

[Cite as *In re K.A.C.*, 2015-Ohio-1158.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 102000, 102002, 102005, and 102006

IN RE: K.A.C., ET AL.
Minor Children

[Appeal By L.C., Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 12905133, AD 12905134, AD 12905135, and AD 13910488

BEFORE: E.T. Gallagher, P.J., Boyle, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: March 26, 2015

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EILEEN T. GALLAGHER, P.J.:

{¶1} L.C. (“mother”), appeals a decision of the Cuyahoga County Court of Common Pleas, Juvenile Division, that granted temporary custody of her minor children, Ka.C., Ke.C., La.C., and J.P. (collectively “the children”), to the Cuyahoga County Division of Children and Family Services (“CCDCFS”). She raises two assignments of error for our review:

1. The trial court’s denial of appellant’s request for continuance was an abuse of discretion since no attempt was made to determine why appellant was not at the hearing.
2. The trial court’s decision granting temporary custody to [CCDCFS] was against the manifest weight of the evidence.

{¶2} We find no merit to the appeal and affirm the trial court’s judgment.

I. Facts and Procedural and History

{¶3} In March 2012, the children were placed under the protective supervision of the CCDCFS because social workers were concerned that mother was unable to provide stable housing, lacked effective parenting skills, and demonstrated mental instability. CCDCFS developed a case plan to assist mother that required her to attend parenting classes, obtain stable housing, and complete a psychiatric assessment.

{¶4} In January 2013, the children were committed to the temporary custody of CCDCFS, where they remained for 13 months. Mother complied with her case plan and the children were reunited with mother in February 2014, with continued supervision. Following reunification, however, the family’s situation deteriorated, and CCDCFS filed another motion to modify protective supervision and for temporary custody of the children.

{¶5} On August 18, 2014, the court held a hearing on CCDCFS’s motion for temporary custody, and mother failed to appear. Mother’s lawyer requested a continuance, stating that mother’s ride “fell through” and she could not afford bus fare. The children’s guardian ad litem

and CCDCFS objected to the motion because the school year was going to start in one week, and the children's residence needed to be settled. The trial court denied the continuance, explaining that the children had been before the court "for a couple of years at this point, and the mother has had a history of not appearing for hearings and appearing late for many hearings." (8/18/14 tr. 7.) The court also stated that "[b]ecause these cases have been continued multiple times, * * * the Court is concerned for the welfare of these children." (8/18/14 tr. 7.)

{¶6} Case worker Denise Bell ("Bell"), who testified in support of the motion for temporary custody, worked with the family since early 2012 and developed the mother's case plan. Although the mother complied with most of the terms of her case plan, Bell stated that she continued to have concerns about mother's ability to provide and care for the children. For example, despite completing parenting classes, mother failed to ensure that the children consistently attended school. The children had numerous absences and were tardy on multiple occasions. The principal at the children's school informed Bell that Ka. C. failed and was required to repeat a grade, in part, because of chronic absenteeism. The principal also informed Bell that the school was unable to contact mother during the school year to address the child's absences.

{¶7} According to Bell, mother failed to obtain necessary medical treatment for J.P. and medical examinations for the other children as ordered by the court. J.P. suffers from severe food allergies, eczema, and a gastrointestinal malady. Mother missed at least five scheduled appointments before finally bringing J.P. to a gastroenterologist for treatment. J.P. received treatment from a dermatologist in February 2012 for severe eczema, and was supposed to return for a follow-up visit six weeks later. However, as of the hearing on August 18, 2014, mother had not taken him to the appointment. According to Bell, J.P., who has been diagnosed with

failure to thrive, also needs allergy testing that mother has not obtained.

{¶8} Bell testified she was concerned about mother's mental condition. Mother completed a psychological evaluation in November 13, 2013, and was diagnosed with antisocial personality disorder. The psychologist who conducted the evaluation concluded that mother would benefit from counseling. There was no evidence that mother received any counseling, and Bell, who is a licensed social worker, believed mother needed further evaluation because she was not making any meaningful changes in her parenting even though she completed parenting classes.

{¶9} Bell was also concerned about the children's housing. The children lived with mother in their grandmother's apartment on Clifton Boulevard in Lakewood for a few months. However, when the children's grandmother moved out, she removed all of the furniture from the apartment. The landlord informed Bell that he wanted to evict mother because the police had been called in response to complaints that the children were left unsupervised in the apartment. Bell offered to assist mother in finding shelter, but mother refused. Although Bell was required by court order to visit mother and children once a week, mother did not disclose where they were living after they vacated the Lakewood apartment. As far as Bell knew, mother had no housing and no concrete plan for the children. Mother's only source of income was social security for one of the children and food stamps. Further, mother's food stamps and medical coverage were terminated for two months when she failed to comply with the programs' requirements.

{¶10} Bell concluded that under the present circumstances, temporary custody was in the children's best interests because mother was unable to provide stable housing and was unable to meet the children's medical and educational needs, despite having received case plan services. The guardian ad litem, who expressed the same concerns for lack of housing, education, and

medical care, also opined that temporary custody was in the best interests of the children. The guardian ad litem commented that mother was “extremely difficult to work with,” because “[s]he’s very argumentative.”

{¶11} At the conclusion of the hearing, the court granted the motion to modify protective supervision and committed the children to the temporary custody of CCDCFS. The court also approved a new case plan for mother.

II. Law and Analysis

A. Continuance

{¶12} In the first assignment of error, mother argues the trial court abused its discretion in denying her request for a continuance because the court made no attempt to determine why mother was not present at the hearing.

{¶13} Juv.R. 23 provides that “[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties.” Thus, “[t]he grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge.” *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981). We, therefore, will not reverse the denial of a continuance absent an abuse of discretion. An “[a]buse of discretion” has been defined as an attitude that is “unreasonable, arbitrary, or unconscionable.” *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985).

{¶14} In evaluating whether the trial court has abused its discretion in denying a continuance, appellate courts consider a variety of factors, such as:

the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is

dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case.

In re B.B., 5th Dist. Stark No. 2010CA00151, 2010-Ohio-4618, ¶ 38, citing *Unger* at 67-68.

{¶15} When the trial court denied mother's continuance, the court explained that mother "has had a history of not appearing for hearings and appearing late for many hearings." The court also noted that the children's cases had already been continued multiple times and that the court was concerned for the welfare of the children. Further, mother was represented by counsel. Moreover, the new school was starting in one week and the children's school needed to be identified so the children could be enrolled. Under these circumstances, the trial court acted within its discretion to deny the continuance.

{¶16} Accordingly, we overruled the first assignment of error.

B. Temporary Custody

{¶17} In the second assignment of error, mother argues the trial court's decision granting temporary custody to CCDCFS was against the manifest weight of the evidence. She also contends the award of temporary custody was contrary to the children's best interests.

{¶18} If a child is adjudicated an abused, neglected, or dependent child, R.C. 2151.353(A) allows a trial court to (1) place the child in protective supervision, (2) commit the child to the temporary custody of a public or private children services agency, (3) award legal custody of the child to either parent or to another person who, prior to the dispositional hearing, files a motion requesting legal custody of the child, or (4) commit the child to the permanent custody of a public or private children's services agency.

{¶19} In choosing among these alternatives, the best interest of the child is the court's primary consideration. *In re S.M., C.M., & D.M.*, 2d Dist. Montgomery No. 24539,

2011-Ohio-6710, ¶ 3. Thus, a court must consider which situation will best promote the “care, protection, and mental and physical development” of the child. R.C. 2151.01(A). A court should only separate a child from his family environment “when necessary for the child’s welfare or in the interests of public safety.” *Id.*

{¶20} In this case, the children had previously been adjudicated dependent, and the trial court awarded temporary custody of the children to CCDCFS pursuant to R.C. 2151.353(A)(2). An award of temporary custody to a public or private children’s services agency is substantially different from an award of permanent custody, where parental rights are terminated. In temporary custody cases, the parent only loses temporary custody of a child and retains residual parental rights, privileges, and responsibilities. *In re G.M.*, 8th Dist. Cuyahoga No. 95410, 2011-Ohio-4090, ¶ 14, citing R.C. 2151.353(A)(3)(c). What is more, the parent’s right to regain custody is not permanently foreclosed. *In re M.J.M.*, 8th Dist. Cuyahoga No. 94130, 2010-Ohio-1674, ¶ 12. For this reason, the juvenile court employs the less restrictive “preponderance of the evidence” standard in temporary custody cases as opposed to the “clear and convincing” standard of evidence employment in permanent custody cases. *Id.* at ¶ 9, citing *In re Nice*, 141 Ohio App.3d 445, 455, 751 N.E.2d 552 (7th Dist.2001).

{¶21} “‘Preponderance of the evidence’ means ‘evidence that is more probable, more persuasive, or of greater probative value.’” *In re C.V.M.*, 8th Dist. Cuyahoga No. 98340, 2012-Ohio-5514, ¶ 7, quoting *In re D.P.*, 10th Dist. Franklin No. 05AP-117, 2005-Ohio-5097, ¶ 52. Although an award of temporary custody to a children’s services agency must be supported by the preponderance of the evidence, the “court has substantial discretion in weighing the considerations involved in making the determination regarding a child’s best interest.” *In re S.M., C.M., & D.M.*, 2d Dist. Montgomery No. 24539, 2011-Ohio-6710 at ¶ 4.

{¶22} The evidence at the dispositional hearing in this case showed that during the four months mother had custody of the children, they were frequently absent from school even though school was within walking distance from their grandmother's Lakewood apartment. One child failed and had to repeat a grade as result of her chronic absenteeism. Two of the children were suspended from school while living with mother, and one child had an active warrant for her arrest because mother failed to take her to court for a probation violation hearing. The state subsequently filed new complaints against that same child for aggravated riot and felonious assault. (8/18/14 tr. 28.)

{¶23} The evidence also showed that mother was not ensuring that the children's medical needs were being met. J.P.'s severe allergies and eczema require him to see a dermatologist and a gastroenterologist in addition to his regular pediatrician. Yet mother repeatedly failed to take him to his medical appointments. Withholding necessary medical treatment from a child is a form of neglect. R.C. 2151.03(A)(3).

{¶24} Finally, the evidence showed that mother failed to provide stable housing for the children. Although mother and children lived for a brief time with the children's grandmother on Clifton Boulevard in Lakewood, the grandmother moved out and mother was evicted. Bell attempted to assist mother in finding suitable housing but mother rejected her help and told Bell she was going to a shelter. At the time of the hearing, there was no evidence that mother had found any housing much less enrolled the children in school.

{¶25} Under the totality of these circumstances, we agree with the trial court that temporary custody is in the children's best interest while mother continues to work on her case plan.

{¶26} Accordingly, the second assignment of error is overruled.

III. Conclusion

{¶27} The trial court acted within its discretion when it denied mother's request for a continuance since the court had previously granted continuances and mother had a history of failing to appear. Mother was represented by counsel, and the children needed a decision on temporary custody before the school year began.

{¶28} The trial court's decision to award temporary custody to CCDCFS was supported by a preponderance of the evidence. Although mother complied with the majority of her case plan, she failed to demonstrate effective parenting skills. The children were continually absent from school, lacked stable housing, and she failed to ensure that the children received all necessary medical treatments.

{¶29} 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 issue out of this court directing the Cuyahoga County 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.

EILEEN T. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., and
ANITA LASTER MAYS, J., CONCUR

