

[Cite as *In re D.R.*, 2015-Ohio-1032.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101743

IN RE: D.R.
A Minor Child

[Appeal by Father, R.R.]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 12903715

BEFORE: Blackmon, J., Stewart, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: March 19, 2015

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant R.R. (“father”) appeals the juvenile court’s decision terminating his parental rights and granting permanent custody of his child to the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “agency”). He raises the following assigned errors:

I. Father was improperly deprived of his constitutional rights to due process and to parent his child where the GAL for the child failed to conduct a complete investigation and discharge her duties in accordance with the law before making a best interest of the child determination and recommending that father’s parental rights be terminated.

II. The trial court abused its discretion in awarding permanent custody to the agency and finding it was in the child’s best interest because the award is against the manifest weight of the evidence and is not supported by clear and convincing evidence.

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

{¶3} When the child was born on February 20, 2012, the father was incarcerated for domestic violence against the mother. Because the child was exposed to drugs while in utero, he remained in the hospital until February 29, 2012. Thereafter, he and his mother lived with a local pastor. The pastor was the main caregiver for the child because the mother was often absent. The mother was addicted to drugs and had mental health issues. She was diagnosed as being bipolar and having depression.

{¶4} On March 1, 2012, the CCDCFS filed a complaint for temporary custody due to the fact the child was dependent based on the mother’s substance abuse, mental health issues, and absence.¹ On May 2, 2012, an adjudicatory hearing was conducted, and the court found the child to be dependent. On May 23, 2012, the pastor was awarded temporary custody of the child

¹Mother at this time had three other children that were not in her care.

by agreement of the mother and CCDCFS. The father was not able to appear at either hearing because he was incarcerated at the time for the domestic violence charge.

{¶5} A case plan was put into effect on this date for the father to receive mental health services with the goal of becoming emotionally stable and to attend anger management classes. The mother was to obtain treatment for her abuse of drugs and mental illness. From June 2012 until December 2012, CCDCFS was unable to locate the mother.

{¶6} In December 2012, the mother was placed in an intensive inpatient drug treatment facility due to continued drug problems. However, she did not complete the program, and it was discovered she was pregnant again.² The mother disappeared after leaving the treatment facility, but was later located after she had the child. She was still on drugs and was placed in a treatment facility to address her ongoing drug abuse and mental health problems.

{¶7} On January 23, 2013, CCDCFS filed a motion to modify temporary custody and to grant legal custody to the pastor, who had been taking care of the child in the mother's absence. The motion was later withdrawn because the pastor no longer wanted custody of the child because the father had made threatening telephone calls that made her afraid for her safety. On March 25, 2013, the father filed a motion for custody of the child.

{¶8} In April 2013, the father was indicted in his second domestic violence case against another woman. He was placed in county jail for 90 days and, thereafter, placed on one year of probation.

{¶9} On May 17, 2013, CCDCFS again filed its motion to modify custody to permanent custody. Attached to the motion was an affidavit of the assigned social worker, Kayla Whiteside ("Whiteside"), who stated the father and mother had failed to comply with their

²The father of this child, is not the father in the instant case. That child was subsequently placed in the custody of his paternal aunt.

case plan. They were still abusing drugs, not taking medication for their mental illnesses, and the father failed to take anger management classes. Both parties had also failed to establish stable housing. The father was not working, but was receiving SSI.

{¶10} On May 8, 2014, a hearing was conducted regarding CCDCFS's motion for permanent custody. Social worker Whiteside testified that she was assigned to the child's case from March 2012 until November 2013. She stated she first met the father of the child in September 2012 after he was released from prison. His health providers had told her that he suffered from schizophrenia and depression. He was prescribed medication for his illness that he refused to take. He also had a drug problem. His case plan, therefore, involved drug treatment and complying with taking his medication. He was also to attend anger management classes. The father failed to make any progress towards the case plan goals while Whiteside was the social worker.

{¶11} According to Whiteside, the father was consistent with his visitation with the child, which occurred at the agency. However, at some of his visits he acted inappropriately. She said he was loud and abrupt with the child and was constantly picking the child up by his arm. She recalled one visit where he interacted more with another female that was there visiting her child than with his own child. He also became enraged when the foster family put Pittsburgh Steelers shoes on the child.

{¶12} In Whiteside's opinion, as of November 2013, the parents were not capable of providing the child's basic needs due their unaddressed mental health issues, continuing drug abuse, and failure to obtain stable housing. She felt that the father was "aggressive" and "abrupt" with the child. In her opinion, the child was afraid of the father. She stated that the father seemed more focused on "the things the child had" instead of the relationship. She stated

that when anyone said anything to the father, he would take it very personal and get “off track” instead of understanding it was about the child, not him.

{¶13} Tracy Digney was the social worker who assumed the case after Whiteside. She conducted a semi-annual review with the parents in December 2013. At that time neither party had complied with the objectives of the case plan. The father admitted he took drugs, but refused to submit to a drug test. A drug assessment was done on him, and he was recommended to intensive out-patient therapy. However, the father failed to attend the intake appointment made for him at the treatment center.

{¶14} According to Digney, the father did not start drug treatment until two months prior to the instant hearing. He has consistently attended the classes, but for the entire month of March, he continued to test positive for marijuana.

{¶15} The father is now living with the child’s mother. Digney is concerned regarding this arrangement because the father had previously committed domestic violence against the mother, and the mother was not doing well with her drug and mental health problems.

{¶16} Digney observed the father’s visitation with the child. She noted that the father would sometimes become enraged, which was frightening to those around him and the child. For instance, once the foster family did not put the shoes on the child that the father had bought for him. Apparently, the shoes he purchased were too small. However, he claimed the foster family was “evil.” During this time, she said the child’s expression went flat and the child looked fearful. She explained to the father that he scared the child when he acted like that. He responded, “My son’s not scared of me.” He then went to the cafeteria, and Digney supervised the child. When he returned, he stated it was his time to visit.

{¶17} At another visit, the child picked up a doll that one of the other families had brought. Digney said the mother gave her a fearful look and when the father saw the doll, he

said loudly, “You are not going to turn my son into a faggot. You are not going to turn my son gay.” Digney told him he was acting inappropriate, but he denied it and continued to shout biblical references against homosexuality. She stated the child was scared and the other people in the visiting room were uncomfortable. She observed that the child was quiet during the car ride back to his foster family, which was unusual for him. Even the foster mother asked if he was okay because he seemed “down.” The father did apologize for his behavior at the next visit.

{¶18} At the most recent visitation, the father was giving the child pop. He was told by an employee of the agency that they did not like the children to drink pop. The mother told her, “He came out of my coochie. I can give him what I want.” The father then stated that he “laid the seed in the coochie.” Digney told the father to stop his inappropriate behavior. He apologized, but then throughout the visit he quoted scripture.

{¶19} Digney stated that the child has been with the foster family for a year and has bonded with them. She stated that he “lights up” when he sees his 11-year old foster sister, and the children are very close. She stated the foster family would like to adopt the child.

{¶20} The guardian ad litem (“GAL”) testified that she has only observed the father at court proceedings and has not seen him interact with the child. She stated she was fearful of the father based on the behavior she witnessed during court proceedings and did not want to be alone with him. She recommended that permanent custody be awarded to CCDCFS because after two years, the parents had only recently begun to comply with the case plan. The GAL had visited the child several times at his foster home and said that the child has strongly bonded with the foster family, and his needs were being met at the home.

{¶21} Based on the above evidence, the trial court concluded that permanent custody to the CCDCFS was in the child’s best interest and granted CCDCFS’s motion for permanent custody.

Guardian Ad Litem

{¶22} In his first assigned error, the father argues that the GAL did not complete the investigation of the child because she failed to observe the father visit with the child and failed to serve the father's attorney with a copy of her report or send notice of submission.

{¶23} Our review of the record shows that the GAL sent her notice of submission to the father's attorney on April 30, 2014. R.C. 2151.414(C) does not require the attorney to send counsel a copy of the GAL report. The report needs only to be filed with the court. The notice of submission should have alerted the father's counsel that the report was available at the clerk's office.

{¶24} There is no dispute that the GAL failed to observe the father interact with his son. She claimed she was afraid of the father and did not want to be alone with him; however, she could have observed him during his visitations at the agency. Regardless, we conclude this omission did not prejudice the father because both social workers provided ample evidence to support the trial court's decision to award permanent custody to the CCDCFS. *See In re J.C.*, 4th Dist. Adams No. 07CA833, 2007-Ohio-3781 (“[W]hen a parent cannot establish any prejudice arising from the action or non-action of a guardian ad litem, then any potential error constitutes harmless error”); *In re R.C.*, 8th Dist. Cuyahoga No. 82453, 2003-Ohio-7062, at ¶ 22 (held no prejudicial error if there was ample evidence to support the ruling without the guardian ad litem's recommendation.) We will discuss this supporting evidence in the father's second assigned error. Accordingly, the father's first assigned error is overruled.

Permanent Custody

{¶25} In his second assigned error, the father argues that the CCDCFS failed to provide clear and convincing evidence that it was in the child's best interest to award permanent custody to the agency.

{¶26} It is well established that the right to parent one's children is a fundamental right. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 28. Nevertheless, a government agency has broad authority to intervene when necessary for the child's welfare or in the interests of public safety. *Id.* at ¶ 28-29, citing R.C. 2151.01(A). In accordance with R.C. 2151.414, a trial court may grant permanent custody of a child to an agency if the court determines, by clear and convincing evidence, that one of the factors enumerated in R.C. 2151.414(B)(1)(a)-(d) applies and that an award of permanent custody is in the child's best interest. *Id.* at ¶ 23. "Clear and convincing evidence" is evidence that "will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

{¶27} The factors under R.C. 2151.414(B)(1) include the following: (a) the child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent; (b) the child is abandoned; (c) the child is orphaned and no relatives are able to take permanent custody of the child; or (d) the child has been in the temporary custody of one or more public or private children services agencies for 12 or more months of a consecutive 22-month period.

{¶28} Because the mother has not appealed, we need not address the trial court's findings that relate solely to her. As to the father, the court found that the child could not be placed with either parent within a reasonable period of time. R.C. 2151.414(E) sets forth the factors a trial court is to consider in determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. The existence of one factor alone will support a finding that the child cannot be reunified with the parent within a reasonable time. *See In re: William S.*, 75 Ohio St.3d 95, 1996-Ohio-182, 661 N.E.2d 738.

{¶29} The trial court found several factors applied. The trial court found that, 1) in spite of planning and diligent efforts by the agency to assist in remedying 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); and 2) the chronic mental illness, chronic emotional illness, mental retardation, physical disability or chemical dependency of the parent is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year. R.C. 2151.414(E)(2).

{¶30} We conclude these findings were supported by clear and convincing evidence. The father, until recently, has refused drug treatment. There was no evidence regarding his progress with receiving treatment for his mental condition. He was diagnosed with schizophrenia and depression and has never been compliant with taking his medication. Although the father's most recent drug test came back negative, he tested positive for marijuana the entire month of March, which was two months before the hearing. After two years, he has only recently begun to attend drug abuse counseling.

{¶31} There was also no evidence that the father could care for his child's basic needs. He only recently obtained housing by moving in with child's mother. As the social worker testified, this was concerning because he had previously committed domestic violence against the mother, the mother was not doing well with her drug abuse and mental health issues, and the mother had told the social worker that she was afraid of the father.

{¶32} The father's behavior during visitation was also telling regarding his mental health interfering with his ability to parent the child. Although "some of the visits" were appropriate, the testimony of the social workers also indicated that the father could be inappropriately "aggressive" and "abrupt." At least three visits in March and April 2014, indicated he still had

problems with his aggressiveness. The social workers noted when the father acts this way, the “child’s face goes flat and the child becomes very quiet.”

{¶33} We note that although the trial court satisfied the requirements for finding that the child could not be reunited with the father within a reasonable time, the court could have also found that the child had been in the temporary custody of one or more public or private children services agencies for 12 or more months of a consecutive 22-month period. This is a requirement pursuant to R.C. 2151.414(B)(1)(d). The child has been in the care of foster parents for his entire life.

{¶34} Having satisfied R.C. 2151.414(B)(1), the only other finding the court was required to make was that an award of permanent custody was in the best interest of the child. *See In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618. R.C. 2151.414(D)(1) 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 the following: (a) the child’s interaction and interrelationship with the child’s parents, siblings, relatives, and foster caregivers; (b) the child’s wishes expressed directly or through a GAL; (c) the child’s custodial history, (d) 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 (e) whether any factors listed in R.C. 2151.414(E)(7)-(11) apply.

{¶35} The social workers and the GAL testified that the child has developed a close bond with the family, especially his foster sister. This is the child’s third foster family. The fact that the family loves him and wants to adopt him will give him the consistency and permanency that he has been lacking. The father’s inability to behave consistently, take his medication, and past domestic violence also supports the trial court’s conclusion that permanent custody to the agency was in the child’s best interest. The father has recently started to attend drug counseling,

however, this was two months prior to the hearing; therefore, there is no evidence he will continue to be consistent in doing so. There is also no evidence he is complying with taking his medication for his schizophrenia. Although the father contends a cousin in Georgia expressed an interest in obtaining custody of the child, the cousin never returned the social worker's telephone call. Accordingly, the father's second assigned error is overruled.

{¶36} 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 Cuyahoga County Juvenile 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

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