

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN RE T.B.

: JUDGES:  
:  
: Hon. W. Scott Gwin, P.J.  
: Hon. William B. Hoffman, J.  
: Hon. Patricia A. Delaney, J.  
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: Case No. 2016CA00163  
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: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of  
Common Pleas, Family Court Division,  
Case No. 2014JCV01186

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

January 30, 2017

APPEARANCES:

For Mother-Appellant:

DAVID L. SMITH  
P.O. Box 20407  
Canton, OH 44701

For SCDJFS-Appellee:

BRANDON J. WALTENBAUGH  
402 Second St. SE  
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*Delaney, J.*

{¶1} Mother-Appellant appeals the August 5, 2016 judgment entry of the Stark County Court of Common Pleas, Family Court Division, granting permanent custody of T.B. to Appellee Stark County Department of Job and Family Services (“SCDJFS”).

### **FACTS AND PROCEDURAL HISTORY**

{¶2} Mother is the birth mother of T.B., born on October 19, 2011, and Z.B., born on September 1, 2015. The father of T.B. is unknown. The father of Z.B. was in prison at the time of Z.B.’s birth.

{¶3} At some point prior to 2014, the state of Kentucky awarded legal custody of T.B. to T.B.’s maternal grandmother. SCDJFS first became involved with T.B. when Grandmother brought T.B. to the agency in November 2014 asking for assistance with T.B.’s care. Grandmother was homeless and under a pending charge of theft. SCDJFS gave Grandmother a case plan, which she did not complete. Grandmother is currently incarcerated and is scheduled to be released from prison in 2018.

{¶4} At the time T.B. came to SCDJFS, T.B. was diagnosed with scabies.

{¶5} SCDJFS filed a complaint alleging dependency and seeking temporary custody of T.B. On February 11, 2015, the trial court granted temporary custody of T.B. to SCDJFS. T.B. was placed in a foster-to-adopt home. T.B. was extremely developmentally delayed and very temperamental.

{¶6} Mother was given a case plan that included: complete parenting skill classes with Goodwill Industries, substance abuse assessment at Quest Recovery Services, obtain stable and appropriate housing, complete parenting evaluation at

Northeast Ohio Behavioral Health and follow all recommendations, and attend anger management and domestic violence counseling and follow all recommendations.

{¶7} Mother completed the Goodwill Industries parenting class and received a certificate of attendance. April Bergert, Parenting Instructor and Case Manager at Goodwill Industries, testified Mother was able to learn the needed skills but struggled to apply them. Bergert observed Mother's visitation with T.B. and found the visits did not go well. Mother did not apply the skills she learned, such as giving T.B. positive reinforcement, and she maintained unrealistic expectations for T.B.'s behavior while they were together.

{¶8} Mother completed a parenting evaluation at Northeast Ohio Behavioral Health with Dr. Aimee Thomas. Dr. Thomas completed her report on August 25, 2015. Dr. Thomas diagnosed Mother with post-traumatic stress disorder, major depressive disorder, dependent personality disorder, borderline personality disorder, and reactive attachment disorder. Dr. Thomas determined Mother had a traumatic and unstable childhood, resulting in her psychological disorders. Her evaluation found that Mother engaged in multiple romantic relationships in close succession; at the time of the evaluation, Mother was cohabitating with a man she met on the street whose name was "Forty." The most troubling aspect about Mother's mental health to Dr. Thomas was Mother's anger issues. Dr. Thomas reported that Mother "blacked out" when she was angry. Because of her anger issues, Dr. Thomas recommended the removal of Z.B. at birth. Dr. Thomas felt Mother's prognosis was poor due to her many mental health issues and her low IQ of 73. Mother's low IQ would make Mother's efforts more challenging to retain critical information. Dr. Thomas recommended that Mother needed to address her

mood disorders, which required medication to stabilize, and receive mental health treatment services before Mother could become psychiatrically stable enough to complete her case plan services. Mother was prescribed Depakote, but she stopped taking the medication because it made her too sleepy. Mother had not attempted to modify her medicine with her treating mental health specialists.

{¶9} Mother did not complete the domestic violence counseling sessions. Mother did complete the Free Space Anger Management Program. Mother's caseworker, Michael Singleton, felt that before Mother could be reunified with her children, Mother needed to resume her medication and finish trauma therapy to manage her anger issues and mental health disorders.

{¶10} Mother receives Supplemental Security Income based on a prior diagnosis of bipolar disorder. She also has appropriate housing.

{¶11} T.B. is bonded with her foster family. She is receiving consistent speech therapy and behavioral therapy, which have addressed her behavioral issues. Z.B. is placed with her sibling. T.B. is very attached to her younger sibling.

{¶12} The Guardian ad Litem recommended that custody be awarded to SCDJFS.

{¶13} On April 20, 2016, SCDJFS filed a motion for permanent custody. A hearing was held on July 19, 2016 and August 3, 2016. The trial court issued its judgment entry on August 5, 2016, granting permanent custody of T.B. to SCDJFS.

{¶14} It is from this judgment entry Mother now appeals.

### **ASSIGNMENTS OF ERROR**

{¶15} Mother raises two Assignments of Error:

{¶16} “I. THE TRIAL COURT’S JUDGMENT THAT THE MINOR CHILD CANNOT AND SHOULD NOT BE PLACED WITH APPELLANT WITHIN A REASONABLE PERIOD OF TIME WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

{¶17} “II. THE TRIAL COURT’S JUDGMENT THAT THE BEST INTEREST OF THE MINOR CHILD WOULD BE SERVED BY GRANTING PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.”

### **ANALYSIS**

{¶18} Mother argues the trial court erred in granting permanent custody of T.B. to SCDJFS. We disagree.

{¶19} “[T]he right to raise a child is an ‘essential’ and ‘basic’ civil right.” *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990), quoting *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). An award of permanent custody must be based on clear and convincing evidence. R.C. 2151.414(B)(1). Clear and convincing evidence is that evidence “which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954). “Where 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.” *Id.* at 477, 120 N.E.2d 118. If some competent, credible evidence going to all the essential elements of the case supports the trial court’s judgment, an appellate court must affirm the judgment and not substitute its judgment for that of the trial court. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶20} Issues relating to the credibility of witnesses and the weight to be given to the evidence are primarily for the trier of fact. *Seasons Coal v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). Deferring to the trial court on matters of credibility is “crucial in a child custody case, where there may be much evidence in the parties’ demeanor and attitude that does not translate to the record well.” *Davis v. Flickinger*, 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997).

{¶21} 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.

{¶22} 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.

{¶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, a 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.

I.

{¶24} In the present case, the trial court made findings pursuant to R.C. 2151.414(B)(1)(a) and R.C. 2151.414(B)(1)(d) to find that permanent custody should be granted to SCDJFS. Pursuant to R.C. 2151.414(B)(1)(a), the trial court found the child could not be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents. In making this decision, the trial court must consider the factors of R.C. 2151.414(E). R.C. 2151.414 states in applicable part:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

\* \* \*

{¶25} The record shows Mother completed some of her case plan objectives. Mother took longer to complete some of the requirements because Mother was on bed rest due to her pregnancy with Z.B. The trial court's reasoning to find that T.B. could not be placed with Mother within a reasonable period of time was primarily based on Mother's parenting evaluation conducted by Dr. Thomas. Dr. Thomas's evaluation revealed Mother suffers from multiple mood disorders requiring medication and mental health treatment services. After stabilization of her mood disorders with the proper medication and mental health treatment services, it was Dr. Thomas's opinion that Mother could then make a better effort at achieving her case plan objectives. Even then, however, Dr. Thomas felt that Mother's ability to apply the skills she learned would be challenging due to Mother's low IQ. Most concerning to Dr. Thomas was Mother's anger issues, which Mother stated caused her to "black out." Based on Mother's anger issues, Dr. Thomas recommended that Z.B. be removed from her care at Z.B.'s birth.

{¶26} The testimony showed Mother stopped taking her medication to treat her mood disorders and had not attempted to work with her mental health specialists to find a medication that would better suit her needs. The SCDJFS caseworker testified that before reunification could occur, Mother needed to take her medication and participate in trauma therapy to address her significant mental health issues due to her traumatic childhood.

{¶27} Mother further argues there was no evidence that SCDJFS made reasonable efforts to prevent the removal of T.B. from her home, to eliminate the continued removal of the child from her home, or to make it possible for T.B. to return to



her home. R.C. 2151.419(A)(1). The trial court made a finding of reasonable efforts at prior hearings, before SCDJFS filed its motion for permanent custody of T.B.

{¶28} We further find SCDJFS made reasonable efforts to reunify T.B. with Mother based on the case plan objectives. Mother, however, failed to comply with treatment for her mental health issues when she stopped taking her medication and to consistently take advantage of the mental health services offered by SCDJFS.

{¶29} Mother's first Assignment of Error is overruled.

## II.

{¶30} Mother contends in her second Assignment of Error that the trial court erred when it found it was in the best interests of T.B. that permanent custody be granted to SCDJFS. We disagree.

{¶31} To fulfill the second prong of the permanent custody analysis, the trial court must find, by a showing of clear and convincing evidence, that an award of permanent custody is in the best interests of the child. R.C. 2151.414(D). The trial court must consider all relevant factors, including but not limited to:

- (a) 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;
- (b) 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;
- (c) 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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(d) 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;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶32} At some point before 2014, Grandmother was granted legal custody of T.B. When T.B. came to SCDJFS, she was diagnosed with scabies and was discovered to be significantly developmentally delayed. T.B. was placed in a foster-to-adopt home where she received regular meals and engaged in consistent speech and behavioral therapy. T.B.'s behavior issues have improved.

{¶33} Mother had some difficulty with her visits with T.B. because Mother had unrealistic expectations for the child. Mother learned skills at Goodwill parenting, but had difficulty in applying the skills to her interactions with T.B. T.B. is bonded to her foster family and her sister, Z.B. The caseworker testified it would be detrimental to T.B. and Z.B. to separate the siblings.

{¶34} The caseworker and Guardian ad Litem recommended it would be in the best interests of T.B. if permanent custody was granted to SCDJFS.

{¶35} We agree with the trial court's conclusion that it would be in the best interests of T.B. if permanent custody was granted to SCDJFS. Mother's second Assignment of Error is overruled.

### **CONCLUSION**

{¶36} The judgment of the Stark County Court of Common Pleas, Family Court Division is affirmed.

By: Delaney, J.,

Gwin, P.J. and

Hoffman, J., concur.