

[Cite as *In re K.S.*, 2015-Ohio-1455.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101735

IN RE: K.S. and N.S.
Minor Children

[Appeal By S.S., Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 12918833 and AD 12918834

BEFORE: S. Gallagher, J., Jones, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: April 16, 2015

ATTORNEY FOR APPELLANT

R. Brian Moriarty
2000 Standard Building
1370 Ontario Street
Cleveland, OH 44113

ATTORNEYS FOR APPELLEES

For C.C.D.C.F.S.

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Colleen R. Cassidy Ulrich
Assistant Prosecuting Attorney
C.C.D.C.F.S.
3955 Euclid Avenue
Cleveland, OH 44115

For C.C., father of N.S.

Gregory T. Stralka
6509 Brecksville Road
P.O. Box 31776
Independence, OH 44131

For John Doe

John Doe, pro se
c/o Cuyahoga County Juvenile Court
9300 Quincy Avenue
Cleveland, OH 44106

For M.M., aunt

Martin J. Keenan
Buckeye Legal Center
11510 Buckeye Road
Cleveland, OH 44104

For A.C.

A.C., pro se
c/o Cuyahoga County Juvenile Court
9300 Quincy Avenue
Cleveland, OH 44106

Also Listed:

Guardian ad Litem for Children

Thomas Kozel
P.O. Box 534
North Olmsted, OH 44070

Guardian ad Litem for Mother

Joi L. Taylor Powell
P.O. Box 22990
Shaker Heights, OH 44122

SEAN C. GALLAGHER, J.:

{¶1} Appellant S.S. (“mother”) appeals two judgments of the Cuyahoga County Court of Common Pleas, Juvenile Division, terminating her parental rights over two of her children, N.S. and K.S., and awarding permanent custody of the children to Cuyahoga County Division of Children and Family Services (“CCDCFS”). Mother has not demonstrated any error. For the following reasons, we affirm the decisions of the trial court.

{¶2} Mother is the biological parent of N.S., born in 2008, and K.S., born in 2012. CCDCFS removed both children from mother’s care three days after the birth of K.S., citing concerns over mother’s substance abuse and mental health problems. Mother tested positive for opioids and benzodiazepines twice while pregnant with K.S., and overdosed once. In addition, there were allegations that N.S. was with inappropriate caregivers. At that time, N.S. lived with his maternal grandparents and his maternal aunt and her three children, none of whom ensured that N.S. received the proper therapy for his eye or asthma conditions. N.S. and K.S. were placed into a foster home where they remain. Both children have special needs that have been fulfilled by the foster family. On May 2, 2013, almost a year after the children were originally removed, CCDCFS filed a motion to modify the temporary custody order to a permanent one.

{¶3} Mother contested the motion. A paternal and maternal aunt each filed motions to intervene and for legal custody of the children. N.S.’s biological father filed a motion for legal custody to the paternal grandmother. The trial court held a hearing to

resolve the motions.

{¶4} Several of the children's medical providers testified, the bulk of which testimony focused on the special needs of each child. It suffices that both children require daily attention and assistance in managing their conditions. Specifically, as it relates to the maternal aunt's motion for custody, N.S. suffers from asthma and cannot be exposed to tobacco smoke. The maternal aunt smokes cigarettes. The medical providers universally testified that the foster mother was handling the treatment and medical visits without exception. The foster mother was credited with providing excellent care and the attention the children needed. Several of the medical providers testified that the children accepted the foster family as their own.

{¶5} As pertinent to the disposition of the case, the eye doctor diagnosed N.S. with esotropia (inward turning of the eye) and amblyopia (lazy eye). Both conditions were bettered with the appropriate therapy. The condition should have been fairly obvious, but mother largely ignored the condition. The maternal aunt attended one eye appointment, but according to the doctor, she was disengaged and left before the treatment instructions were communicated.

{¶6} Further, K.S. was referred to an occupational therapist in light of her poor motor skills. Between August 2012 and April 2014, K.S. attended 58 biweekly therapy sessions. During that time, in which the foster mother managed the at-home therapy and accompanied K.S. to the therapy sessions, mother attended only four sessions, and the maternal aunt attended only six sessions with the last attendance in February 2013. As

relevant to the therapy the children received, including the extensive at-home therapy, the maternal aunt had only a rudimentary understanding of N.S.'s asthma and eye conditions.

{¶7} CCDCFS, through the caseworker, developed a case plan in the attempt to reunify the family. Mother was required to complete a drug and alcohol assessment, complete recommended services, attend weekly alcoholic anonymous meetings, complete random drug screens, complete a mental health assessment, and provide documentation of compliance. Mother also was required to find stable employment and housing. Mother failed to complete a drug rehabilitation program and was incarcerated on unrelated charges. Mother told the caseworker that she did not have a substance abuse problem and needed no further treatment. Mother never completed any case plan services. Further, of the 10 to 12 times mother visited her children in 2013, mother had to be removed twice for visiting while under the influence of drugs.

{¶8} The caseworker testified that the children bonded with the foster family. N.S. even asked if his last name could be changed and referred to his foster mother as "mommy." K.S. was described as "clingy" to her foster parents and had not bonded with any of her biological family. The children's guardian ad litem recommended that the children remain with the foster family, in light of the length of time the children were with the foster family and in the belief that the biological family would not be appropriate caregivers well into the foreseeable future. According to the guardian ad litem, foster placement and permanent custody was in the children's best interest.

{¶9} Finally, there was turmoil between the maternal and paternal sides of the

family that concerned the caseworker from CCDCFS. Neither side wanted the other to gain legal custody of the children, and the caseworker believed that could provoke future conflict deleterious to the children's development. Even within the maternal side of the family, mother prohibited the maternal aunt from visiting the children on several occasions, and there were questions as to whether maternal aunt wanted legal custody of both children. There were serious issues raised as to the biological family's feelings regarding one of the children's racial heritage.

{¶10} In defense of her request for custody, the maternal aunt stated that she intended to quit smoking if granted legal custody of the children. Two days before the permanent custody hearing, she began taking Chantrix, a drug intended to curb the desire to smoke. She had unsuccessfully used that drug treatment to quit smoking in the past. As of the hearing, she was still smoking. The maternal aunt has three of her own children, ages 14, 11, and 9, and testified that although she lives in a three-bedroom home with state assistance, she anticipated moving to a larger house if granted custody.

{¶11} Upon that evidence, the trial court granted CCDCFS's motion for permanent custody, thereby terminating mother's parental rights. The motions by the biological family members for custody were all denied. None of those family members appealed the trial court's decisions.

{¶12} Mother appealed, claiming in a single assignment of error that "the trial court's order granting permanent custody to CCDCFS was not based upon sufficient clear and convincing evidence." According to mother, N.S. misses her and loves her, and

therefore, this demonstrates N.S.’s desire to stay with mother. Further, mother claims that K.S. was removed shortly after her birth, and the two have not had time to establish a bond. In the alternative, mother claimed that the maternal aunt should have been awarded custody of the children. We find no merit to mother’s sole assignment of error.

{¶13} “An appellate court will not reverse a juvenile court’s termination of parental rights and award of permanent custody to an agency if the judgment is supported by clear and convincing evidence.” *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 48, citing *In re M.J.*, 8th Dist. Cuyahoga No. 100071, 2013-Ohio-5440, ¶ 24. A trial court may terminate parental rights and grant permanent custody of a child to CCDCFS if one of four conditions set forth in R.C. 2151.414(B)(1)(a)-(d) applies, and that permanent custody is in the best interest of the child. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 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.’” *In re T.B.*, 8th Dist. Cuyahoga No. 99931, 2014-Ohio-2051, ¶ 28, quoting *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

{¶14} In the case of each child, the trial court determined that the condition set forth under R.C. 2151.414(B)(1)(a) and (b) was established. It is undisputed that the children were in the temporary custody of CCDCFS for 12 or more months of a consecutive 22-month period, were abandoned, and could not be placed with their biological parents within a reasonable time. Neither mother nor the biological fathers

(N.S. and K.S. were issue of different fathers) had any contact with the children since November 4, 2013, at the latest, and the guardian ad litem recommended against placing the children with either biological parent well into the foreseeable future. The sole remaining issue is, therefore, whether permanent custody is in the best interest of the children.

{¶15} The best interests of the child determination under R.C. 2151.414(B)(2), is itself guided by a non-exhaustive list of factors to consider as set forth in R.C. 2151.414(D). *In re N.B.* at ¶ 52. These factors include the wishes of the children, the custodial history of the children, the need for legally secure placement and any factor listed in R.C. 2154.414(E)(7)-(11). This district has “consistently held that only one of the factors set forth in R.C. 2151.414(D) needs to be resolved in favor of the award of permanent custody in order for the court to terminate parental rights.” *Id.* at ¶ 53, quoting *In re Z.T.*, 8th Dist. Cuyahoga No. 88009, 2007-Ohio-827, ¶ 56.

{¶16} In this case, the trial court clearly and convincingly found, based on the evidence presented, that both children wished to remain with and were attached to the foster family. Neither child demonstrated any ongoing connection with the biological family, nor any desire to be reunited. N.S. was close to his foster family and stopped inquiring about mother after she failed to make visitation attempts. N.S. treated his foster parents as his actual mom and dad, and was closer to his foster brother than to his biological sister. As far as K.S. was concerned, the foster family was the only family she ever knew.

{¶17} The court also found, pursuant to the factors enumerated in R.C. 2151.414(E)(7)-(11): that the biological family failed to remedy the conditions causing the removal; the chronic chemical dependency of the biological mother was so severe as to render her unable to provide a permanent home for either child; the parents demonstrated a lack of commitment to support or care for the children; the parents abandoned the children; and the children's medical and special needs weighed in favor of granting permanent custody to CCDCFS and terminating parental rights. And finally, the trial court noted that despite knowing of N.S.'s asthma, the maternal aunt took no steps to abstain from smoking in order to make herself better suited to seek legal custody.

Further, it cannot be overlooked that the guardian ad litem, the caseworker, and treating medical providers all favored terminating the parental rights.

{¶18} As a result, the trial court did not err in its determinations granting permanent custody to CCDCFS, terminating mother's parental rights, and denying the biological family members' motions for custody. Upon a thorough review of the record and arguments presented on appeal, mother's sole assignment of error is overruled. The judgment of the trial court is supported by clear and convincing evidence, and therefore, the decisions are not against the manifest weight of the evidence.

{¶19} 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.

SEAN C. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
PATRICIA ANN BLACKMON, J., CONCUR