

[Cite as *In re M.J.*, 2010-Ohio-5793.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95131

IN RE: M.J.

A Minor Child

Appeal By
T.W., Mother

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-08939774

BEFORE: Celebrezze, J., Boyle, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: November 24, 2010

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, T.W.,¹ appeals the juvenile court's decision terminating her parental rights and granting permanent custody of her minor child, M.J. ("the child"), to the Cuyahoga County Department of Children and Family Services ("the agency"). After a thorough review of the record and relevant law, we affirm.

{¶ 2} Appellant, who is cognitively delayed and has been diagnosed with diabetes, asthma, depression, and obsessive-compulsive disorder, gave birth to the child on September 28, 2008. When appellant took the child to MetroHealth Medical Center for a check-up on October 14, 2008, the physicians noted that the child had not gained the appropriate amount of weight since birth and scheduled a follow-up appointment. On October 22, 2008, the child was diagnosed with failure to thrive and admitted to the hospital. When questioned about the child's feeding schedule, appellant was unable to explain when and how much she fed the child. Subsequently, appellant indicated that she fed the child twice a day, once at 10:00 a.m. and once at 10:00 p.m. The agency filed a motion for temporary custody on October 27, 2008, which was granted. The child has remained in the

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

temporary custody of the agency since that date and was placed with appellant's maternal aunt and uncle.

{¶ 3} The agency created a case plan for appellant and the child's father, R.J., with the ultimate goal of reuniting the child with her parents.² Pursuant to the case plan, appellant primarily needed to gain parenting skills, emotional stability, and needed to learn to care for her own physical health.

{¶ 4} With regard to her parenting skills, appellant was to consistently participate in and successfully complete parenting classes and regularly attend visits with the child.

{¶ 5} In order to gain emotional stability, appellant was required to attend and participate in all appointments regarding her mental health, follow the recommendations of her medical providers, and take her medications as prescribed. Appellant was also required to schedule and attend doctor appointments as recommended; participate in her examinations and follow the doctors' recommendations; and demonstrate self-care skills by checking her blood sugar, following a special diet, and demonstrating good hygiene. She was also required to sign releases so that the assigned social

² Although R.J.'s parental rights were also terminated, he is not a party to this appeal.

worker could gain access to her information and verify her compliance with the case plan.

{¶ 6} The case plan also provided secondary needs for appellant to address. Pursuant to these needs, appellant was required to meet with community providers on a monthly basis, follow the recommendations of these providers, demonstrate an ability to recognize when she needed assistance and actively seek that assistance, and accept support from family members. Finally, appellant was required to successfully complete family preservation services.

{¶ 7} On September 1, 2009, the agency filed a motion to modify temporary custody to permanent custody. The court held a hearing on this motion on March 25, 2010. On April 30, 2010, the juvenile court judge issued an opinion severing appellant's parental rights and awarding permanent custody to the agency. This appeal followed wherein appellant argues that the agency "failed to make reasonable efforts in developing and implementing a case plan designed to meet the professed goal of returning the child to the home."

Law and Analysis

{¶ 8} We review a juvenile court's judgment awarding permanent custody for an abuse of discretion. *In re L.C.*, Cuyahoga App. No. 93657, 2010-Ohio-778, ¶17. To constitute an abuse of discretion, the ruling must be

unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶ 9} Motions for permanent custody are governed by R.C. 2151.413 and 2151.414. “R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody.” *In re B.H.*, Tuscarawas App. No. 09AP020012, 2009-Ohio-2703, ¶22. First, the court must determine whether the situation meets one of the situations delineated in R.C. 2151.414(B)(1)(a). *Id.* Next, the court must determine whether granting the motion for permanent custody would be in the best interests of the child. *Id.*

{¶ 10} R.C. 2151.414(B) provides in relevant part that “the court may grant permanent custody of a child to a movant if the court determines * * * that any of the following apply:

{¶ 11} “(a) The child * * * has not 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, * * * and the child cannot be placed with either of the child’s parents within a reasonable time or should not be placed with the child’s parents.”

{¶ 12} The child was born on September 28, 2008, and the custody hearing was held on March 25, 2010. Based on our calculations, the child was only 18 months old, and therefore could not have been in the agency’s

custody for “twelve or more months of a consecutive twenty-two-month period.” After making this determination, the trial court was required to determine whether granting the agency’s motion for permanent custody was in the child’s best interests and whether the child could not be placed with her parents within a reasonable time or should not be placed with her parents.

{¶ 13} In deciding whether granting permanent custody to the agency was in the child’s best interests, the trial court was required to consider the factors set forth in R.C. 2151.414(D)(1), which include the interaction of the child with her parents and foster care providers, the child’s wishes, the child’s custodial history, the child’s need for permanency, and the factors set forth in R.C. 2151.414(E)(7) through (11). *Id.* Finally, R.C. 2151.414(E) requires the court to consider all relevant evidence in determining whether the child could not be placed with either parent within a reasonable time or should not be placed with her parents.

{¶ 14} R.C. 2151.414(E) sets forth certain situations that, if proven by clear and convincing evidence, warrant a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. Pursuant to this statute, specifically R.C. 2151.414(E)(4), the trial court found that appellant demonstrated a lack of commitment toward the child because she only attended approximately 31 out of the

scheduled 141 visits with the child. Based on this and other relevant factors, including appellant's refusal to complete parenting classes, refusal to provide signed releases so that the social worker could access her case file, and her refusal to engage in various community assistance programs, the trial court determined it was in the child's best interests that permanent custody be granted in favor of the agency.

{¶ 15} Appellant now argues that the trial court erred in its determination because the agency failed to make reasonable efforts to implement the case plan. This argument is misguided. First, R.C. 2151.414(C) provides that "[t]he court shall not deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan."

{¶ 16} Notwithstanding this provision, the record demonstrates that the agency took numerous steps to successfully implement the case plan. For example, the assigned social worker referred appellant to parenting classes on multiple occasions. According to the social worker's records, appellant completed the intake assessment for one of these parenting classes and attended a couple of sessions, but then refused to attend the remainder of that program. Despite the social worker's repeated attempts to get appellant to enroll in a different parenting program, appellant refused and took the

position that she did not need the parenting classes to properly care for her daughter.

{¶ 17} The record also shows that appellant signed the initial releases to allow the social worker to gain access to her medical and mental health files, but she scratched out various portions of the releases so that the social worker could not have complete access. Appellant allowed the social worker to speak with her MRDD caseworker, but required this conversation to occur in a 3-way phone conversation so that appellant could hear all discussions. The initial releases expired six months after they were signed, and appellant refused to sign additional releases claiming the information was “none of [the social worker’s] business.”

{¶ 18} The evidence presented unequivocally demonstrated that granting permanent custody in favor of the agency was in the child’s best interests. When the child was a newborn, appellant was only feeding her twice a day. After temporary custody was awarded in favor of the agency, appellant failed to consistently visit the child and was unable or unwilling to care for the child when she did attend her weekly visits. The child’s guardian ad litem recommended custody be granted in favor of the agency, noting that appellant failed to visit the child and, during observed visits, interaction between appellant and the child was minimal at best.

{¶ 19} The trial court considered all relevant evidence in making its decision to grant permanent custody in favor of the agency. The evidence, including the testimony and the various agency reports, clearly shows that appellant was unable, and in some aspects did not even attempt, to complete the case plan. The trial judge did not act arbitrarily in reaching its determination, and we cannot find that she abused her discretion. Appellant's sole assignment of error is overruled.

Conclusion

{¶ 20} The trial court complied with all statutorily required procedures and considered the relevant factors in determining that granting permanent custody in favor of the agency was in the child's best interests and that the child could not be placed with appellant within a reasonable time or should not be placed with appellant. The record clearly supports the trial court's determination, and we cannot find that such a decision was arbitrary or capricious, nor was it an abuse of discretion.

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.

FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, P.J., and
JAMES J. SWEENEY, J., CONCUR