

[Cite as *In re D.K.*, 2010-Ohio-3203.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94441

IN RE: D.K.

A Minor Child

(Appeal by Mother)

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 08933786

BEFORE: Gallagher, A.J., Stewart, J., and Boyle, J.

RELEASED: July 8, 2010

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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, B.K., appeals the judgment of the Cuyahoga County Court of Common Pleas, Juvenile Division, that granted a planned permanent living arrangement for her son, D.K., to the Cuyahoga County Department of Children and Family Services (“CCDCFS”). For the reasons stated herein, we affirm.

{¶ 2} B.K. (hereafter “Mother”) is the mother of D.K., who was born in July 1993. On May 12, 2008, D.K. was committed to the temporary emergency custody of the CCDCFS, following a domestic violence incident. The CCDCFS subsequently filed a complaint for dependency and temporary custody of D.K.

{¶ 3} The trial court adjudicated D.K. as a dependent and initially awarded CCDCFS temporary custody of D.K. Thereafter, the CCDCFS filed a motion to modify temporary custody to a planned permanent living arrangement. Following an evidentiary hearing, the trial court issued an order committing the child to the planned permanent living arrangement of CCDCFS.

{¶ 4} Mother timely filed this appeal and has raised three assignments of error for our review. Pertinent facts shall be addressed under the assigned errors.

{¶ 5} Mother’s first and second assignments of error provide as follows:

{¶ 6} “I. The trial court erred in granting [a] planned permanent living arrangement to CCDCFS absent clear and convincing evidence that such an award was in the best interests of the child.”

{¶ 7} “II. It was reversible error for the trial court to find that there was clear and convincing evidence that the requirements of R.C. 2151.353(A)(5) were met.”

{¶ 8} Under these assignments of error, Mother challenges the trial court’s decision to order a planned permanent living arrangement for D.K. A “planned permanent living arrangement” is defined as a placement that gives legal custody of a child to an agency without terminating parental rights and that allows the agency to make an appropriate placement, including foster care or other placement. R.C. 2151.011(A)(36).

{¶ 9} Pursuant to R.C. 2151.353(A)(5), if a child is adjudicated as a dependent, the court can order a planned permanent living arrangement upon the request of a public children’s services agency if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following factors exists:

“(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.

“(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care

for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

“(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.”

{¶ 10} In determining the best interest of the child, the court must consider all relevant factors, including the factors listed in R.C. 2151.414(D), which include certain interactions and interrelationships of the child, the wishes of the child, the custodial history of the child, and the child’s need for a legally secure permanent placement.

{¶ 11} In this case, the trial court found that there was clear and convincing evidence that a planned permanent living arrangement was in the best interest of D.K. and that placement was supported under R.C. 2151.353(A)(5)(b) and (c).

{¶ 12} The court recognized that D.K. had retained a significant and positive relationship with his mother and uncle. However, the mere existence of a good relationship is insufficient to establish the overall concern of the best interest of the child. See *In re R.N.*, Cuyahoga App. No. 83121, 2004-Ohio-2560. As found by the trial court, the record reflects that there were ongoing arguments between D.K. and his mother and that the high level

of conflict that resulted in D.K. having domestic violence charges brought against him would almost immediately recur if they were reunited.

{¶ 13} The court also recognized that D.K. was 16 years of age or older, had been counseled on permanent placement options, was unwilling to consent to adoption, and was preparing for independent living. The court found that Mother has significant physical, mental, and psychological problems and is unable to care for D.K., and that D.K. continues to need a level of support and an absence of conflict that will be unattainable if he is returned to Mother.

{¶ 14} Our review of the record reflects that D.K. struggles with anger and aggression and has behavioral and emotional needs. He was committed to the custody of CCDCFS after he assaulted his mother, resulting in domestic violence charges against him in juvenile court. One professional described the relationship between Mother and D.K. as “a very toxic relationship.”

{¶ 15} Mother had a psychological evaluation performed by Dr. Rita Polliser that found Mother’s physical disabilities would not interfere with providing a safe and secure environment for her son, as evidenced by her care over the past 15 years. However, there was evidence that Mother has a history of psychiatric issues. Dr. John Matthew Fabian, a forensic and clinical psychologist, completed a psychological evaluation regarding Mother

and found, in his opinion, that Mother suffers from mental health issues, with “depression by history.” With respect to Mother’s ability to parent a child with special needs, Dr. Fabian found that her prognosis was poor because of her “well-entrenched personality disorder features, lack of insight into her mental health issues, as well as non-compliance with [CCDCFS] recommendations.”

{¶ 16} Mary Daniels, a social worker for CCDCFS, testified that when she met D.K., he had poor hygiene, poor self-esteem, poor attendance and grades at school, as well as other issues that were not adequately being addressed by Mother. She described Mother as being uncooperative and “belligerent and condescending.” She also testified that Mother never followed through with any of the recommendations of CCDCFS, including counseling.

{¶ 17} There was testimony that during Mother’s visitations with D.K., Mother had inappropriate discussions in front of the child, was controlling, and would “pick at him.” There were times when they would argue and D.K. would become agitated. Their interactions were described as “very dysfunctional.”

{¶ 18} The record reflects that D.K. has been receiving psychiatric care and has improved and responded in a positive direction in his foster home. Although he continues to exhibit some behavioral problems, the foster family

is committed to his care and has responded in a very positive and constructive manner. D.K. also has developed a positive relationship with extended family members that the foster parents encourage.

{¶ 19} During an in camera interview, D.K. expressed that if it was not safe to return to his mother's house, then he did not wish to return and that he would be okay with staying at the foster home. The guardian ad litem's report and recommendation also indicated that D.K. did "not feel comfortable going home unless he was assured that the mother was addressing her various physical and mental health issues." However, D.K. remained hopeful of a possible reunification with Mother.

{¶ 20} Relying on the testimony and evidence in the record, we find that there was ample, competent, credible evidence before the trial court to support a finding by clear and convincing evidence that a planned permanent living arrangement is in the best interest of D.K. and to satisfy the factors listed in R.C. 2151.353(A)(5)(b) and (c). As such, Mother's first and second assignments of error are overruled.

{¶ 21} Mother's third assignment of error provides as follows:

{¶ 22} "III. The Cuyahoga County Department of Children and Family Services failed to satisfy its burden to prove that it made reasonable efforts to reunify appellant and her child."

{¶ 23} R.C. 2151.419 requires the trial court to determine whether the agency made “reasonable efforts to prevent the removal of the child from the child’s home, to eliminate the continued removal of the child from the child’s home, or to make it possible for the child to return safely home.” The statute places the burden of proof on the agency. R.C. 2151.419(A)(1). In making a reasonable efforts determination, “the child’s health and safety shall be paramount.” Id.

{¶ 24} Here, the record reflects that CCDCFS developed a case plan goal for Mother to participate in a psychological assessment and follow all recommendations for treatment. The record reflects that Mother failed to comply with the directives and refused to obtain counseling or any other mental health services. Concerns remained regarding her interactions with D.K., her ability to appropriately address his special needs, and the well-being of D.K.

{¶ 25} The trial court made “reasonable efforts” determinations on several occasions, and no objections to these findings were made. The court specifically found that placement with D.K.’s father had been unsuccessful and that Mother refused referrals for counseling services.

{¶ 26} We find the trial court’s determination was supported by the record and we overrule Mother’s third assignment of error.

Judgment affirmed.

It is ordered that appellee recover from appellant 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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR