

[Cite as *In re L.C.*, 2009-Ohio-6651.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 93319, 93320 and 93321

IN RE: L.C., J.C., AND N.V.

[APPEAL BY MOTHER
DEFENDANT-APPELLANT]

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Juvenile Court Division of
Cuyahoga County Court of Common Pleas
Case Nos. CV- AD07900031, AD08931371 and AD07900030

BEFORE: Blackmon, J., McMonagle, J., and Jones, J.

RELEASED: December 17, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

PATRICIA ANN BLACKMON, J.:

{¶ 1} In this consolidated appeal, appellant (“mother”) appeals a juvenile court order granting permanent custody of her children J.C., L.C., and N.V.¹ to the Cuyahoga County Department of Children and Family Services (“CCDCFS” or the “Agency”). The mother assigns the following errors for our review:

“I. The Department of Children and Family Services failed to establish that it complied with the provisions of Ohio Revised Code Section 2151.414(E)(1).”

“II. The Department of Children and Family Services failed to establish that [the mother] had a chronic chemical dependency or mental illness that was so severe that it prevented her from providing the child with an adequate permanent home at the present time, and as anticipated, within one year.”

{¶ 2} Having reviewed the record and pertinent law, we affirm the juvenile court’s decision. The apposite facts follow.

FACTS

{¶ 3} On September 19, 2006, J.C. (born January 26, 2003) and L.C. (born November 3, 2003) were removed from their mother’s custody because she had been arrested for drug trafficking and drug possession. L.C. was with her at the time of the arrest. Police found him in the mother’s car playing with a crack pipe. CCDCFS was granted temporary custody of J.C. and L.C. At the time of J.C. and L.C.’s removal, she had not given birth to N.V. (born August 22, 2007). On April 1, 2008, N.V. was removed from

¹The parties are referred to by their initials in accordance with this court’s policy regarding non-disclosure of identities in juvenile cases.

custody due to the mother's arrest after a drug raid. CCDCFS was granted temporary custody of N.V. On September 15, 2008, CCDCFS moved to modify temporary custody of the children to permanent custody. Thereafter, a hearing was conducted.

{¶ 4} The mother has four other children; none are in her custody because she was unable to complete the case plan and failed to obtain substance abuse treatment. Mother has had a drug problem for over 20 years and she is a frequent user of methadone, heroin, cocaine, and marijuana. The father of J.C. and L.C. is the same;² however, N.V.'s father is unknown.

{¶ 5} J.C. needs a high level of medical care because he suffers from cerebral palsy and epilepsy. He cannot walk and is confined to a wheelchair.

He also must be fed through a feeding tube connected to his stomach. J.C. has been in the same foster home for the past three years and his health has improved while there. He was undernourished when he was removed from his mother's care and quickly gained weight at his foster home. He has bonded with his foster mother and foster siblings. His foster family maintains an open relationship with the mother and has given her their

²The parental rights of the father of J.C. and L.C. were also terminated; he has not appealed from the permanent custody order.

telephone number to contact them. If the agency is granted permanent custody, the family would like to adopt J.C.

{¶ 6} L.C.'s speech and motor skills are delayed. However, these problems have improved while he has been in foster care. L.C. and N.V. are in the same foster home and have bonded with their family. The foster mother has an open relationship with the mother and allows her to visit. If the agency is granted permanent custody, the foster mother would like to adopt L.C. and N.V.

{¶ 7} J.C.'s and L.C.'s paternal grandmother and aunt would also like to adopt J.C. and L.C. The paternal grandmother has custody of two of the mother's other children. Because N.V. does not share the same father as J.C. and L.C., the paternal grandmother and aunt would not adopt her.

{¶ 8} The mother is very affectionate with her children during visitation. The children are aware that she is their mother and do have a bond with her. However, her visitation was sporadic.

{¶ 9} Mother has failed to complete the case plan requirements. The objectives of the plan were for her to obtain substance abuse treatment, attend parenting and anger management classes, and obtain the means to care for the children, including learning how to care for J.C.'s medical needs. The mother did well with complying with the case plan when she was pregnant with N.V. She was drug-free during the pregnancy and completed

an in-patient drug treatment plan. In fact, there was hope that she could be reunited with the children if she stayed on track. However, once N.V. was born the mother relapsed and her attendance at out-patient treatment became sporadic. Random drug testing indicated she was abusing cocaine. The mother's programs were arranged with Catholic Charities, which provides programs for those who speak Spanish, because she was more comfortable with people who spoke Spanish.

{¶ 10} Several weeks prior to the permanent custody hearing, the mother completed an in-patient drug treatment program at Turning Point. While at Turning Point, she also completed a parenting program; according to the mother's social worker, the parenting program did not satisfy the case plan requirements because it is not as intensive as the one provided by Catholic Charities. Because the mother has been receiving in-patient treatment for the past three months, she has not visited with the children. While she was at Turning Point, she requested to visit with J.C. However, once visitation was arranged at the Jane Edna Hunter building, she refused to come because she had an active warrant and was afraid she would be arrested. Since the mother has been out of treatment, she has not requested to see the children.

{¶ 11} The mother obtained housing with the help of the Two Ways Home program but has not maintained the utilities. According to the social

worker, although the mother has the housing, she does not live there. Two Ways is a program that assists families to obtain reunification by providing bus tickets to attend treatment, helping find housing, and providing a support network. In November 2008, Two Ways Home closed the mother's case because it had provided her with services for two years, and she had still not demonstrated progress towards completing her case plan.

{¶ 12} The mother claimed to work at a bakery; however, she failed to provide requested pay stubs and failed to provide contact information for the bakery. At the hearing, the social worker was not sure if the mother was still on probation. Several messages were left with her probation officer; the officer has failed to return the agency's calls.

{¶ 13} The mother testified that she loved her children. She feels her recent treatment at Turning Point will be successful because the program also helped her mentally deal with her childhood rape. After the conclusion of the hearing, the court issued a decision granting permanent custody of the children to CCDCFS.

Standard of Review

{¶ 14} A juvenile court's authority to award permanent custody of a child to the state arises under R.C. 2151.414.³ Under the statute, the court is required to grant permanent custody of a child to the state if it determines,

³*In re M.H.*, Cuyahoga App. No. 80620, 2002-Ohio-2968, at ¶22.

by clear and convincing evidence, that: (1) the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors enumerated in R.C. 2151.414(D); and (2) the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, pursuant to at least one of the factors listed in R.C. 2151.414(E).

{¶ 15} Clear and convincing evidence is “that measure or degree of proof which is more than a mere ‘preponderance of the evidence’ but not to the extent of such certainty required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.”⁴ Where clear and convincing proof is required at trial, a reviewing court will examine the record to determine whether the trier of fact had sufficient evidence before it to satisfy the requisite degree of proof.⁵ Judgments supported by competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence.⁶

{¶ 16} Compliance with R.C. 2151.414(E)(1)

⁴*In re Awkal* (1994), 95 Ohio App.3d 309, fn. 2, citing *Lansdowne v. Beacon Journal Publishing Co.* (1987), 32 Ohio St.3d 176, 180-181.

⁵*In re T.S.*, Cuyahoga App. No. 92816, 2009-Ohio-5496, at ¶24, citing *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74.

⁶*Id.*

{¶ 17} In her first assigned error, the mother argues CCDCFS failed to show that it complied with R.C. 2151.414(E)(1). She contends the agency failed to provide a reasonable case plan and failed to diligently assist her to remedy the problems that caused the children to be removed from her custody. We disagree.

{¶ 18} As a preliminary matter, we note that J.C. and L.C. had been in CCDCFS's temporary custody for at least twelve months before the agency filed for permanent custody. Therefore, it was not necessary for the trial court to find, as it did, that J.C. and L.C. could not be placed with either parent within a reasonable time.⁷ The court needed only to determine whether it was in their best interest to be placed with the agency. The mother does not dispute the court's best interest finding. Therefore, our following discussion pertains to the custody of N.V. only.⁸

{¶ 19} The trial court's determination of whether the child cannot or should not be placed with either parent within a reasonable period of time is guided by R.C. 2151.414(E), which sets forth 16 factors that the court may consider in its determination. It provides that if the trial court finds by clear and convincing evidence that any of the 16 factors exists, the court must enter

⁷*In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, at ¶30; *In re C. W.*, 104 Ohio St.3d 163, 166-167, 2004-Ohio-6411, at ¶ 21.

⁸At the time the agency filed for custody of N.V. she had been in the agency's care for five months.

a finding that the child cannot or should not be placed with either parent within a reasonable period of time.⁹ In the instant case, the trial court based its decision on four of the factors. They are as follows:

“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 parents have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the home. [R.C. 2151.414(E)(1)]

“Mother has a chronic chemical dependency that is so severe that it makes her unable to provide an adequate permanent home for the child at the present time, and as anticipated, within one year after the court held the hearing in this matter. [R.C. 2151.414(E)(2)]

“The parents are unwilling to provide food, clothing, shelter, and other necessities for the child or to prevent the child from suffering emotional or mental neglect, as evidence by their unwillingness to successfully complete a case plan so they can provide care for the child. [R.C. 2151.414(E)(14)]

“Parents have committed abuse or neglect to the child and the likelihood of recurrence of the abuse or neglect makes the child’s placement with the parent a threat to the child’s safety. [R.C. 2151.414(E)(15)]”

{¶ 20} Thus, the court made four findings in support of permanent custody when only one was required. On appeal, the mother only contests the first and second finding, which even if her arguments have merit, would

⁹*In re P.C.*, Cuyahoga App. Nos. 90540 and 90541, 2008-Ohio-3458, at ¶19.

still leave two of the factors uncontested. The Ohio Supreme Court in *In re C.F.*,¹⁰ confronted a similar situation in which the parent claimed the agency failed to set forth a reasonable case plan and to diligently attempt to reunify the family. The court found that sufficient evidence supported the trial court's permanent custody order because it based its decision on two additional uncontested grounds. Therefore, based on the fact that two of the factors in the instant case are uncontested, the mother's appeal does not provide sufficient grounds to disturb the trial court's grant of permanent custody.

{¶ 21} Moreover, we conclude sufficient evidence was presented supporting the trial court's determination that the children cannot and should not be returned to either parent because the mother had failed continuously and repeatedly to substantially remedy the conditions that had caused the children to be placed outside the home. As to the mother's contention that the agency failed to set a reasonable case plan and failed to diligently assist her, the record demonstrates otherwise.

{¶ 22} The mother claims that because "the social worker and the service providers did not speak the same language as [the mother]," the agency failed to provide reasonable case planning and failed to make diligent efforts to assist her to remedy the conditions that caused the children to be

¹⁰113 Ohio St.3d 73, 2007-Ohio-1104.

removed. The social worker testified that the mother was more comfortable speaking Spanish than English; however, there was no indication that the mother could not understand English. The social worker also stated that while it was not always possible, he attempted to have an interpreter present whenever he spoke to the mother. The mother was also specifically referred to Catholic Charities because it was proficient at providing services for Spanish-speaking clients. Therefore, the mother's preference for Spanish was reasonably adhered to by the agency. The record indicates the mother failed at meeting the case plan requirements not because she did not speak English well, but because of her substance abuse problem.

{¶ 23} The mother's claim that the social worker "failed to verify [her] after care program or make any additional referrals upon her discharge from Turning Point to any recommended treatment services" is disingenuous. The mother did not complete the inpatient program until March 13, 2009, two weeks before the permanent custody hearing. Moreover, although she did successfully complete the program, because she waited so long to obtain this case plan objective, she did not provide sufficient time to determine if she would again relapse.

{¶ 24} The mother also claims the agency was not diligent because it failed to verify her income or determine whether she had complied with her parole obligation. However, as to her income, the mother failed to provide

her pay stubs or give the agency the contact information to verify her employment. As to her probation, her social worker called the mother's probation officer several times and left messages. However, the probation officer never returned the calls.

Findings as to Chemical Dependency

{¶ 25} In her second assigned error, the mother contends the agency failed to establish that her chronic chemical dependency was so severe that it prevented her from providing the children with an adequate permanent home or that she was unable to do so within a year. We disagree.

{¶ 26} The evidence showed that on the date of the hearing, J.C. and L.C. had been in permanent custody for over two-and-one-half years. N.V. had been in custody for over 12 months. Mother's continued abuse of drugs caused her children to remain in foster care. The mother has abused drugs for 20 years. The evidence showed that over the years the mother has attended five drug treatment programs only to relapse. The mother's longest period of sobriety was the nine months she was pregnant with N.V. After the baby was born, she relapsed and continued abusing drugs.

{¶ 27} Two weeks prior to the hearing, the mother had just finished her sixth drug treatment program. Her failure to do so sooner, however, prevented the court from determining if she would again relapse as she has done in the past. Her children are in need of a permanent, nurturing home.

Based on her lengthy history of drug abuse and relapses, the court did not err by concluding the mother's chronic substance abuse prevents her from providing the children with an adequate permanent home and that she was unable to do so within a year. Accordingly, the mother's second assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellants its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

PATRICIA ANN BLACKMON, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and
LARRY A. JONES, J., CONCUR