[Cite as *In re A.B.*, 2004-Ohio-5862.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83971

IN RE: A.B., ET AL. :

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: JOURNAL ENTRY

:

: AND

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: OPINION

Date of Announcement
of Decision: NOVEMBER 4, 2004

Character of Proceeding: Civil appeal from Court
of Common Pleas Juvenile
Division Case No. 02902511

Judgment: Affirmed

Date of Journalization:

Appearances:

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JAMES J. SWEENEY, J.:

{¶ 1} Appellant T.H.[1] ("Mother") appeals from a decision of the Cuyahoga County Court of Common Pleas Juvenile Division, which granted permanent custody of her three children ("the children") to the Cuyahoga County Department of Children and Family Services ("CCDCFS"). On appeal, T.H. complains that the court should not have granted CCDCFS permanent custody of her children, alleging the children should have been placed with her or in a Planned Permanent Living Arrangement ("PPLA") instead. After reviewing the record, we conclude that the trial court did not abuse its discretion and affirm the judgment of the trial court.

{¶ 2} In September 1998, CCDCFS removed two of the children from the custody of T.H. upon a complaint of neglect and dependency. On March 3, 1999, the third child was removed at birth into the emergency temporary custoday of CCDCFS upon a similar complaint. At the time of the removal, T.H. had been diagnosed with undifferentiated schizophrenia. On April 29, 1999, all three children were committed to the temporary custody of CCDCFS and placed with the same foster family. A case plan was instituted at that time for purposes of pursuing reunification of the minor children with their mother.

{¶ 3} On July 23, 2002, CCDCFS filed a motion seeking permanent custody of the children.

[1]The parties are referred to herein by their initials or title in accordance with this Court's established policy.

{¶ 4} On May 1, 2003, T.H. admitted to the allegations of the amended complaint and the children were adjudicated dependent.

{¶ 5} On September 9, 2003, the first of four dispositional hearings commenced. During this hearing, testimony was heard from CCDCFS social worker Christopher Malcolm. Mr. Malcolm became involved with T.H. and the children in September 1998 after two of the children were removed from the custody of T.H. because she was living in a homeless shelter and there were allegations of neglect. He developed a case plan for T.H., which included parenting skills, appropriate housing, and mental health treatment. T.H. completed the parenting classes and psychiatric evaluation, but failed to provide any documentation of her progress with the psychiatrist. Mr. Malcolm observed several of T.H.'s visits with her children and found her to be very unstable. He also suspected that she was not taking her medication. He testified that the children appeared to be doing well in their foster care placement. On cross- examination, he admitted that he was assigned to the case for the first two years, but had not had any contact with the family since 2000.

{¶ 6} On September 10, 2003, the second dispositional hearing commenced. During this hearing, testimony was heard from psychologist Dr. Douglas Waltman. He testified that T.H. has schizophrenia and needs to be on medication. He stated that he has observed several visits with T.H. and the children and did not see a strong parental bond between them. Although he did testify that the children liked T.H. and would benefit from some interaction with her, he recommended against reunification because he did not feel that T.H. could adequately care for the children.

{¶ 7} On October 22, 2003, the third dispositional hearing took place. During this hearing, testimony was heard from two witnesses. First, CCDCFS social worker Joseph Jackson testified that he became involved with T.H. and the children in June 2001. He testified that he developed a case plan for T.H., which included appropriate housing, emotional stability including taking her

medication, and parenting classes. He testified that T.H. attended some parenting classes and appeared to be compliant with her medication, but seemed very unstable and had not obtained appropriate housing. He stated that the children were doing well in the foster family and opined that reunification was not recommended.

{¶ 8} Thereafter, T.H. testified on her own behalf. She admitted that she has schizophrenia and has been seeing a psychiatrist for the past ten months. She testified that she is currently taking medication to control her disease and does not hear voices or see things that are not there. She testified that she is living in a one-bedroom apartment but is trying to obtain more appropriate housing. She stated that she wants to get the children back and have a relationship with them.

{¶ 9} On November 13, 2003, the final dispositional hearing took place. During this hearing, testimony was heard from psychiatrist Dr. Eileen Campbell. She testified that she has been treating T.H. for one year and that T.H. is compliant with her medication. She stated that T.H. loves the children very much but Dr. Campbell admitted that she had never observed T.H. with the children and was unable to give her professional opinion on whether T.H. is capable of taking care of them.

{¶ 10} After closing arguments were heard, the guardian ad litem for the children filed a written report, which recommended that the children be placed in the permanent custody of CCDCFS.

{¶ 11} On December 1, 2003, the court granted permanent custody of the three children to CCDCFS. T.H. appeals from that decision and raises one assignment of error for our review.

{¶ 12} "I. The Juvenile Court erred when it failed to render a dispositional order to place the children in a planned permanent living arrangement over a grant of permanent custody, when the evidence adduced at trial satisfied the statutory requirements and conditions of such an order."

{¶ 13} In her sole assignment of error, T.H. contends that the trial court erred in awarding CCDCFS permanent custody instead of placing the children in a planned permanent living arrangement ("PPLA"). We disagree.

{¶ 14} R.C. 2151.353(A)(5) provides that the trial court may place a child in a PPLA only if the statutory requirements are satisfied and only if CCDCFS requests the court to place the child in such an arrangement. Here, CCDCFS did not request or argue for a PPLA and the court did not suggest an alternative disposition. Rather, CCDCFS always sought permanent custody of T.H.'s three children. Accordingly, the trial court, according to R.C. 2151.353(A)(5), could not have ordered a PPLA. See *In re B.N.*, Cuyahoga App. No. 83704, 2004-Ohio-4459; *In re K.P.*, Cuyahoga App. No. AD 02901679, 2004-Ohio-1674; *In re I.M.*, Cuyahoga App. Nos. 82669 and 82695, 2003-Ohio-7069; *In re P.R.*, Cuyahoga App. No. 79609, 2002-Ohio-2029.

{¶ 15} Next, we consider whether the trial court abused its discretion when it granted permanent custody of T.H.'s three children to CCDCFS. In considering an award of permanent custody, the court must first determine whether, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody. R.C. 2151.414(D). In determining the best interest of the child during the permanent custody hearing, the court must consider the factors listed in R.C. 2151.414(D), which include the reasonable probability the child will be adopted, the interaction of the child with the child's parents, siblings, and foster parents, the wishes of the child, the custodial history of the child, and the child's need for a legal secure permanent placement.

{¶ 16} Here, the record reveals that T.H. has a long history with CCDCFS. Two of her children had been removed from her care in 1998 and the third was removed at her birth in 1999. The children were adjudicated dependent in 2003, the subject of this appeal. The children have lived together in a foster home since their removal from T.H. All of the children have developed a close

bond with their foster family and are developing normally for their age. Finally, the guardian ad litem recommended that permanent custody be granted. Accordingly, there is clear and convincing evidence that supports the trial court's determination that permanent custody is in the best interest of the children.

{¶ 17} In addition to determining the child's best interest, the court must make a second determination before granting permanent custody: it must determine whether the child can be placed with a parent within a reasonable time or should not be placed with the parent. R.C. 2151.414(B)(1)(a). The court is required to enter a finding that the child cannot be placed with a parent within a reasonable time if any factors set forth in R.C. 2151.414(E) apply, including the following:

{¶ 18} "(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.

{¶ 19} "(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.

{¶ 20} "***

{¶ 21} "(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; ***."

{¶ 22} Here, the trial court enumerated R.C. 2151.414(E)(1), (2), and (4) as applicable to the children.

{¶ 23} First, the trial court found that T.H. had failed continuously and repeatedly to substantially remedy the conditions causing the children to be removed from the home. Specifically, at the time of trial, T.H. had not yet obtained appropriate housing. Next, the trial court found that T.H. has a chronic mental illness which prevents her from providing adequate parental care for the children now, or in the foreseeable future. The evidence at trial showed that T.H. has schizophrenia and needs to be on medication. Although currently compliant with her medication, the evidence indicates that she is unable to adequately care for the children. Indeed, even T.H.'s psychiatrist was unable to state that T.H. could provide appropriate care for the children due to her condition.

{¶ 24} Finally, the trial court found that the father had demonstrated a lack of commitment toward the children by failing to regularly support, visit, or communicate with the children when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the children. The evidence at trial showed that the father never visited, contacted, or supported the children. Indeed, at the time of trial, he was incarcerated. Accordingly, the trial court's determination that the children could not be placed with either parent within a reasonable time is supported by clear and convincing evidence.

{¶ 25} We find that the trial court made its findings according to the statutory guidelines of R.C. 2151.414 and that these findings are supported by clear and convincing evidence. Therefore, T.H.'s sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas Juvenile Court Division to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., P.J., and

COLLEEN CONWAY COONEY, J., CONCUR.

JAMES J. SWEENEY
JUDGE