HIM IN THE PERMANENT CUSTODY OF FAIRFIELD COUNTY CHILD PROTECTIVE SERVICES.

**{¶16}** "II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND BY CLEAR AND CONVINCING EVIDENCE THAT D.J. COULD NOT BE PLACED WITH HIS MOTHER WITHIN A REASONABLE TIME OR SHOULD NOT BE PLACED WITH HIS MOTHER.

**{¶17}** "III. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED COUNSEL'S REQUEST FOR A CONTINUANCE BASED UPON MOTHER BEING DENIED A FAIR OPPORTUNITY TO OBTAIN HOUSING."

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

Fairfield App. No. 15CA3

I, II

Fairfield App. No. 15CA4

I, II

**{¶19}** In his first assignments of error, Father maintains the trial court erred and abused its discretion in finding permanent custody was in E.J. and D.J.'s best interest. In his second assignments of error, Father contends the trial court erred and abused its discretion in finding the children could not be placed with Mother within a reasonable time or should not be placed with Mother.

**{¶20}** 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.

**{¶21}** 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.

**{¶22}** 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.

**{¶23}** 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.

**{¶24}** 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.

**{¶25}** As set forth in our statement of the facts and case, supra, we find there was competent, credible evidence Parents failed to remedy the problems which caused the removal of the children from the home. Father was incarcerated throughout the majority of the proceedings and had not completed any aspect of his case plan. Mother failed to substantially comply with her case plan. Mother did not have stable housing and was unemployed. Mother did not consistently attend individual counseling and associated with an individual with whom she used to do drugs.

**{¶26}** With respect to the best interest finding, the evidence revealed the children are doing well in foster care. They had been in the Agency's custody for over 16 months. The boys need stability, which Parents are unable to give them now or in the foreseeable future.

**{¶27}** Based upon the foregoing, we find the trial court's findings the children could not be placed with Parents within a reasonable time or should not be placed with Parents, 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.

**{¶28}** Father's first and second assignments of error are overruled.

Fairfield App. No. 15CA3

III

Fairfield App. No. 15CA4

III

{¶29} In his final assignments of error, Father asserts the trial court erred and abused its discretion in denying Mother's request for a continuance in order to obtain housing.

{¶30} The grant or denial of a continuance is a matter that is entrusted to the broad, sound discretion of the trial court. *State v. Unger* (1981), 67 Ohio St.2d 65. In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

{¶31} Upon review of the record, we find the trial court did not abuse its discretion in denying Mother's request for a continuance. Mother had been released from prison in April, 2014. Her case plan required her to find safe and stable housing. She had over six months from the time of her release to the hearing on the Agency's motion for permanent custody to find housing. She failed to do so. The Agency provided her with a number of options, but she chose not to act on any of these leads. Furthermore, we question whether Father has standing to raise this issue on behalf of Mother.

{¶32} Father's third assignments of error are overruled.

**{¶33}** The judgment of the Fairfield County Court of Common Pleas, Juvenile Division, is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur