[Cite as *In re G.V.*, 2015-Ohio-2030.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:	)	CASE NO. 14 BE 29
	)	
G.V.	)	
	)	OPINION
	)	
	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas, Juvenile Division, of Belmont County, Ohio
Case No. 13 JC 213

JUDGMENT: Affirmed.

APPEARANCES:

For Appellee BCDJFS:

Atty. Daniel P. Fry
Belmont County Prosecutor
Atty. Rhonda Greenwood
Assistant Prosecuting Attorney
147-A West Main Street
St. Clairsville, Ohio 43950

For Appellant Alysa VanDyne:

Atty. Aaron A. Richardson
4110 Sunset Blvd.
Steubenville, Ohio 43952

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: May 18, 2015

[Cite as *In re G.V.*, 2015-Ohio-2030.]
WAITE, J.

{¶1} Appellant Alysa VanDyne, mother of minor child G.V. (d.o.b. 6/23/11), appeals the judgment of the Belmont County Court of Common Pleas, Juvenile Division, permanently terminating her parental rights. The child was removed from Appellant's custody and adjudicated a dependent child due to Appellant's drug abuse, suicidal threats, and mental health problems. Appellee, the Belmont County Department of Jobs and Family Services (BCDJFS), eventually filed a motion for permanent custody and the motion was granted, leading to this appeal. The record provides extensive support for the trial court's decision. In addition to Appellant's nearly complete failure to fulfill the terms of her case plan, she illegally removed the child from BCDJFS custody, continued to abuse drugs and test positive for drug and alcohol use during the course of this case, failed to visit the child, continued to contemplate suicide, was homeless and unemployed, and personally requested that her parental rights be terminated. Appellant's argument on appeal is not supported by the record, and the judgment is affirmed.

Facts and Procedural History

{¶2} On March 14, 2013, BCDJFS took emergency custody of G.V. and filed a dependency complaint for the child due to Appellant's drug abuse, threats of suicide, and because Appellant left the child with inappropriate caregivers. At the time the dependency complaint was filed the child was 21 months old. Appellant did not attend the initial hearing but did attend, with counsel, the adjudicatory hearing. She stipulated to the allegations in the complaint and the child was adjudicated dependent and placed in the care of BCDJFS. A case plan was prepared and filed

with the goal of reuniting Appellant and the child. (6/5/13 Case Plan). The case plan required Appellant to stop using illegal drugs and alcohol and stop all association with other persons who abuse drugs or alcohol. While she was permitted her prescribed medications, she was not otherwise permitted to be under the influence of drugs or alcohol while caring for her child. She was also required to learn healthy ways to cope with stress and provide for the care and protection of the child by meeting the child's basic medical, safety and emotional needs. She was mandated to seek employment and secure adequate housing and prohibited from leaving the child with inappropriate caregivers. She was also required to follow all of the recommendations of the Help Me Grow social service agency staff. The case plan required Appellant to receive a drug, alcohol and psychological assessment at North Point Counseling Services, cooperate with and follow the recommendations of counselors and case management staff, and submit to random drug and alcohol screenings. Appellant was given weekly visitation rights. The child's father has not participated in any of the court proceedings and is not contesting the decision of the juvenile court.

{¶3} On September 11, 2013, a motion was filed at Appellant's request that the child be permanently surrendered to BCDJFS. Appellant later failed to sign the surrender form.

{¶4} On January 31, 2014, due to Appellant's failure to follow most of the aspects of the case plan and the need to find permanent placement for the child, BCDJFS filed for permanent custody pursuant to R.C. 2151.413. Pretrial was held on April 24, 2014. Appellant did not appear at pretrial. Final hearing was held on

May 8, 2014. Appellant was present, represented by counsel, and testified. The record shows that Appellant failed to attend the initial meeting regarding the case plan. Appellant failed to visit the child from March 14, 2013, when the child was taken into custody, until July 11, 2013. At the July 11, 2013 visitation, Appellant took the child without permission and fled. Appellant admitted that she "stole" her child from BCDJFS custody. (Tr., p. 114.) Appellant was arrested for taking the child from BCDJFS custody and has not seen her child since that incident. Appellant admitted she has a bipolar disorder and refuses to take appropriate medication. She failed to complete a mental health evaluation; has a criminal record that includes multiple theft convictions; does not attend Narcotics Anonymous meetings; stopped attending Crossroads Counseling (a drug and alcohol treatment center); has not received any type of mental health treatment during the course of this case; cancelled her counseling program; and found no type of employment while her child was in the custody of BCDJFS. She admitted that she failed to complete her case plan.

{¶5} Her counselor, Lee Alban, testified that Appellant attended one private counseling session and six group sessions. She never appeared again and did not reschedule her counseling sessions after December of 2013. Alban then closed her case due to non-attendance. Alban determined that Appellant had multiple drug and alcohol dependencies and that she needed a full mental health evaluation, which Appellant did not complete.

{¶6} Rhonda Braden, a therapist at Belmont Community Hospital, testified that she treated Appellant for attempted suicide on July 23, 2013. Braden determined that Appellant had mental illness. She also found that Appellant was

addicted to multiple drugs and had taken to stealing drugs for personal use. Appellant was homeless and had been living on bread and water for over a year, and had another child taken from her because of her mental health and drug abuse issues. After being released from the hospital, Appellant stayed with her grandparents for a time and then moved in with an abusive boyfriend. She was readmitted to the hospital in August. Braden testified that Appellant had bruises all over her body, was being used for sex by multiple men, had been high for days, and wanted to give up custody of G.V. She refused to comply with treatment, was argumentative and belligerent, and was dismissed for noncompliance on September 12, 2013.

{¶7} Sue Helt, Appellant's caseworker at BCDJFS, testified that Appellant admitted to being suicidal, that she was addicted to multiple substances such as crack cocaine, that whenever she has any money she uses it to buy drugs, and that she had spent time in jail for theft offenses related to her drug addictions. Shortly after that first meeting, Appellant was again incarcerated for theft offenses. Appellant was placed on probation in May of 2013. Attempts were made by BCDJFS to have Appellant visit the child, but the attempts failed due to lack of cooperation by Appellant. A visit finally took place on July 11, 2013. Appellant tested positive for marijuana at the visit. It was at that visit that Appellant took the child from the agency without permission while Helt was making a phone call. Appellant was discovered hiding with the child in a house near the agency. Police were called and Appellant was arrested. Visitation was suspended until Appellant could obtain a mental health evaluation.

{¶8} At a family team meeting on August 27, 2013, Appellant admitted that she was suicidal and that she had recently overdosed on drugs. She was dealing with pending theft charges, was homeless and unemployed, continued to abuse over the counter medications and alcohol, and admitted that she needed treatment. She was readmitted to Belmont Community Hospital. While at the hospital, Appellant requested to surrender the child to BCDJFS. She later withdrew the request. Helt testified that Appellant did not complete parenting classes, did not attempt to contact the child in any way after July 2013, failed to attend multiple case plan hearings, failed to receive a psychological evaluation, failed to complete a drug and alcohol assessment and failed to obtain a medical card to help provide treatment services. Appellant had only one visit with the child since the child was placed in the custody of BCDJFS. Helt testified that the child was in foster care and that the foster parents sought to adopt the child. Helt testified that it was in the child's best interests to be permanently placed with BCDJFS.

{¶9} On June 20, 2014, the trial court filed its judgment entry terminating Appellant's parental rights and granting permanent custody of the child to BCDJFS. This timely appeal followed.

ASSIGNMENT OF ERROR

THE MAGISTRATE'S DECISION AND THE JUVENILE COURT'S AFFIRMATION OF SAID DECISION, WHICH TERMINATED THE PARENTAL RIGHTS OF THE APPELLANT, WAS AN ABUSE OF DISCRETION AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶10} Appellant is challenging the weight of the evidence supporting the trial court's decision to grant permanent custody of G.V. to BCDJFS, and permanently terminating her parental rights. R.C. 2151.414(B)(1) allows the juvenile court to grant permanent custody to a children's services agency if it finds by clear and convincing evidence that it is in the best interests of the child, and if all the following apply: the child is not abandoned or orphaned, has not been in the custody of children's services agency for more than 12 months of a consecutive 22-month period, and the child cannot or should not be placed with either of the child's parents within a reasonable period of time. There is no dispute that G.V. was not abandoned or orphaned, that the child was not in the agency's custody for more than 12 months of a 22-month period, and that the basis of the motion was that the child could not or should not be placed with either parent within a reasonable period of time. The child's father has not been involved in the proceedings. The only question on appeal is whether the record supports the trial court's conclusion, by clear and convincing evidence, that permanently terminating Appellant's parental rights was in the best interests of the child.

{¶11} Appellant contends that the trial court erred by not taking into account the reasons why she failed to obtain a mental health evaluation, why she was unable to find employment, whether she actually had stable housing, and whether she was permanently dependent on drugs. These issues all to go the weight of the evidence presented at trial.

{¶12} "[A] court exercising Juvenile Court jurisdiction is invested with a very broad discretion, and, unless that power is abused, a reviewing court is not warranted

in disturbing its judgment." *In re Anteau*, 67 Ohio App. 117, 119, 36 N.E.2d 47 (6th Dist.1941). Thus, a trial court's decision terminating parental rights and responsibilities is reviewed for an abuse of discretion. *In re Awkal*, 95 Ohio App.3d 309, 316, 642 N.E.2nd 424 (8th Dist.1994). A reviewing court will not overturn a permanent custody order for abuse of discretion unless the trial court has acted in a manner that is arbitrary, unreasonable or capricious. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶13} Natural parents have a "fundamental liberty interest * * * in the care, custody, and management" of their children that is protected by the Fourteenth Amendment of the United States Constitution. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). A juvenile court's decision to terminate parental rights and transfer permanent custody of a minor child must be supported by clear and convincing evidence. *Id.* at paragraph three of the syllabus; R.C. 2151.414(B)(1). "Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is [an] intermediate [standard], being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and *unequivocal*." (Emphasis sic). *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

{¶14} When reviewing the decision of a juvenile court to determine whether it is supported by clear and convincing evidence, "a reviewing court may not as a matter of law substitute its judgment as to what facts are shown by the evidence for

that of the trial court" because the "trial judge, having heard the witnesses testify, was in a far better position to evaluate their testimony than a reviewing court." *Id.* at 478, 120 N.E.2d 118. "Where the evidence is in conflict, the trier of facts may determine what should be accepted as the truth and what should be rejected as false ." *Id.* "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶15} The court can rely on the factors listed in R.C. 2151.414(D)(1) and 2151.414(E) in determining the best interests of the child. In addition, "the court may use any factors it considers to be relevant when determining the best interest of the child, and it is not limited solely to the statutorily enumerated factors." *In re G.G.*, 7th Dist. No. 12 CO 6, 2013-Ohio-3991, ¶19.

{¶16} Appellant first argues that the court failed to take into account the financial limitations that prevented her from paying $400 for a mental health evaluation. There is no indication in the record that the court disregarded this information. The record also indicates that Appellant's inability to pay for the mental health evaluation was largely of her own making. She testified that she had a medical card to help her with medical expenses (such as the mental health evaluation) while she had custody of her children, but could no longer use the card once she lost custody of her children to BCDJFS. (Tr., pp. 100-101.) Assuming this testimony is true, the loss of the medical card can be directly attributed to Appellant's own actions. Appellant also stated that she had a job at Taco Bell but gave it up

because of the need to pay for gasoline to drive to work. (Tr., p. 102.) She failed to explain why she thought she should not have to use some of her earnings to pay for gasoline so that she could continue to have a job. She made some type of excuse for failing to be hired for other jobs, while admitting at the same time in her testimony that she did not go to Narcotics Anonymous meetings, stopped going to counseling and treatment at Crossroads Counseling, refused mental health treatment, and stopped taking her medication. (Tr., pp. 101-103.) Appellant's own actions appear to be at the root of her failure to earn her own money or obtain assistance in paying for the mental health evaluation.

{¶17} Appellant disagrees with the court's conclusion that she had not acquired stable housing. She contends that, at the time of the hearing, she had been in stable housing at the home of Mr. Charles Carlier and his wife for eight months. This was confirmed by Mr. Carlier's testimony. (Tr., p. 91.) Carlier is the father of Appellant's boyfriend, Jarod. (Tr., p. 91.) Stable housing is not a specific requirement in the dependency statutes, but is often a requirement of the case plan in dependency proceedings. There is no set definition for “stable housing,” although it usually involves control, continuity, and adequate upkeep of one's living environment. Staying with a boyfriend's parents does not present the type of stable housing usually contemplated in dependency cases. *See, e.g., In re Maloney*, 7th Dist. No. 95 CO 74, 1999 WL 3427566 (living in ex-mother-in-law's trailer, and inability to live independently from ex-relatives, was not stable housing); *Matter of Ashby*, 7th Dist. No. 88 C.A. 126, 1989 WL 63166 (living in one place seven or eight months is not, in and of itself, a sign of stable housing). Neither Appellant nor Jarod

are employed, neither contribute any money to the household, and Appellant could be asked to leave the premises at any time since she has no rental agreement or familial relationship with the Carliers. The trial court could have discounted Mr. Carlier's testimony about his willingness to allow Appellant to continue living rent free at his home. The trial judge, acting as the trier of fact, was in the best position to weigh the credibility of the witnesses. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984); *In re Keylor*, 7th Dist. No. 04 MO 02, 2005-Ohio-1661, ¶104.

{¶18} Appellant contends that the trial judge incorrectly concluded that she would be drug dependent for life. Appellant admits that she is drug dependent, but believes that she could be free of drug dependency in the future. Whether or not the trial court believed that her condition was permanent is not crucial to the court's conclusion that it was in the best interests of the child for permanent custody to be awarded to BCDJFS. The record indicates that at the time of the final hearing Appellant had made almost no progress on her case plan. She had rejected all forms of treatment except self-treatment and was clearly drug dependent at the time of the hearing. Appellant had not completed her drug and alcohol assessment and had not taken a mental health evaluation. She did not have her own independent housing and was unemployed. She failed to attend parenting classes; failed to complete required counseling; and had only visited the child on one occasion, during which she illegally took the child and was later apprehended and arrested for doing so. It is not clear how the trial court concluded that Appellant's drug dependence was permanent, but based on her own testimony, it was reasonable to conclude that her

dependency had no likelihood of improving due to her complete refusal to take the most basic steps to deal with her condition, even in the face of losing her child.

{¶19} The record reveals, by clear and convincing evidence, that it was in the best interests of the child to be placed in the permanent custody of BCDJFS and for Appellant to have her parental rights terminated. Appellant's assignment of error is overruled and the judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

Robb, J., concurs.