[Cite as *In re C.H.*, 2010-Ohio-5617.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95151

IN RE: C.H.
A Minor Child

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 07900418

BEFORE: Cooney, J., Rocco, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: November 18, 2010

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Appellant, J.H. ("mother"), appeals the trial court's order granting permanent custody of her minor child, C.H. ("C.H. or "the child"), to appellee, Cuyahoga County Department of Children and Family Services ("the agency").[1] Finding no merit to the appeal, we affirm.

[1]The parties are referred to herein by their initials or title pursuant to this court's

{¶ 2} In April 2007, the agency sought temporary custody of C.H. after she sustained multiple fractures and bruising. At the time the injuries were discovered, the child lived with her mother, who was a minor, and her maternal grandmother. C.H.'s father, R.J., was ultimately convicted of child endangering for causing the child's injuries, and was sentenced to four years in prison. In September 2007, a magistrate adjudicated the child neglected and abused and committed the child to the temporary custody of the agency.

{¶ 3} The mother's case plan for reunification with C.H. required her to discontinue the use of alcohol and drugs, participate in individual and family counseling to address her domestic violence, anger, and mental health issues, obtain employment and stable housing, and improve her parenting skills. J.H. did not fully comply with the requirements of her case plan, so the agency moved for permanent custody in August 2009.[2]

{¶ 4} On March 29 and 30, 2010, dispositional hearings were held on the motion for permanent custody. The court heard testimony from the mother's public health nurse and social worker. The court also heard testimony from the mother's aftercare placement coordinator, school

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established policy regarding nondisclosure of identities in juvenile cases.

[2]C.H. had been in agency custody for approximately one year and 11 months at the time of the permanent custody motion.

counselor, case manager, and former employer.[3] The child's guardian ad litem was also present and gave a brief oral recommendation in support of permanent custody to the agency.

{¶ 5} In May 2010, the trial court granted permanent custody of C.H. to the agency, finding by clear and convincing evidence that a grant of permanent custody is in the best interest of the child.

{¶ 6} It is from this order that the mother appeals, raising one assignment of error, in which she argues that the trial court's granting of permanent custody is against the manifest weight of the evidence.

Standard of Review

{¶ 7} When reviewing a trial court's judgment on child custody cases, the appropriate standard of review is whether the trial court abused its discretion. *Masters v. Masters*, 69 Ohio St.3d 83, 1994-Ohio-483, 630 N.E.2d 665. An abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

[3]R.J. was not present at the hearings because he was serving his four-year prison term.

{¶ 8} An appellate court must adhere to "every reasonable presumption in favor of the lower court's judgment and finding of facts." *In re Brodbeck* (1994), 97 Ohio App.3d 652, 659, 647 N.E.2d 240, quoting *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 226, 1994-Ohio-432, 638 N.E.2d 533. 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. *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54; *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus.

{¶ 9} Furthermore, "[t]he discretion a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned. The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding (i.e., observing their demeanor, gestures, and voice inflections, and using these observations in weighing the credibility of the proffered testimony) cannot be conveyed to a reviewing court by a printed record. [*Miller v. Miller* (1988), 37 Ohio St.3d 71, 74, 523 N.E.2d 846], citing *Trickey v. Trickey* (1952), 158 Ohio St. 9, 13, 106 N.E.2d 772." *In re Satterwhite*, Cuyahoga App. No. 77071, 2001-Ohio-4137.

Termination of Parental Rights

{¶ 10} R.C. 2151.414 sets forth a two-prong analysis to be applied by the juvenile court for a determination of whether permanent custody should be granted to an agency. The statute requires the court to find by clear and convincing evidence: (1) one of the factors enumerated in R.C. 2151.414(B)(1)(a)-(d); and (2) that an award of permanent custody is in the best interest of the child. "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 facts sought to be established." *Cross v. Ledford* (1954), 161 Ohio St. 469, 477, 120 N.E.2d 118.

{¶ 11} In the instant case, the trial court concluded that pursuant to R.C. 2151.414(B)(1)(d), the child had been in temporary custody of the agency for 12 or more months of a consecutive 22-month period.[4] The mother acknowledges that the court records indicate that the child was in temporary custody for the required time, but argues that the failure of the agency to present this evidence at the hearing constitutes a fundamental flaw. This argument lacks merit.

[4]R.C. 2151.414(B)(1) provides in pertinent part: "the court may grant permanent custody of a child to a movant if the court determines at the hearing * * *, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that * * * [t]he child has been in the temporary custody of one or more public children services agencies * * * for twelve or more months of a consecutive twenty-two-month period * * *."

{¶ 12} A review of the hearing testimony reveals that Ashley Adams ("Adams"), the social worker assigned to the case, testified that C.H. was committed to the temporary custody of the agency on September 6, 2007. When the agency moved for permanent custody on August 7, 2009, the child had been in agency custody for one year, 11 months and one day. Because the child was in agency custody for more than 12 months of a 22-month period, the first requirement for permanent custody under R.C. 2151.414 was satisfied.

{¶ 13} The mother also argues that there is a lack of proof that permanent custody is in the child's best interest and that the child could not be placed with her parents in a reasonable amount of time. Although the mother fails to reference a statute to support this argument, it appears that she is referring to R.C. 2151.414(E). This statute sets forth several factors for the court to consider when determining whether a child cannot or should not be placed with either parent within a reasonable time.

{¶ 14} However, application of R.C. 2151.414(E) is unnecessary because an award of permanent custody under R.C. 2151.414(B)(1)(d) does not require such determination. *In re W.C.*, Cuyahoga App. No. 90748, 2008-Ohio-2047, ¶14. See, also, *In re K. & K.H.*, Cuyahoga App. No. 83410, 2004-Ohio-4629, ¶31, citing *In re C.N.*, Cuyahoga App. No. 81813, 2003-Ohio-2048 and *In re Brown*, Franklin App. Nos. 04AP-169-170 and 04AP-180-181, 2004-Ohio-4044.

Thus, the only issue remaining to be resolved is whether the award of permanent custody to the agency is in the child's best interest.

{¶ 15} R.C. 2151.414(D) sets forth the relevant factors a court must consider in determining the best interest of the child. These factors include, but are not limited to: (1) the child's interaction and interrelationship with the child's parents, siblings, relatives, and foster caregivers; (2) the child's wishes expressed directly or through a guardian ad litem; (3) the child's custodial history; (4) the child's need for legally secure permanent placement and if that type of placement can be obtained without granting permanent custody to the agency; and (5) whether any factors listed in R.C. 2151.414(E)(7)-(11) apply. See R.C. 2151.414(D)(1)-(5). This court has stated that only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re W.C.* at ¶18, *In re Moore* (Aug. 31, 2000), Cuyahoga App. No. 76942, citing, *In re Shaeffer Children* (1993), 85 Ohio App.3d 683, 621 N.E.2d 426.

{¶ 16} In the instant case, the juvenile court concluded that:

> "Upon considering the interaction and interrelationship of the child with the child's parents, siblings, relatives, and foster parents; the custodial history of the [child], including whether the child has been in temporary custody of a public children services agency or private child placing agency under one more separate orders of disposition for twelve or more months of a consecutive twenty-two month period; the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody; and, the report of the Guardian Ad Litem, the Court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the child * * *."

{¶ 17} The mother argues that the court's judgment is against the manifest weight of the evidence because there is no evidence that permanent custody is in the child's best interest. She claims that no one with any personal knowledge was able to testify that she had not benefitted from her case plan. J.H. contends that Adams should not have been allowed to testify to events that occurred prior to her direct involvement in the case because she had no personal knowledge of those facts.[5]

{¶ 18} Contrary to the mother's assertions, we find that Adams had personal knowledge of the case, as she was assigned to the matter in October 2009 and observed many interactions between the child, the mother, and the maternal grandmother. Moreover, this court has found "that it is not error for a social worker to testify to reports that predated her assignment to a particular case." *In re Z.T.*, Cuyahoga App. No. 88009, 2007-Ohio-827, ¶20, citing *In re Gilbert* (Mar. 23, 2000), Cuyahoga App. No. 75469. As we noted in *In re Z.T.*, R.C. 2151.35(B)(2)(b) states that during a dispositional hearing, "'[t]he court may admit any evidence that is material and relevant; including, but not limited to, hearsay, opinion, and documentary evidence; * * *.'" Id. Thus, this argument lacks merit.

[5]We note that the mother failed to object to Adams's testimony at trial. As a result, she has waived all but plain error.

{¶ 19} Furthermore, a review of the record reveals clear and convincing evidence supporting the court's best-interest-of-the-child finding. Here, Carol Campbell ("Campbell"), a public health nurse with the Cuyahoga County Board of Health, testified that during the three and one-half years that she assisted the family, she observed intermittent altercations between the mother, the maternal grandmother, and R.J. These incidents occurred in the child's presence. On several occasions, Campbell was so concerned that she refused to leave until the altercation subsided.

{¶ 20} Adams testified that when she was assigned to the case, the child had been in temporary custody with the agency for almost two years. The child had been placed in temporary custody with the agency because R.J. had physically abused her. Although the mother had made progress and completed several aspects of her case plan, Adams testified that the agency had some concerns that prevented the reunification. The most pressing concern was the mother's ongoing anger issues. She was adjudicated delinquent on two occasions, stemming from domestic violence against her mother.[6] As part of the mother's case plan, she and her mother were to participate in family counseling and J.H. was to participate in individual

[6]She was also convicted of disorderly conduct from an incident on her college campus.

counseling. Adams testified that J.H. never returned to her counseling sessions after the initial intake appointment. In addition, J.H. was residing with her mother, which was a concern because of the volatile nature of their relationship.

{¶ 21} The agency was also concerned with the mother's substance abuse issues. The mother had posted information on the internet indicating that she drinks alcohol and uses drugs. She admitted drinking in December 2009 and had not been consistent with urine screenings or substance abuse services.

{¶ 22} Adams further testified that the agency was concerned with the mother's parenting skills. J.H.'s interaction with the child at their supervised visits was minimal, and J.H. made poor parenting decisions despite completing parenting education classes. Adams also testified that the child is very comfortable with her foster parents.

{¶ 23} The child's guardian ad litem agreed with Adams, stating that, "I've had the opportunity over the years and over time to observe [the child] at visits with [mother] and in her various placements. Unfortunately, I have not noticed a strong bond between [the child] and her mother. I have observed [the child] in the placement she currently is at. * * * She is very comfortable and happy in that home." Adams recommended permanent

custody to the agency, stating that "I don't believe [J.H.] can provide a safe and stable home for [C.H.]"

{¶ 24} Thus, based on the foregoing, we find that the court did not abuse its discretion when it granted the agency permanent custody, and its decision is not against the manifest weight of the evidence.

{¶ 25} Accordingly, the sole assignment of error is overruled.

Judgment is affirmed.

It is ordered that appellee recover of appellant 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 common pleas court, juvenile 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.

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COLLEEN CONWAY COONEY, JUDGE

KENNETH A. ROCCO, P.J., CONCURS WITH SEPARATE CONCURRING OPINION ATTACHED;

MARY EILEEN KILBANE, J., CONCURS WITH COLLEEN CONWAY COONEY, J., AND WITH SEPARATE CONCURRING OPINION OF KENNETH A. ROCCO, P.J.

KENNETH A. ROCCO, P.J., CONCURRING:

{¶ 26} I agree with my colleagues that the juvenile court did not abuse its discretion and that its decision did not contravene the manifest weight of the evidence. I write separately to highlight several troubling countervailing facts.

{¶ 27} First, C.H. was born January 31, 2007. The complaint was filed just two months later, on April 4, 2007. The child was adjudicated abused and neglected and committed to the temporary custody of CCDCFS on October 1, 2007. The child remained in temporary custody for some 31 months, until the court entered the permanent custody order under review here on May 14, 2010. Indeed, CCDCFS did not move for permanent custody until after the mother herself sought legal custody. The delay of more than three years between the

filing of the case and its final disposition is particularly unfortunate for a child of such tender years.

{¶ 28} In the intervening years, the child's mother, J.H., has made remarkable progress. Although J.H. herself was a minor in the custody of CCDCFS at the time she became pregnant with C.H., she obtained her GED and went on to attend college at Cuyahoga Community College and Kent State University. She completed a substance abuse rehabilitation program.[7]

{¶ 29} The record reflects some anger management issues between J.H. and her own mother. There was testimony that J.H. returned to her mother's home after completing a residential drug treatment program while she was still a minor. J.H. complained that her mother's boyfriend was smoking marijuana. J.H.'s mother then threw J.H. out of her home. J.H.'s anger with her mother under such circumstances is certainly understandable, although her method of expressing it was not acceptable. Her anger issues did not appear to have extended to anyone except her mother. It might have been helpful to have included a provision in the case plan that J.H. should live apart from her own mother. Such refinements, timely made, might have allowed for reunification.

[7] The trial court found that J.H.'s "chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency" was "so severe that it makes the [mother] unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year." There is no evidence in the record to support this finding. However, the finding was also unnecessary to the court's decision.

{¶ 30} This appears to be a case in which careful, timely case management could have allowed for J.H. to be reunited with her child. Nevertheless, I must reluctantly agree that the best interests of the child required an award of permanent custody in this case.