[Cite as *In re J.P.*, 2013-Ohio-1834.]

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

In re Jose.P., Jay.P., Ju.P., Jac.P., Josh.P.

Court of Appeals No. L-12-1294

Trial Court No. AB 11211426 DNC

DECISION AND JUDGMENT

Decided: April 30, 2013

* * * * *

Mary C. Clark, for appellant.

Jeremy G. Young and Shelby J. Cully, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, T.P., appeals the October 3, 2012 judgment of the Lucas County Court of Common Pleas, Juvenile Division, which terminated appellant's (the father) and the mother's parental rights to their five children and awarded permanent custody to Lucas County Children Services ("LCCS").

{¶ 2} Appellant is the father of Jose.P., Jac.P., Jay.P., Josh.P., and Ju.P. ("the children" or, when referred to individually, referenced by birth order), who, at the time the complaint was filed, ranged in age from ten to one-year old. Appellant and the mother, who is not a party to this appeal, were never married but had been in a relationship since before their first child's birth. LCCS initially became involved with the family in 2006, when the oldest two children were removed from the home after they received a complaint that the children were left home alone. After completing the case plan, the children were returned to the home.

{¶ 3} On January 19, 2011, LCCS filed a complaint in dependency and neglect. The complaint alleged that in September 2010, the mother left the three youngest children home alone and left the residence intoxicated. The mother was referred to an intensive outpatient substance abuse program but the complaint alleged that she denied any alcohol problem and was abusing prescription drugs and marijuana. The mother also had mental health issues. As to appellant, the complaint alleged domestic violence issues between the pair and that appellant was frequently away from the home due to his work schedule.

{¶ 4} Following mediation, appellant and the mother agreed to a dependency adjudication. On February 7, 2011, temporary custody was awarded to LCCS. A case plan with a goal of reunification was implemented and provided for substance abuse and mental health services, and domestic violence and parenting classes for the mother. It provided for domestic violence batterer's classes and Al-Anon meetings for appellant.

{¶ 5} On May 22, 2012, LCCS filed a motion for permanent custody of the children. LCCS argued that the mother failed to complete any of her case plan services, there were concerns regarding domestic violence between the parties, proper supervision of the children, and appellant's inability to parent the children alone. The motion stated that because the parents had failed to remedy the conditions which caused the children's removal, reunification was not possible. LCCS stated that the children had an "excellent" prospect of being adopted by their aunt and uncle.

{¶ 6} The hearing on the motion was held on August 28 and 29, 2012, and the following relevant evidence was presented. Appellant first testified on cross-examination. Appellant stated that he purchased his childhood home from his parents approximately ten years ago. He stated that he drove a delivery truck from approximately 3:00 a.m. until 4:00 p.m. but that he had given his two weeks' notice in order to pursue an at-home business. Though they are not married, appellant and the mother have been together for 13 years.

{¶ 7} Appellant stated that the mother had moved out approximately one month prior to the hearing and she had last been at the house two weeks ago to remove some belongings. Appellant denied knowledge of mother's drug use prior to their 2006 contact with LCCS. Appellant stated that once he had knowledge, they discussed ways for her to quit.

{¶ 8} Appellant testified that the case plan required him to attend Al-Anon meetings and domestic violence batterer's classes. Appellant completed batterer's

classes. He stated that the last time there was a physical altercation between he and the mother was in 2006 or 2007. Appellant stated that verbal altercations happened only when the mother had been drinking or using drugs; this was between ten and 20 times.

{¶ 9} Appellant stated that he consistently attended weekly Al-Anon meetings for the past two years; he denied forging attendance slips. Appellant also admitted that the LCCS caseworker attempted to meet with him several times but that he failed to answer her calls, was working, or fell asleep and failed to attend the meeting.

{¶ 10} Appellant testified that he had been attending bi-weekly visitation with his children in Licking County, Ohio, at the home of the children's maternal aunt and uncle. Appellant noted that two months prior to the hearing the visits were changed to supervised and took place at Licking County Children Services; appellant stated that he did not know why the visits had changed to supervised. Appellant was then questioned about concerns expressed by Carla Chonko from Licking County Children Services that he was ignoring his two oldest children and exhibiting negative behaviors to the children. Appellant stated that Ms. Chonko did not know the background facts and, thus, her opinion was not valid.

{¶ 11} Appellant was also questioned about his use of prescription drugs. Appellant admitted to using Percocet but said that he had a prescription for it. Appellant stated that he stopped using the drug two days prior to the hearing and had not refilled the prescription.

{¶ 12} A.M., the children's maternal aunt, next testified that the three youngest children were placed with her in February 2011, and that the older two were placed with her in September 2011. A.M. stated that she and her husband, D.M., had been married for 18 years and have two biological and two adopted children.

{¶ 13} A.M. testified that visitation with the parents was initially unsupervised but that, after determining that the mother was under the influence of drugs and/or alcohol, she requested that her visits be supervised. A.M. stated that on at least one occasion, appellant took the children to see their mother. Eventually, his visits became supervised as well. A.M. stated that if LCCS was awarded permanent custody of the children she and her husband would be interested in adopting them.

{¶ 14} During cross-examination, A.M. admitted that the mother initially attempted to address her drug problem but that once she began testing positive for drugs and spending time in jail, things "went downhill." A.M. stated that this was when she decided to stop helping her. A.M. testified that the mother told her that appellant hit her and that she observed a large bruise on the mother's hip; the mother stated appellant hit her with a two by four. A.M. testified that the mother desired that the children live with appellant.

{¶ 15} A.M.'s husband, D.M., testified next. D.M. testified that following a scheduled visitation, he observed the mother being picked up down the road by appellant and proceeding to a motel. D.M. contacted the caseworker and confirmed that they were not supposed to be together.

{¶ 16} Carla Chonko testified that she is a visitation coordinator with Licking County Children Services. Chonko stated that on July 18, 2012, she had her first supervised visitation with mother. Chonko had concerns about the mother's interaction with the children; she did not know what to do with them. The second visit, August 1, Chonko observed that the mother had a black eye and cut on the right side of her eye. Chonko stated that she also appeared to be under the influence of drugs or alcohol. Chonko had a nurse administer a drug screen which testified positive for multiple prescription drugs and marijuana. The mother never made it to the next visitation and was verbally abusive to Chonko over the telephone.

{¶ 17} Regarding appellant, Chonko stated that he had two supervised visits. At the first visit, Chonko was concerned because appellant ignored his two oldest children for most of the visit and then when he did pay attention to them it was negative. Chonko stated that the second visit went better; on a few occasions it appeared as if appellant "checked himself" before speaking.

{¶ 18} LCCS caseworker, Barbara Cummins, testified that she had worked with the family since January 2011. She was assigned to the case because the mother was dissatisfied with and threatened the prior caseworker. Cummins testified that the family's first contact with LCCS was in 2006, when the two oldest children were removed from the parents after a report that they had been left home alone. There were also substance abuse issues with the mother and appellant and domestic violence concerns. The parents completed their case plan services and the family was reunited.

{¶ 19} In September 2010, LCCS received a referral that the three youngest children had been left home alone. The police were called and the children were found alone and crying in a playpen. According to Cummins, a safety plan was implemented where the mother could not be left alone with the children. Appellant was allowed to supervise and the children could remain in the home. Cummins testified that the plan was modified due to reports that the mother was, in fact, being left home alone with the children.

{¶ 20} Cummins testified that her first home visit took place in January 2011. Cummins stated that it was immediately apparent that the mother was under the influence; she could not keep her eyes open and her head was bobbing. Cummins stated that the mother was incoherent and had a large bruise and scratch on her face.

{¶ 21} Cummins testified that the following Monday, LCCS had decided to remove the children from the home when she received a voicemail message from the mother requesting that the children be removed. Cummins stated that the mother sounded "really high" and stated that she needed help and could not keep the children.

{¶ 22} The mother's case plan services, following a diagnostic assessment, included intensive outpatient treatment for alcohol dependence and prescription drug abuse. The mother also had mental health issues that needed to be addressed and she was referred for parenting and domestic violence intervention classes. Regarding the issue of domestic violence, Cummins stated that the mother admitted that appellant hits and pushes her. Cummins stated that the mother would sometimes recant.

{¶ 23} Cummins stated that the mother continued to abuse prescription drugs and failed to take any medications prescribed for her mental health conditions. The mother did attend six domestic violence classes but was asked to stop because she was still using drugs. Cummins stated that the mother has failed to complete any of the case plan services.

{¶ 24} Cummins testified that in October 2011, she first discussed with appellant the potential need for him to parent alone. Around that time, appellant did make a preliminary plan which included a move to a house in Fremont, Ohio, across from a school, and hiring a caregiver. No steps were made to effectuate the plan. Appellant then considered a move to Michigan. In April 2012, appellant spoke about a job change and hiring a friend's teenage son to watch the children. Cummins stated that she had heard nothing further about the plan but appellant did inform her that he was starting his own business. Cummins testified that she had tried to meet with appellant four or five times the week of the hearing, but that appellant stated that his work schedule prevented it.

{¶ 25} Regarding appellant's case plan services, Cummins testified that he was referred to Al-Anon, which is a group for family or those close to people with drugs or alcohol problems. Appellant was also referred to domestic violence batterer's classes; he began in May 2010 and completed in October 2011.

{¶ 26} Regarding appellant and the mother's relationship, Cummins testified that her concern is that appellant cannot break it off with her. Cummins stated that she last saw the mother leaving the family home on July 24, 2012.

{¶ 27} Cummins next testified about the children and their placements. Cummins stated that the three younger children had been placed with their aunt and uncle and remained there. The older two boys were originally placed with their maternal grandfather in order to remain in their school. The grandfather placement did not work out and appellant's sister and brother-in-law took the boys. Ultimately that placement was not suitable and, in September 2011, the boys were reunited with their siblings at their aunt and uncle's home. Cummins stated that the children integrated very well with their aunt and uncle and cousins. Cummins stated that she has no concerns about the children living there; they are happy and well-adjusted. Cummins stated that she believed it was in their best interests for LCCS to be awarded permanent custody because they need a stable home life. In addition, appellant had failed to remove himself from the relationship with the mother, change jobs, and provide supervision for the children.

{¶ 28} Cummins was cross-examined about the alleged domestic violence between appellant and the mother. Cummins stated that at the January 2011 home visit, the mother had a black eye. Cummins indicated that she received three different versions about how the mother was injured but agreed that none of the versions came from appellant. Cummins stated that the mother had told her about appellant hitting her but she would later recant. Cummins testified that she was made aware of additional

domestic violence incidents through relatives, police reports, or hospital records. Multiple medical records stated that the mother was injured by her boyfriend; a few reports specifically named appellant. Cummins stated that appellant has never admitted hitting the mother.

{¶ 29} Cummins testified that appellant would say that he was severing all ties with the mother and then she would see her at the house. On one occasion, appellant stated that the mother was just moving things out of the home. Cummins stated that the mother had not been carrying anything and just got into her car and drove away. Cummins stated that although the mother has an apartment, she is in and out of the family home and still spends the night there.

{¶ 30} Regarding appellant's preparations for solo parenting, Cummins stated that appellant seemed serious about a move to Fremont, Ohio, and getting a caregiver for the children but that as late as March 2012, appellant was still hoping that the mother could still be a part of the family. Appellant had not changed jobs and at an April 2012 home visit, the mother was there. Appellant denied reports by others that they were still together.

{¶ 31} Cummins summarized that she has concerns about the safety risk to the children if the mother came back into the house. She further stated that, even if the mother was not involved, there were concerns that appellant could not parent the children alone. She again stated that the children were well-adjusted and bonded with their relatives.

{¶ 32} Appellant testified on direct examination that he had started his own business doing fruit carvings and fruit and vegetable arrangements for special occasions. Appellant stated that he now had a large enough customer base that he is quitting his delivery job and can spend a lot more time with the children. Appellant's employer also offered him an opportunity to train new drivers; he could set his own schedule. Appellant stated that he has neighbors who are willing to help and would apply for state assistance for preschool.

{¶ 33} Appellant was questioned about the domestic violence history between him and the mother. Appellant stated that they would engage in a verbal confrontation, he would tell her that she needed to leave, and then she would call the police and tell them that he hit her. Regarding the bruising and other injuries, appellant stated that the mother would be under the influence, fall down, and then go to the hospital and say that he hit her. Appellant was generally the one who took her to the hospital.

{¶ 34} Appellant testified as to his successful completion of the domestic violence batterer's classes. Appellant also testified regarding his Al-Anon meetings and the booklet he took for them to sign and confirm attendance.

{¶ 35} Testimony was then presented as to the duration and nature of appellant's relationship with the mother. Appellant testified that he met the mother in 1993, when he was near the end of high school and that they are not legally married. Appellant stated that things went smoothly after their first son was born but that, after their second child, things began to change.

{¶ 36} Appellant testified in 2011, he called the police after reports that the mother was driving drunk with the children and that she had left them alone in the house. Appellant said that he had not been aware of the mother's issues due to his demanding work schedule.

{¶ 37} Appellant explained the unsupervised visit in Licking County where it was alleged that he took the children to see their mother who was limited to supervised visitation. Appellant stated that he was with the children that the mother called from the hotel and asked him to bring her the cell phone charger. Appellant stated that he and the kids were there for only two to three minutes and left.

{¶ 38} Appellant also explained his first supervised visit in Licking County. He stated that for two months prior to the visit the oldest two children had cut off all communication; specifically, they were not emailing or responding to emails. Appellant stated that the three younger children ran to him but the older two "reluctantly" got off the couch and walked over.

{¶ 39} Appellant was cross-examined about his knowledge of the mother's drug abuse. Appellant admitted that he knew she had been arrested in 1998, for possession of a controlled substance and that he had posted bond three or four times to get her released from jail.

{¶ 40} Regarding his plan to solo parent the children, appellant agreed that his testimony at the hearing was the first time either the caseworker, or the GAL had heard of it. Appellant admitted that he has failed to separate himself from the mother as required

to get the children back. Appellant admitted that he could have asked for more help from LCCS and support from family, friends and neighbors. Appellant also felt that LCCS could have done more to help the mother.

{¶ 41} On appellant's behalf, neighbor L.N. testified that she has known appellant for approximately 14 years. She stated that she observed appellant with the children and that they interacted very well. L.N. stated that she never saw appellant discipline the children because there was no need to. L.N. stated that she would be able to help with the children. During cross-examination, L.N. admitted that appellant just asked her for help a week before the hearing.

{¶ 42} Another neighbor, M.S., testified. She stated that she lived across the street from appellant for approximately 20 years. She stated that appellant was the only one she ever saw caring for the children; he cooked for them, took them places and did other activities with them. M.S. stated that when the twins were born "things started to fall apart." M.S. clarified that appellant was beginning to realize that the mother was engaging in inappropriate behaviors. According to M.S., appellant told her to call children services and report what she had witnessed.

{¶ 43} M.S. stated that she would be able to help appellant with the children. She also stated that appellant had informed her that if she saw the mother at the house she was to call the police.

{¶ 44} During cross-examination, M.S. clarified that she has no issue with appellant's ability to parent his children, her concern lies with the mother. M.S. stated

she observed the police at the home less than ten times and it was usually the mother who called because the couple was arguing.

{¶ 45} Veronica Szozda testified that she was appointed the GAL for the children approximately three weeks prior to trial. Szozda stated that in compiling her report and recommendation she reviewed the case file, spoke with the prior guardian and the caseworker. She testified that she interviewed appellant, the mother, the aunt and uncle, visited and spoke with the children, the paternal uncle, and the mother's father and stepmother. Szozda stated that her recommendation was that LCCS be awarded permanent custody.

{¶ 46} Szozda explained her reasons for her recommendation included the "chaos" between the mother and father, the fact that the mother is a drug addict and that appellant is too engrossed with her, and appellant's idea that they can all be a family and that he will continue to allow the mother in their lives. The eldest son stated that he did not want to live with the father alone and the next oldest stated that he wanted to live with both his mother and father. The boy said that if he could not be with both, he would be happy with his aunt and uncle. Szozda noted that the third child, a girl, was born with drugs in her system and the doctor stated that the mother was "higher than a kite" during delivery. During cross-examination, Szozda acknowledged that she had never caught appellant in a lie. In camera interviews of the oldest two boys were conducted.

{¶ 47} On October 3, 2012, the trial court entered its judgment entry granting LCCS' motion for permanent custody. The court specifically found that, under R.C.

2151.414(B)(1)(a), the children could not or should not be placed with either parent within a reasonable time, that, under R.C. 2151.414(B)(1)(d), the three youngest children had been in temporary custody of LCCS for 12 or more months of a consecutive 22-month period, and that by clear and convincing evidence under R.C. 2141.414(D)(1), it was in the children's best interest to award permanent custody to LCCS.

{¶ 48} Under R.C. 2151.414(E), the court found factors (1) the parents failed to remedy the conditions that caused the removal, (2) the mother has chronic mental or chemical dependency and is unable to provide an adequate home for the children, (4) the parents demonstrated a lack of commitment to the children, and (16) the parents unstable and violent relationship is unsafe for the children. This appeal followed.

{¶ 49} Appellant raises the following assignment of error for our review:

> The trial court's finding that permanent custody should be awarded to Lucas County Children Services pursuant to O.R.C. § 2151.414(D) & (E) was not supported by clear and convincing evidence.

{¶ 50} 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.).

{¶ 51} In his sole assignment of error, appellant argues that the court's judgment terminating his parental rights was not supported by clear and convincing evidence because appellant did remedy the conditions identified in the case plan, established a permanent, appropriate home for the children, and has demonstrated commitment to his children. Appellant further asserts that his prior relationship with the mother is not relevant because the mother does not reside with him and he is aware that he must parent alone.

{¶ 52} As set forth above, the trial court found the following factors under R.C. 2151.414(E) in support if its determination of parental suitability:

> In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code 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, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code 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.

(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

* * *.

(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;

* * *.

(16) Any other factor the court considers relevant.

{¶ 53} Reviewing the record in this case, we find that appellant's arguments are not persuasive. Although appellant complied with the case plan regarding Al-Anon meetings and domestic violence batterer's classes, he failed to sever his relationship with the mother and provide a plan for appropriate supervision of the children. As set forth above, testimony was presented that appellant and the mother were seen together on several occasions when they were not supposed to be in contact. Appellant stated that he had examined plans to provide for his children but, on the date of the hearing, he was still with the same employer and had no definite caregiver for the children. Further, appellant failed to acknowledge or appreciate the severity of the domestic violence between the parties and its impact on the children. Thus, the court's findings under R.C. 2151.414(E) are supported by competent, credible evidence. Further, under R.C. 2151.414(D), the court demonstrated that it is in the children's best interests for permanent custody to be awarded to LCCS. Appellant's assignment of error is not well-taken.

{¶ 54} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas,

Juvenile Division, is affirmed. Pursuant to App.R. 24, costs of this appeal are assessed to appellant.

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. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE