

[Cite as *In re K.H.*, 2011-Ohio-1699.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95873

IN RE: K.H., JR.
A Minor Child

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 08939973

BEFORE: Keough, J., Kilbane, A.J., and Stewart, J.

RELEASED AND JOURNALIZED: April 7, 2011

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KATHLEEN ANN KEOUGH, J.:

{¶ 1} Appellant/paternal-grandmother, appeals from the judgment of the Common Pleas Court, Juvenile Division, granting permanent custody of her grandchild, K.H., to appellee, the Cuyahoga County Department of Children and Family Services (“CCDCFS”). For the following reasons, we affirm.¹

{¶ 2} In 2008, CCDCFS filed a complaint alleging abuse and requesting a disposition of temporary custody of K.H., a minor child. In January 2009, following stipulations by the parents to the allegations in the complaint and for temporary custody, the trial court found K.H. to be abused and committed him to the temporary custody of CCDCFS.

{¶ 3} In September 2009, appellant filed a motion to intervene in the proceedings and requested legal custody of K.H. In November 2009, CCDCFS filed a motion to modify its temporary custody to permanent custody. Visitation between appellant and K.H. began in February 2010. In September 2010, the trial court held an evidentiary hearing on appellant’s motion for legal custody and CCDCFS’s motion for permanent custody.

{¶ 4} Following the hearing, the trial court denied appellant’s motion for legal custody and entered an order granting permanent custody of K.H. to

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.

CCDCFS. Appellant appeals from this order, raising as her sole assignment of error that the trial court erred in committing the minor child to the permanent custody of CCDCFS.

{¶ 5} A trial court's decision to award permanent custody will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Adoption of Lay* (1986), 25 Ohio St.3d 41, 42, 495 N.E.2d 9. 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. *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54.

{¶ 6} R.C. 2151.414(B)(1) establishes a two-part test for courts to apply when determining a motion for permanent custody to a public services agency. The movant must prove by clear and convincing evidence that (1) granting permanent custody of the child to the agency is in the best interest of the child, and (2) either the child (a) cannot be placed with either parent within a reasonable period of time or should not be placed with either parent; (b) is abandoned; (c) is orphaned and no relatives are able to take permanent custody of the child; or (d) has been in the temporary custody of one or more public or private children services agencies for twelve or more months of a consecutive twenty-two month period. R.C. 2151.414(B)(1).

{¶ 7} “Clear and convincing evidence is more than a mere preponderance of the evidence; it is evidence sufficient to cause a trier of fact to develop a firm belief or conviction as to the facts sought to be established.” *In re T.S.*, Cuyahoga App. No. 92816, 2009-Ohio-5496, _24, citing *In re Estate of Haynes* (1986), 25 Ohio St.3d 101, 104, 495 N.E.2d 23.

{¶ 8} In this case, the trial court determined that the father abandoned K.H. in August 2009 due to the no-contact order imposed in the criminal case wherein he pled guilty to child endangering, regarding K.H. (R.C. 2151.414(B)(1)(b)). The court also found that K.H. had been in the temporary custody of a public services agency for twelve or more months of a consecutive twenty-two month period. (R.C. 2151.414(B)(1)(d)). The trial court noted that notwithstanding these findings, K.H. could not be placed with either parent within a reasonable amount of time or should not be placed with his parents. (R.C. 2151.414(B)(1)(a)).²

{¶ 9} We find that the trial court properly determined that this prong of the R.C. 2151.414(B)(1) test was satisfied. Moreover, appellant does not dispute this aspect of the trial court’s decision. Accordingly, the trial court was then required to make a “best interest” determination pursuant to R.C. 2151.414(D).

²K.H.’s mother passed away in August 2010, prior to the hearing.

{¶ 10} R.C. 2151.414(D) requires that in determining the best interest of the child, the court must consider all relevant factors, including, but not limited to: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents, and out-of-home providers, and any other person who may significantly affect the child; (2) the wishes of the child as expressed directly by the child or through the child's guardian ad litem; (3) the custodial history of the child; (4) 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 to the agency; and (5) whether any factors in R.C. 2151.414(E)(7) through (11) are applicable. "There is not one element that is given greater weight than the others pursuant to the statute." *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, _56. 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 Moore* (Aug. 31, 2000), Cuyahoga App. No. 76942, citing, *In re Shaeffer Children* (1993), 85 Ohio App.3d 683, 621 N.E.2d 426.

{¶ 11} In this case, the juvenile court conducted an evidentiary hearing and considered the testimony and evidence presented. In determining whether a grant of permanent custody to CCDCFS was in the best interest of K.H., the court considered all relevant factors, including those listed in R.C.

2151.414(D)(1)-(5). A review of the record clearly and convincingly supports the trial court's findings.

{¶ 12} As for the factor in R.C. 2151.414(D)(1), regarding interactions and interrelationships, the trial court found that "this child has been with his foster parents since May 4, 2009. He was placed there when he was eight and a half months old. He has lived with them for about seventeen months and is extremely attached to them. He calls his foster parents 'mommy' and 'daddy,' and is thriving with them. [The foster parents] wish to adopt him and give him a safe and secure, permanent home."

{¶ 13} The record supports these findings. LaCola Daniels, a social worker for CCDCFS, testified that K.H. was originally removed from the home in October 2008 at age two months when he was taken to the emergency room due to a broken arm. At the hospital, medical personnel observed that he had bruising to his forehead, scratches on his face, and healing fractures to his ribs, and the base of his skull, and healing contusions to his lungs.

{¶ 14} K.H. was placed with his current foster parents in May 2009 where, according to Daniels, he developed a strong bond with them. Daniels testified that "the child is very comfortable with [his foster parents]. * * * [H]e has established a relationship with them. He's pretty attached with the

foster parents. * * * [He] refers to them as his mommy and daddy.” According to Daniels, K.H.’s foster parents wanted to adopt K.H. if permanent custody was granted.

{¶ 15} K.H.’s guardian ad litem told the court that K.H.’s foster parents were “excellent caregivers. The child appears to be very well bonded with them. * * * He considers them to be his parents. I think he would be excellent if he was left at that placement, too.”

{¶ 16} Regarding the factor in R.C. 2151.414(D)(2), the trial court made no specific finding as to the child’s wishes except to note that K.H.’s guardian ad litem recommended that legal custody to appellant be granted.

{¶ 17} As for the factor in R.C. 2151.414(D)(3), regarding custodial history, the trial court stated, “this little boy was removed from his biological parents because he was severely injured as a tiny infant. His first foster mother was unable to keep him because her license expired. [K.H.] just met [appellant] in February 2010. Unsupervised visits began only a month ago. Disrupting the bond the child has with his foster parents over the past year and a half and placing him into what would be his fourth placement (counting his biological parents) in the two years he has been alive would not be in his best interest.”

{¶ 18} The evidence before the court supports the trial court's findings. K.H. was removed from his parents in October 2008 and placed with his first foster family. In May 2009, K.H. was placed in the care of his current foster family, which has been his longest established residence since birth.

{¶ 19} As for the factor in R.C. 2151.414(D)(4), the child's need for permanent placement and the ability to achieve permanency without a grant of permanent custody to the agency, the trial court found that permanent custody to CCDCFS was in K.H.'s best interests. Although the trial court recognized that the biological parents and the guardian ad litem wanted K.H. to be placed with appellant, and that a legally secure placement could be achieved, the trial court found the concerns raised by the CCDCFS to be well-founded.

{¶ 20} In denying appellant's motion for legal custody and granting CCDCFS's motion for permanent custody, the trial court specifically noted appellants' statement that K.H.'s parents were "going to work their way back into [the child's] life." The court found this particularly troubling because of the abuse suffered by K.H. from his parents. The court also noted that appellant and her live-in boyfriend "have histories with CCDCFS and the Wood County Department of Children and Family Services for physical,

sexual abuse, and/or neglect.” The trial court was ultimately concerned about whether K.H. would be adequately protected from further harm.

{¶ 21} Appellant contends that the trial court ignored the guardian ad litem’s recommendation regarding granting legal custody and “turned it’s [sic] head on the facts.” The facts are that K.H. was abused by his parents, has been in the temporary custody of CCDCFS since he was two months old, and has found a safe, secure, and loving home with his current foster parents. We find that the trial court disagreed with the guardian ad litem’s recommendation that appellant’s motion for legal custody be granted based on its concerns for K.H.’s continued safety. These concerns are supported by the evidence.

{¶ 22} Finally, the trial court considered R.C. 2151.414(E), noting that factors (7), (10), and (15) apply. These factors are relevant for consideration based on the father pleading guilty to child endangering and the no-contact order prohibiting the father from contact with K.H.

{¶ 23} Upon our review of the record, we find that the trial court weighed all relevant factors and decided what was the best option for K.H. This court finds competent and credible evidence in the record supporting the trial court’s decision. Accordingly, the trial court did not err in granting

permanent custody of K.H. to CCDCFS. Appellant's assignment of error is overruled.

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.

KATHLEEN ANN KEOUGH, JUDGE

MARY EILEEN KILBANE, A.J., and
MELODY J. STEWART, J., CONCUR