

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

In re K.M.

Court of Appeals No. L-11-1164

Trial Court No. JC 09200905

**DECISION AND JUDGMENT**

Decided: February 17, 2012

\* \* \* \* \*

Tim A. Dugan, for appellant.

Angela Y. Russell, for appellee.

\* \* \* \* \*

**PIETRYKOWSKI, J.**

{¶ 1} Appellant D.M. appeals the June 21, 2011 judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating his parental rights to his minor daughter, K.M., and awarding permanent custody to Lucas County Children’s Services (“LCCS”). For the reasons that follow, we affirm.

{¶ 2} K.M. was born in December 2009. On December 31, 2009, LCCS filed a complaint in dependency. The complaint alleged multiple incidents of domestic violence between D.M, the natural father, and B.M., the natural mother, with appellant being the aggressor. There were also concerns regarding the parents' mental health. LCCS filed an amended complaint on January 12, 2010, and requested a shelter care hearing. Interim temporary custody of K.M. was awarded to LCCS.

{¶ 3} The original case plan was filed on February 12, 2010, and had a goal of reunification. The plan required that appellant undergo an updated psychological assessment and follow all recommendations, attend parenting classes, undergo a domestic violence and anger management assessment and follow the recommendations. As to B.M., the plan required that she attend parenting classes, get a domestic violence assessment and follow all recommendations of the assessor, and get a psychological assessment and follow all recommendations.

{¶ 4} On February 17, 2010, K.M. was found to be a dependent and neglected child. On March 10, 2010, appellant's biological mother, C.C., filed a motion to intervene and for legal custody. Thereafter, on April 27, 2010, temporary custody was awarded to LCCS with the agency to determine placement. K.M. remained in foster care due to some concerns that LCCS had with C.C.

{¶ 5} On January 31, 2011, LCCS filed a motion for permanent custody of K.M. LCCS argued that despite reasonable efforts to reunite the family, it was in K.M.'s best interests to terminate parental rights. A dispositional hearing was held on the motion for

permanent custody and on C.C.'s motion for legal custody on April 27, and May 23, 2011, and the following evidence was presented.

{¶ 6} LCCS caseworker, Sarah Hall, testified that her first contact with the family was in January 2010, and that domestic violence in the home was the reason for K.M.'s removal. Hall testified that on January 10, 2010, she had been in contact with B.M. throughout the day and that B.M. had been staying at a women's shelter with K.M. B.M. called and said that she felt like hurting herself and possibly K.M. so Hall and a LCCS staff member went to the shelter to find her. At the shelter they learned that B.M. had gone to a friend's house and they followed her there. Hall testified that at that point, she removed K.M.

{¶ 7} Hall testified that, according to B.M. there have not been any domestic violence incidents with appellant in the past year and that their relationship was "fine." Hall believed, however, that the domestic violence issues still needed to be addressed.

{¶ 8} As to appellant, Hall testified that he was required to complete the case plan services which included domestic violence offender's treatment, mental health treatment, parenting classes, and obtaining stable and appropriate housing. Hall stated that appellant was not willing to participate in domestic violence treatment; he felt that he just has anger issues. According to Hall, appellant has been treated for being bipolar and having recurrent depression. Hall is unable to verify appellant's mental health status because he would not sign a release. Appellant was also referred for a psychological evaluation. He refused to complete the MMPI testing so the evaluation was considered incomplete. Just

like his wife, B.M., because appellant failed to complete the domestic violence and mental health components of the case plan, he did not get referred to parenting classes.

{¶ 9} Hall testified that appellant frequently missed visitation due to his need for a new kidney. Hall could not confirm that appellant was seeking the appropriate care for his physical health.

{¶ 10} Regarding K.M., Hall testified that she had been in foster care since January 2010, and that she had two foster placements. Hall stated that K.M. was removed from her first foster home because the foster parents feared that appellant was trying to find their address. Hall stated that the current foster parents were interested in adopting K.M.

{¶ 11} Hall testified that she believes that LCCS being awarded permanent custody was in K.M.'s best interests because the parents failed to address their domestic violence issues and it posed a safety threat.

{¶ 12} During cross-examination, Hall admitted that the parents had housing but that she was instructed by her superiors not to go to the home due to safety concerns. Hall admitted that the counseling center that B.M. currently uses can address domestic violence issues. Hall also acknowledged that B.M. was currently pregnant and unable to take her mental health medications. Hall also admitted that there was no evidence of domestic violence issues between the parties in the last year.

{¶ 13} As to appellant, Hall testified that she has seen improvement in his behavior since being assigned to the case. His angry outbursts at agency decisions have decreased.

{¶ 14} Hall was also questioned about possible placement of K.M. with appellant's biological mother C.C. Appellant was adopted at birth. Hall admitted that LCCS approved a home study for placement of another granddaughter but that since that approval, there had been concerns regarding domestic violence between C.C. and her husband. Hall also stated that B.M. had a civil protection order ("CPO") against C.C. due to alleged threats of violence.

{¶ 15} Hall was cross-examined regarding her attempts at finding relative placement for K.M. Prior to her involvement with the family, Hall stated that a home study was not able to be approved for C.C. Hall stated that every time she meets with the parents she has asked about relatives where LCCS could place K.M.

{¶ 16} Hall acknowledged that C.C. and both parents requested that C.C. gain custody of K.M. Hall testified that there were some concerns about placing the child with C.C. Specifically, C.C. did not recognize the domestic violence issues and that there was a domestic violence issue between C.C. and her husband. Hall did acknowledge that C.C. was approved for placement of her granddaughter, M.D., on February 10, 2010. Hall stated that because C.C.'s parental rights to D.M. had been terminated (she had been raped), they were not obligated to place K.M. with her because she was not legally a

relative. Hall stated that she did not believe that it was in K.M.'s best interest to be placed with C.C.

{¶ 17} Regarding C.C.'s home study, Hall further explained that in February 2010, the study was conducted for kinship funds for C.C.'s granddaughter, not for adoptive placement. Hall stated that an adoptive study is more in-depth. Hall further explained that they have not been able to have further communications with C.C. about the case because appellant withdrew his consent for LCCS to contact her. Upon further questioning, Hall agreed that LCCS could discuss possible legal or adoptive placement with C.C.

{¶ 18} Lauri Wolfe, the parties' caseworker from December 2009 through April 2010, testified next. She testified regarding the December 2009 incident which led to LCCS' involvement with the family. According to Wolfe, appellant drove B.M. to the hospital and told her that if she did not check herself into the psychiatric unit she would never see her daughter again. Appellant then slammed B.M.'s head against the car door and broke her glasses.

{¶ 19} Wolfe stated that she had discussions with B.M. regarding domestic violence. When she was alone with B.M. she would admit instances of violence and that she was afraid of appellant. When appellant was present she would avoid answering questions. Wolfe stated that B.M. told her that appellant pushed her out of a moving car; Wolfe observed a bruise on B.M.'s arm and that she was holding her side and walking very slowly.

{¶ 20} Wolfe testified that appellant denied any domestic violence problems. He stressed that there had only been charges, not convictions. Appellant did go for a domestic violence assessment but the agency could not make any recommendations because he would not cooperate.

{¶ 21} Wolfe testified that while she was the caseworker, appellant would constantly call LCCS to speak with her or her supervisors. According to Wolfe, appellant was very demanding and unreasonable and fired multiple attorneys. Specifically, Wolfe felt that he was not willing to complete the case plan services and wanted to dictate how the agency involvement would proceed.

{¶ 22} During cross-examination, Wolfe acknowledged that B.M. recanted many of her domestic violence allegations. Wolfe stated that she was able to get some information of appellant's mental health counseling before he revoked his releases. Wolfe stated that he was on medication but she did not know which kind. The counseling center did agree that appellant was demanding, unreasonable, and erratic. Wolfe further stated that on several occasions, appellant prevented her from speaking with B.M.

{¶ 23} Janis Woodworth, a licensed psychologist, testified that in January 2011, LCCS referred appellant to her for a psychological evaluation. Woodworth stated that the purpose of the referral was to determine whether appellant's mental health issues would interfere with his ability to maintain a safe environment for his child. Woodworth

testified that appellant did not complete the evaluation because he refused to take the MMPI2, a personality and cognitive assessment.

{¶ 24} K.M.'s guardian ad litem, Heather Thibeault, testified that she was assigned to the case in January 2010. Thibeault testified that early in the case, she and B.M. had extensive conversations about the violence, manipulation and control between her and appellant. B.M. indicated that she was fearful of appellant and wanted to leave him. Thibeault testified that she observed appellant controlling B.M. and preventing her from speaking with various people, even as recently as the day of the hearing.

{¶ 25} Thibeault testified that B.M. told her appellant threw her out of a moving vehicle while telling her that it was the day she was going to die. According to Thibeault, B.M. came into the meeting limping and crying; she had some bruises on her elbow.

{¶ 26} Thibeault stated that appellant had been very hostile toward her from the outset of the case and that he indirectly threatened her. Appellant also prevented his ten-year-old son from speaking with her. Thibeault further stated that appellant had been making attempts at finding K.M.'s foster home and that there were concerns that he would kidnap her.

{¶ 27} According to Thibeault, appellant was adamant that he was not going to follow through with various components of the case plan. Specifically, appellant refused to participate in any domestic violence counseling. Appellant also clashed with security during supervised visitations.



{¶ 28} Regarding appellant's mother, C.C., Thibeault stated that C.C. was not living in the same home that LCCS approved for another grandchild in February 2010. Thibeault stated that C.C. has filed a domestic violence charge against her husband but dropped it once she knew that a home study was planned. Thibeault stated that she felt that C.C. did not take appellant's behavior seriously and, as a result, she would not be able to adequately protect K.M. Additionally, Thibeault testified that appellant and B.M. had an active CPO against C.C.

{¶ 29} During cross-examination, Thibeault was questioned as to why she had not been to appellant's and B.M.'s home. She stated that the two had lived in a shelter for the majority of the time the case was pending. Once they moved into a home they did not have utilities for a period of time. Once they utilities were turned on, the parents were no longer being considered for placement.

{¶ 30} Thibeault was also questioned about B.M.'s recantation of many of the alleged domestic violence incidents between her and appellant. Thibeault stated that B.M. recanted as a result of appellant's threats. She stated that appellant clearly dominates B.M., telling her what to say and who she can speak to. Thibeault stated that it was in K.M.'s best interest not to be placed with appellant or B.M.

{¶ 31} Appellant called C.C. as a witness. C.C. testified that she was interested in taking K.M. from the day she was removed from the home. C.C. testified that she was very concerned about the parents' behavior and that she would be able to protect K.M. from them if necessary. C.C. recounted an incident when appellant's son was an infant

and the three of them were in a store. C.C. stated that she was supervising visitation because appellant did not properly care for the infant. She explained that appellant demanded that C.C. give him the child; she refused and the mother and police were called.

{¶ 32} C.C. testified that she and appellant began their relationship when he was 15 years old and his adoptive parents permitted telephone contact. Due to behavioral problems, when appellant was 18 he moved in with her. C.C. said that they do have arguments but that after things “cool down” they continue with their relationship.

{¶ 33} Regarding the CPO, C.C. testified that appellant and B.M. had been accused of attacking a man. C.C. went to their home at the behest of another friend to assess the situation. According to C.C., appellant and B.M. were angry because they believed that she was supporting the other individual and filed for a protection order. C.C. said she did not oppose it but that she did not threaten them. C.C. testified that she did tell them they needed their “butts kicked” but that, as a parent, she felt she was entitled to say that based upon all the poor choices the two had made.

{¶ 34} During cross-examination, C.C. clarified that the prior home study by LCCS was for kinship funds. At the time the study was conducted she already had custody of her granddaughter; her daughter voluntarily assigned her legal custody. The only LCCS involvement was help with the court filing fee. C.C. stated that she had recently given up placement of her granddaughter.

{¶ 35} Regarding the alleged domestic violence in her home, C.C. stated that her husband never physically hurt her. She stated that they are in the process of getting divorced. C.C. was also questioned about her housing situation. C.C. stated that she had moved from the home where the study had been completed to an apartment next door to appellant. She moved from there due to “false allegations” from her daughter that prompted LCCS to force her to move. Then, she lived with her ex-husband and his wife for three weeks and was currently residing with her brother while she was remodeling a home she purchased with her income tax return. C.C. stated that she is currently unemployed.

{¶ 36} At the conclusion of the hearing, the court found, under R.C. 2151.414(B)(1)(a), that K.M. could not and should not be returned to appellant and B.M. Specifically, the court concluded that under R.C. 2151.414(E)(1), the parties had failed to remedy the situation that caused K.M.’s removal from their custody. The court further found that C.C. would not be able to adequately protect K.M. from her parents and denied her motion for legal custody. On June 21, 2011, the court issued its written judgment entry. This appeal followed.

{¶ 37} Appellant now raises the following assignment of error for our consideration:

The Juvenile Court’s decision terminating appellant’s parental rights fell against the manifest weight of the evidence.

{¶ 38} A trial court’s judgment terminating parental rights will not be overturned on appeal as against the manifest weight of the evidence where there is competent credible evidence in the record under which the court could have formed a firm belief or conviction that the essential statutory elements for termination of parental rights have been established. *In re Alexis K.*, 160 Ohio App.3d 32, 2005-Ohio-1380, 825 N.E.2d 1148, ¶ 26 (6th Dist.).

{¶ 39} In his sole assignment of error, appellant argues that the court’s decision terminating his parental rights to K.M. was against the weight of the evidence because LCCS did not give appellant sufficient time to address his mental health and anger management issues which had been improving. Further, LCCS and the court failed to give C.C.’s motion for legal custody appropriate consideration.

{¶ 40} In its judgment, the trial court found, by clear and convincing evidence that, under R.C. 2151.414(B)(1)(a) and R.C. 2151.414(E), K.M. “cannot and should not be placed with either parent within a reasonable period of time.” The court identified conditions set forth in R.C. 2151.414(E)(1) and (4) as supporting its determination on the issue of parental suitability.

{¶ 41} R.C. 2151.414(E) provides, in relevant part:

(E) In determining \* \* \* whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence \* \* \* that one or more of the

following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

(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.

\* \* \*

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child; \* \* \*.

{¶ 42} Relevant to R.C. 2151.414(E)(1), the court outlined the case plan services offered to the parents to address concerns relating to domestic violence, mental health, parenting, and housing. The testimony demonstrated that appellant failed to successfully complete either the domestic violence assessment or the psychological evaluation. The court found that appellant failed to acknowledge a domestic violence problem in the home and, though agreeing that he has anger issues, failed to address the anger and control issues witnessed by LCCS staff. The court also found, relevant to R.C. 2151.414(E)(4), that appellant showed a lack of commitment to K.M. by missing a large number of scheduled visitations, though the court did acknowledge that appellant had a medical condition. Further, a lack of commitment was shown by his failure to progress in the case plan and, resultantly, not being referred to the parenting program.

{¶ 43} In its judgment, the court also conducted a best interest analysis under R.C. 2151.414(D)(1)(a-e). The court found that K.M. had been out of parental care since January 2010, shortly after her birth. The court cited a need for secure placement which was not possible with her parents.

{¶ 44} Finally, as to C.C.'s motion for legal custody, the court determined that she would not be an appropriate placement. At the time of the hearing, C.C. had given up custody of her granddaughter, had moved several times and was temporarily living with her brother, did not have employment, and had an active CPO against her which was filed by K.M.'s parents following an alleged assault against a third party. The trial court did acknowledge that C.C. is appellant's biological mother and did not appear to give the fact

that he was adopted any greater weight. We conclude that the court fully considered her motion and hearing testimony and did not err in determining that C.C. would not be able to care for and protect K.M.

{¶ 45} Based on the foregoing, we find that there is competent, credible evidence in the record to support a firm conviction by the trier of fact that an award of permanent custody of K.M. to LCCS is in K.M.'s best interests. Appellant's assignment of error is not well-taken.

{¶ 46} On consideration whereof, this court finds that substantial justice was done the party complaining and the judgment of the Juvenile Division of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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