

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

G.L., DEPENDENT CHILD

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. John W. Wise, J.
Hon. Craig R. Baldwin, J.

Case No. 15 CAF 020015

O P I N I O N

CHARACTER OF PROCEEDING: Appeal from Delaware County Court of
Common Pleas, Case No. 13-12-2421AB

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 11, 2015

APPEARANCES:

For Appellant - Mother

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And

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For Father

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Hoffman, P.J.

{¶1} Appellant Daisy Layne (“Mother”) appeals the January 23, 2015 Judgment Entry entered by the Delaware County Court of Common Pleas, Juvenile Division, which terminated her parental rights, privileges, and responsibilities with respect to her minor child, and granted permanent custody of the child to Appellee Delaware County Department of Job and Family Services (“DCDJFS”).

STATEMENT OF THE FACTS AND CASE

{¶2} Mother is the biological mother of G.L. (dob 01/04/2012). Brian Cox (“Father”) is G.L.’s biological father.¹ DCDJFS became involved with the family on January 4, 2012, the day on which Appellant gave birth to G.L. The trial court adjudicated G.L. dependent on May 25, 2013, due to Mother being homeless, her drug and alcohol issues, and her failure to meet G.L.’s basic needs. After G.L. spent approximately 13 months in foster care, Mother completed an inpatient drug treatment program, and G.L. was placed back in her custody with a protective supervision order in Scioto County. Scioto County Department of Job and Family Services took custody of G.L. on September 23, 2013, through a thirty day parental agreement with Mother after she had been evicted and tested positive for drugs. Scioto County closed the case after Mother relocated to Franklin County.

{¶3} Franklin County Department of Job and Family Services planned to remove G.L. from Mother’s home because of unstable and inappropriate housing. However, Mother relocated to Delaware County, and Franklin County closed the case.

¹ Father is not a party to this appeal.

{¶4} In December, 2013, DCDJFS filed a second dependency complaint due to concerns Mother did not provide adequate shelter or basic necessities for G.L. The trial court granted temporary custody of G.L. to DCDJFS on December 30, 2013. G.L. was placed in foster care, and has remained in the same foster home throughout the pendency of this matter.

{¶5} DCDJFS filed a motion for permanent custody on September 2, 2014. The trial court conducted a hearing on the motion on December 22, 2014. The following evidence was adduced at the hearing.

{¶6} Lindsey Wood, the ongoing caseworker, testified regarding Mother's case plan. The case plan required Mother to participate in counseling and follow all recommendations, take medication as prescribed, complete parenting classes, maintain stable housing and employment, provide releases to DCDJFS, submit to random drug and alcohol testing, and complete the Adult Treatment Court Program.

{¶7} Mother completed an intake appointment with Marion Counseling, but did not follow through with counseling recommendations. She did not take the medication prescribed by a psychiatrist. Mother failed to attend parenting classes. Mother was employed for a brief time at a Wendy's Restaurant. She did not maintain stable housing. During the course of the proceedings, she was incarcerated on four occasions, homeless, or living with friends. The majority of residences Mother reported were not appropriate environments for G.L. Mother continually tested positive for marijuana, and, at times, cocaine, amphetamines, and morphine. Mother did not successfully complete the Adult Treatment Court Program. She was admitted for inpatient detox on September 8, 2014, after she tested positive for suboxone use.

Mother only stayed in treatment for two days although the average length of stay is seven to fourteen days. Mother reported leaving the program because she had “issues” with other clients in the program and felt she was being picked on.

{¶8} While Mother regularly attended her supervised visits with G.L., her behavior was unpredictable, and often erratic. She was often inappropriate. Mother often became disruptive requiring intervention by security.

{¶9} G.L. has been in the same foster home since December, 2013. He was placed in this same home in April, 2012, when he was initially removed from Mother’s care. He remained in that placement until he was returned to Mother in March, 2013. G.L. is well adjusted, although he has some behavioral issues, speech delays, and anger management issues. G.L. attends a specialized preschool and therapy to help with his problems. His foster family wishes to adopt him.

{¶10} Via Judgment Entry filed January 23, 2015, the trial court terminated Mother’s parental rights, privileges, and responsibilities, and granted permanent custody of G.L. to DCDJFS. The trial court found G.L. could not and should not be placed with Mother within a reasonable time, and it was in the child’s best interest to grant permanent custody to DCDJFS.

{¶11} It is from this judgment entry Mother appeals, assigning the following as error:

{¶12} "I. THE TRIAL COURT ABUSED ITS' DISCRETION WHEN IT FOUND DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES HAD MADE REASONABLE EFFORTS TO RETURN THE CHILD SAFELY HOME TO THE MOTHER. THE TRIAL COURT'S ORDER CONTAINS NO FINDING THAT

DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES MADE REASONABLE EFFORTS AT REUNIFICATION. THE TRIAL COURTS' [SIC] DECISION IS NOT REFLECTED IN THE TRANSCRIPT.

{¶13} "II. THE TRIAL COURT ABUSED ITS' DISCRETION WHEN IT DETERMINED THAT THE CHILD COULD NOT BE PLACED WITH HIS MOTHER WITHIN A REASONABLE PERIOD OF TIME AFTER THE TRIAL ON THE DCDJFS'S MOTION FOR PERMANENT CUSTODY. THE TRIAL COURTS' [SIC] DECISION IS NOT REFLECTED IN THE TRANSCRIPT.

{¶14} "III. THE TRIAL COURT FINDING THAT TERMINATING APPELLANT'S PARENTAL RIGHTS WAS IN THE BEST INTERESTS OF THE CHILD WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

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

I

{¶16} In her first assignment of error, Mother asserts the trial court abused its discretion in finding DCDJFS made reasonable efforts to return G.L. to Mother. Specifically, Mother submits the trial court's judgment entry does not contain a finding relative to reasonable efforts at reunification.

{¶17} In the case judice, DCDJFS filed its Motion for Permanent Custody pursuant to R.C. § 2151.414. Pursuant to R.C. § 2151.419, the agency which removed the child from the home must have made reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the

home, or make it possible for the child to return home safely. The statute assigns the burden of proof to the agency to demonstrate it has made reasonable efforts.

{¶18} However, R.C. § 2151.419 does *not* apply in a hearing on a motion for permanent custody filed pursuant to R.C. § 2151.413 and § 2151.414. *In re C.F.*, 113 Ohio St.3d 73, 81, 862 N.E.2d 816, 2007–Ohio–1104, (Citation omitted). Therefore, the trial court was not required to make a specific finding DCDJFS had made reasonable efforts to reunify the family.

{¶19} In *In re C.F.*, *supra*, the court also stated this does not mean the agency is relieved of the duty to make reasonable efforts. “At various stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification. To the extent that the trial court relies on 2151.414(E)(1) at a permanent custody hearing, the court must examine the reasonable case planning and diligent efforts by the agency to assist the parents' when considering whether the child cannot and should not be placed with the parent within a reasonable time.” *Id.* at paragraph 42.

{¶20} The Ohio Supreme Court has held the trial court is not obligated by R.C. 2151.419 to make a determination the agency used reasonable efforts to reunify the family at the time of the permanent custody hearing unless the agency has not established reasonable efforts have been made prior to that hearing. *Id.* at paragraph 41, 43. The trial court is only obligated to make a determination the agency has made reasonable efforts to reunify the family at “adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or

dependent children, all of which occur prior to a decision transferring permanent custody to the state.” *Id.* at 41.

{¶21} We find the evidence as set forth in Our Statement of the Facts and Case, *supra* establishes DCDJFS did provide Mother with services designed to alleviate the problem that led to G.L.'s removal and did make diligent efforts to assist Mother in remedying the problems.

{¶22} Mother's first assignment of error is overruled.

II, III

{¶23} We elect to address Mother's second and third assignments of error together. In her second assignment of error, Mother maintains the trial court's finding G.L. could not be placed with her within a reasonable time was against the manifest weight and sufficiency of the evidence. In her third assignment of error, Mother contends the trial court's finding an award of permanent custody was in the best interest of G.L. was against the manifest weight and sufficiency of the evidence

{¶24} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Cross Truck v.. Jeffries*, Stark App. No. CA5758 (Feb. 10, 1982). Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶25} 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.

{¶26} 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.

{¶27} 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.

{¶28} 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.

{¶29} 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.

{¶30} As set forth in our Statement of the Facts and Case, *supra*, we find there was competent, credible evidence Mother failed to remedy the problems which caused the removal of G.L. from the home. Mother failed to complete any aspect of her case plan.

{¶31} With respect to the best interest finding, the evidence revealed G.L. is doing well in foster care. He has been with the same foster family throughout the pendency of the case and is bonded with the parents and other children in the home. The foster parents wish to adopt him. The guardian ad litem filed a report wherein she opined the best interest of G.L. would be served by granting permanent custody to DCDJFS.

{¶32} Based upon the foregoing, we find the trial court's findings G.L. could not be placed with Mother within a reasonable time, and an award of permanent custody was in the child's best interest were not against the manifest weight of the evidence and were based upon sufficient evidence.

{¶33} Mother's second and third assignments of error are overruled.

{¶34} The judgment of the Delaware County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur