

[Cite as *In re J.S.*, 2015-Ohio-2701.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 101991 and 101992

IN RE: J.S., III, ET AL.
Minor Children

[Appeal By K.W., Mother]

JUDGMENT:
AFFIRMED

Civil Appeals from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 11915000 and AD 11915001

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

RELEASED AND JOURNALIZED: July 2, 2015

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MARY J. BOYLE, J.:

{¶1} In this consolidated appeal, appellant-mother, K.W. (“mother”), appeals the juvenile court’s judgment granting permanent custody of her two minor children, M.S. (d.o.b. August 25, 1998) and J.S. (d.o.b. February 19, 2001), to the Cuyahoga County Department of Children and Family Services (“CCDCFS” or “the agency”). She raises a single assignment of error for our review, claiming that the trial court erred when it terminated her parental rights and granted permanent custody to CCDCFS. Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶2} On August 23, 2011, CCDCFS moved for predispositional (“emergency”) temporary custody, and simultaneously filed a complaint alleging that M.S. and J.S. were neglected children, requesting temporary custody of them. The complaint alleged that the children were brought to the agency by the children’s caregiver, who could no longer care for them. At the time, mother and father were both incarcerated. The complaint further alleged that neither parent had adequate housing to provide for the children’s basic needs and that mother lacked the necessary judgment to provide adequate care for the children.

{¶3} After a predispositional hearing was held, the trial court granted CCDCFS’s motion, placing the children in the emergency temporary custody of CCDCFS.

{¶4} An adjudicatory and dispositional hearing was held on November 2, 2011. Mother agreed with the agency having temporary custody and agreed to the case plan. The trial court granted CCDCFS temporary custody.

{¶5} On March 21, 2013, the agency filed a motion to terminate its temporary custody with an order of protective supervision. On April 4, 2013, the trial court granted the motion, terminating the agency's temporary custody of the children, placing them back in mother's legal custody, with the agency having protective supervision of the children.

{¶6} On August 1, 2013, CCDCFS moved for predispositional ("emergency") temporary custody, and moved to modify protective supervision to temporary custody. In the motion, CCDCFS alleged that mother was arrested on July 29, 2013, and was incarcerated. Mother had arranged for someone to take care of the children, but the caregiver was no longer able to do so. The complaint alleged that it was the second time mother had been incarcerated since January 2013. At the time, father was prohibited from having contact with the children pursuant to a federal criminal case. The trial court granted the agency's motion, placing the children in the emergency temporary custody of the agency.

{¶7} On October 10, 2013, the trial court also granted CCDCFS's motion to modify protective supervision to temporary custody, placing the children in the temporary custody of the agency.

{¶8} On January 3, 2014, CCDCFS moved to modify temporary custody to permanent custody. The agency moved for permanent custody because the children had been in its custody for 24 of 28 months and 12 of 22 consecutive months, as well as asserting that it was in their best interests.

{¶9} On June 20, 2014, the children's guardian ad litem moved to become the children's attorney (due to a conflict between the children's wishes and the guardian ad litem's "likely recommendation") and for an order appointing a new guardian ad litem for the children. The trial court granted the motion, appointing the former guardian ad litem to be the children's attorney and appointing a new guardian ad litem for the children.

{¶10} The trial court conducted an in camera interview with the children in July 2014. Both children said that they wished to reside with mother.

{¶11} The court held a hearing on CCDCFS's permanent custody motion on August 13, 2014. Present at the hearing were mother, father, mother's counsel, the children's counsel and guardian ad litem, counsel for CCDCFS, and Shawna Young, the CCDCFS social worker assigned to the case. The following facts were presented at the hearing.

{¶12} Father testified that he was voluntarily relinquishing his rights to the children. Father further admitted that he owed \$56,000 in child support.

{¶13} Young testified that she got involved in the case in September 2012. At that time, the agency already had temporary custody of the children. She reviewed the

case history and was familiar with what had occurred prior to her being assigned to the case.

{¶14} Young testified that the agency first became involved with the family in 2006 due to concerns of domestic violence between the parents. Young stated that the agency “engaged the family,” but they were not “necessarily open to services at that time.” The case was closed out that same year. Young explained that when there are not enough facts to support court involvement, the agency can only offer voluntary services to a family; the parents have the right to refuse services if the court is not involved.

{¶15} In 2007, Young stated that the agency became involved with the family again due to domestic violence between mother and an older daughter (who is not part of the present case). Mother did participate in services at that time, but not father. The case was closed out.

{¶16} Young stated that the agency’s next involvement occurred in 2010 due to allegations of educational neglect and mother’s substance abuse issues. The agency attempted to offer services to mother, but she was not interested at that time. Since there was not enough evidence “for a court complaint,” the case was “closed down yet again.”

{¶17} Young testified that the facts that led to the present involvement occurred in August 2011, when mother was arrested. The agency had been involved with the family since that time. Young explained that mother had been incarcerated and left the children with a family friend. The family friend brought the children to the agency because she

no longer wanted to care for the children. Young stated that mother had been convicted of deception to obtain a dangerous drug. Mother was placed in an inpatient drug treatment program for approximately four to six months. Young stated that the children were placed into foster care because father was in federal prison at that time, and no other relatives were available to take them.

{¶18} Young stated that mother successfully completed her inpatient drug treatment program at Matt Talbot. Mother's "drug of choice" was opiates. But mother did not "follow up" with aftercare, or attend a "12-step maintenance program." Young stated that mother had not completed a drug screen "from June of this year."

{¶19} Under the original case plan, Young explained that mother was supposed to complete a drug and alcohol assessment, complete domestic violence services, obtain and maintain safe housing, and ensure that the children's basic needs were met. The goal of the case plan was reunification.

{¶20} Young testified that mother successfully participated in those services such that in April 2013, the children were returned to mother's legal custody, with the agency retaining protective supervision. Young stated that the children were only in mother's custody for 119 days. The agency received emergency temporary custody of the children when mother was arrested in late July 2013. Mother had again left the children with a family friend, but the family friend was no longer willing to care for the children. Young said that she attempted to find relatives willing to take the children to "avoid the children coming back into [the agency's] care," but there were not any available.

{¶21} Young testified that when mother got out of jail, the agency did not believe that it was appropriate to place the children back in her care. Young said that it was traumatic for the children to experience their mother's arrest. The agency received temporary custody of the children on October 7, 2013. A new case plan was developed at that point, with the goal still being reunification. In addition to requiring mother to establish and maintain housing and employment, mother was supposed to complete a psychological assessment and complete all recommended services, engage in individual and family counseling, and not engage in any criminal behavior.

{¶22} According to Young, mother did not maintain stable housing. Mother was evicted in November 2013. Young also learned that mother had just been evicted from her then current housing. Young believed mother's "putout date" to be the Friday of that week (meaning the week of the permanent custody hearing). Young learned that mother did not pay her rent for the months of May, June, or July 2014. The agency did not have another address for mother.

{¶23} Young testified that when the children came back into the agency's temporary custody, Young learned that mother had been providing the agency with false verification of employment. Young stated that when the agency returned the children to mother's custody in April 2013, it believed that mother had been working for ten months based on documentation that she provided. But the agency learned that mother had actually been terminated from that job prior to the children's return to her custody in April 2013.

{¶24} Regarding mother's "current employment," Young stated that the agency had not been able to verify employment. Mother reported that she was working for American Finance. Mother provided Young with documentation (a W-2 and paycheck stubs) that included an employee number. But Young called American Finance and was told that they do not have an employee by mother's name or employee number. Young even sent a formal letter to the company based on an address from a paycheck stub that mother had given Young, but the letter came back to her stamped "return to sender." Young contacted the post office and discovered that the address listed on the pay stub did not exist.

{¶25} Young testified that she had been requesting to meet with mother for the previous six months. Young scheduled appointments with mother, but mother "usually calls the evening before or after hours and cancels." Young said that mother did not attend the last semiannual review. But Young stated that prior to that, mother had attended her semiannual review sessions, so she was aware of what the agency required of her before her children would be returned to her custody.

{¶26} As of the date of the permanent custody hearing, Young did not know if mother was employed or where she was currently residing.

{¶27} Young testified that mother's behavior was "very erratic at times," which is why the agency requested mother to complete a psychological evaluation. Young stated that the agency had concerns "about possible mental health and just the ongoing ability to maintain some sense of stability." The agency believed that mother's mental health may

have been a barrier to her completing some of the services they requested. Young stated that some of mother's behavior included mother's "ongoing deceitful behavior, being dishonest, providing unverifiable information, being unable to communicate effectively, irrational thoughts and behaviors, coming to erroneous conclusions, being verbally hostile, just irrational behavior."

{¶28} Young testified that mother did complete a psychological evaluation. Mother was diagnosed with "opiate dependence and remission" and antisocial personality disorder. But there were no recommended services that the agency could have provided to mother based on her diagnosis because there was no "long-term recovery" for antisocial personality disorder.

{¶29} Young stated that mother did attend individual counseling in October 2013. But the counseling agency reported to Young that mother had not attended counseling services since April 10, 2014. Young also stated that mother did "begin counseling" with M.S. and M.S.'s counselor toward the end of the previous school year, but the counselor ended it because "it wasn't effective," because M.S. was not ready. Young stated that the children's current therapists report that the children are still not ready to attend family counseling with mother.

{¶30} Young testified about the children's foster placement history. Due to various issues, some of which were caused by mother, the children had been in several foster homes. At the time of the hearing, they were placed in a foster home in Toledo. Young stated that they were doing "pretty well." She said that M.S. struggles because

she is very close with her mother and “this is very difficult for her.” But M.S. was receiving counseling and psychiatric services to deal with depression and anxiety. J.S. was better in foster care and was “very bonded with the foster parents.”

{¶31} Young stated that mother had consistently visited with the children. Before the children were placed in Toledo, mother had visited them weekly for two hours. After they moved to Toledo, she visits them biweekly for three hours. Young said the visits with mother are “up and down.” Although mother’s behavior “this last time around” had been appropriate, the children “still struggle” at times. Young explained that the children struggle because they “clearly love their mother,” but they are also angry and hurt because they have been in foster care for nearly three years.

{¶32} Young testified that the agency considered a planned permanent living arrangement for the children because they were “older,” rather than permanent custody, but decided that it was not in their best interests. She explained that the children deserved to have stability, which would be better served by permanent custody. Young further explained that the agency took into consideration how mother interfered with the children’s life and placements over the three years. The agency had to move the children from their foster homes twice in the last two years “largely” due to mother’s behavior. Young explained that mother is also not always honest with the children, which causes them anxiety and stress. Young said, “[w]e’re not naive in believing that, you know, they won’t always have some relationship with their mother, but we do believe that in order to give them some stability, we need to cut some ties.”

{¶33} Mother testified that although her landlord filed an eviction against her regarding her current residence, he agreed after the eviction hearing to accept the back rent from her and not evict her.

{¶34} Mother testified that she is still currently employed by American Finance, but explained that she works for two people who opened their own franchise of American Finance. She stated that she had been to Atlanta, Georgia, which is their headquarters, for training.

{¶35} Mother explained that when she was arrested on July 29, 2013, she had missed a court date in her theft case. When the police arrested her, they came into her house at 6:00 a.m., when she and the children were sleeping. When she got out of jail, she called Young, who informed her that she was only allowed to have supervised visits with the children.

{¶36} Mother stated that she never tested positive for drugs throughout the pendency of her case with CCDCFS, nor had she tested positive for drugs as part of her probation in her various criminal cases. Regarding the one drug test that Young said mother missed on June 11, 2014, mother testified that the letter was dated June 6, 2014. The letter, dated June 6, 2014, was admitted into evidence.

{¶37} Mother testified that she provided her children with cell phones. She stated that she is “extremely close” to her children, and talks to them all of the time. She stated that she also gives them spending money when she sees them and “Skypes” with them every night.

{¶38} Mother testified that as of March 2014, her counselor discharged her from having to attend further sessions. Mother stated that she would still make appointments with her counselor when she felt sad about her children. But mother explained that she got too busy to go, so she did not go as often.

{¶39} Michael Telep, the guardian ad litem for the children, testified that he submitted his recommendation to the court on July 17, 2014. Telep recommended that the children's best interests would be served by granting permanent custody to CCDCFS.

{¶40} In investigating the case, Telep interviewed both children, S.S. (an older sibling who was part of the case, but aged out when she turned 18 on May 19, 2014), mother, mother's landlord, and Young. He also reviewed the entire case file, and mother's criminal history.

{¶41} M.S. and J.S. told Telep that they wanted nothing to do with their father, but wanted to stay with their mother.

{¶42} Mother told Telep that her oldest daughter, H.S. (born in 1993), left home when she was 14 years old due to sexual abuse by father (and yet mother stayed with father until 2010).

{¶43} Telep noted that S.S. told him that M.S. and J.S. were hopeful that their mother would stabilize, but S.S. had "her doubts." S.S. further told Telep that "her little brother and sister do not really know what they need when they want to return home to mom, implying that mother is unlikely to meet the children's needs."

{¶44} Mother's landlord (or the wife of mother's landlord) told Telep that mother had not paid rent since April 1, 2014. The landlord further told Telep that she executed a three-day notice to vacate the premises on July 8, 2014, and that her husband was in the process of filing the eviction complaint.

{¶45} At the permanent custody hearing, Telep stated that based on everything he heard, his recommendation had not changed. He said that he strongly believed that it was in the children's best interests to be placed in the permanent custody of CCDCFS.

{¶46} After the hearing, the trial court granted CCDCFS's motion for permanent custody, finding in relevant part that CCDCFS had shown by clear and convincing evidence that the children had been in the temporary custody of CCDCFS for 12 or more months of a consecutive 22-month period, and that it would be in the children's best interests to be in the permanent custody of CCDCFS. It is from this judgment that mother appeals.

Permanent Custody Determination

{¶47} The termination of parental rights is governed by R.C. 2151.414. *In re M.H.*, 8th Dist. Cuyahoga No. 80620, 2002-Ohio-2968, ¶ 22. R.C. 2151.414 sets forth a two-part test courts must apply when deciding whether to award permanent custody to a public services agency. R.C. 2151.414 requires the court to find, by clear and convincing evidence, that (1) granting permanent custody of the child to the agency is in the best interest of the child under R.C. 2151.414(D), 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 if any one of the factors in R.C. 2151.414(E) are present; (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 12 or more months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a)-(d). *In re J.M-R.*, 8th Dist. Cuyahoga No. 98902, 2013-Ohio-1560, ¶ 26.

{¶48} An appellate court will not reverse a juvenile court’s decision awarding permanent custody to an agency if the judgment is supported by clear and convincing evidence. *In re J.M-R.* at ¶ 28. Clear and convincing evidence is defined as:

“that measure or degree of proof which is more than a mere ‘preponderance of the evidence’ but not to the extent of such certainty required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.”

In re Awkal, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994), fn. 2, citing *Lansdowne v. Beacon Journal Publishing Co.*, 32 Ohio St.3d 176, 512 N.E.2d 979 (1987).

{¶49} In this case, mother does not dispute that the second prong under R.C. 2151.414(B) was established. At the time of the permanent custody hearing, the children had been in the agency’s temporary custody for 32 of 36 months. Rather, mother contends that it was not in the children’s best interest to be placed in the permanent custody of CCDCFS. Therefore, we next consider whether permanent custody was in the children’s best interest.

Best Interest Determination

{¶50} When determining whether a grant of permanent custody is in the children's best interest, the juvenile court must consider the following factors under R.C. 2151.414(D)(1):

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period * * *;
- (d) 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;
- (e) Whether any of the factors in divisions (E)(7) to (11) apply in relation to the parents and child.

{¶51} This court 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." *In re Z.T.*, 8th Dist. Cuyahoga No. 88009, 2007-Ohio-827, ¶ 56.

{¶52} After reviewing the record, we conclude that the trial court had clear and convincing evidence before it to find that it was in the children's best interest to be placed in permanent custody of CCDCFS. The children's custodial history was a big factor in the case. Another important factor in the case was the children's need for a legally

secure permanent placement and whether that type of placement could be achieved without the grant of permanent custody.

{¶53} As we stated, the children had been in the temporary custody of the agency for 32 of 36 months. Although mother did have custody for a four-month period in 2013, at the time of the permanent custody hearing, mother had been evicted from her home for the second time in less than a year. The evidence showed that mother had been evicted the second time for not paying rent for the months of May, June, and July 2014.

{¶54} Mother testified that although she had been evicted, she had talked to her landlord and he agreed to accept back rent from her so that she would not have to move. But mother failed to provide any documentation or evidence to prove this. Moreover, the GAL texted the landlord's wife during the hearing; the landlord's wife said that she was unaware of any such agreement between her husband and mother.

{¶55} Further, Young could not verify mother's "current" employment. Mother reported that she was working for American Finance and had given Young a W-2 and pay stub. But Young called American Finance's headquarters; they did not have an employee by that name or employee number. Young also sent a letter to the company at the address listed on the pay stub that mother had given Young; it came back stamped "return to sender." Young contacted the post office and discovered the address listed on the pay stub did not exist.

{¶56} Mother testified that she was still employed by American Finance, but that it was a "franchise" of American Finance. But mother failed to counter Young's testimony

with any proof of the matter. Mother simply stated that Young could have come to her place of employment to verify it. Mother made no other efforts to cooperate with Young to show Young that she had complied — or even that she was attempting to comply — with the requirements of her case plan.

{¶57} Further, mother claimed that she was making \$15 per hour at American Finance, working over 40 hours a week. But if that was the case, mother could have been paying her rent to maintain housing if she hoped to regain custody of her children.

{¶58} Young further testified that she had been attempting to meet with mother for the previous six months, to no avail. Mother kept cancelling appointments that Young set for them to meet.

{¶59} Young testified that due to mother's "ongoing deceitful" behavior, the agency had her complete a psychological evaluation. Mother was diagnosed with antisocial personality disorder, which Young stated explained some of mother's erratic behavior. Young described an incident where mother had reported to police that father had sent her threatening emails. Mother had even sent Young copies of father's threatening emails. But it was discovered that mother drafted the emails herself. Mother was charged with falsification; that case was pending at the time of the permanent custody hearing. Most damaging, however, was the fact that M.S. had seen the emails. Although mother denied showing them to her, Young testified that M.S. told her that she had seen the emails on mother's computer.

{¶60} Young testified that she had spoken to mother's counselor, who reported that mother had stopped going to counseling in April 2014; mother's counselor did not tell Young that she had discharged mother. Mother testified that her counselor released her from having to go to counseling that March, but mother failed to provide Young with any documentation as to that fact. Nor did mother bring any documentation to court to establish this fact.

{¶61} Young further explained that mother often lied to the children about the case, raising their expectations, only to have them come crashing down again. Although Young did not get into details as to how it happened, mother also interfered with the children's foster placement, where they had to be moved out of the home, changing schools in the middle of the school year. Mother even admitted that she was wrong in doing so.

{¶62} The agency also established that although the children loved mother, mother's actions caused the children stress and anxiety. Further, J.S. was very bonded with his foster family. M.S. was older and struggled more with the foster family, but she was in counseling and doing better with the foster family.

{¶63} Mother focuses her arguments on the fact that the children were returned to her custody in April 2013, noting that the "situation that caused the removal of her children in August [2011] was rectified." Mother cites Young's testimony that establishes that while the children were in mother's custody from April to late July 2013, mother was appropriately caring for her children. But mother was evicted from that

home, and eight months later, at the time of the permanent custody hearing, she was evicted from another residence. And when the agency moved for emergency temporary custody of the children in late July 2013, mother was again incarcerated. Young explained that the children were traumatized by the arrest, with the police coming into their home at 6:00 a.m. to arrest their mother while they were in bed with her. The agency was justified in requesting that the court modify the protective supervision to temporary custody. Thus, mother's arguments are without merit.

{¶64} Accordingly, we conclude that the agency established by clear and convincing evidence that it was in the children's best interest to be placed in the permanent custody of the CCDCFS. The agency established two of the best interest factors, namely, that the children had been in the temporary custody of CCDCFS for 12 or more months of a consecutive 22-month period, and that they needed a legally secure placement that could not be achieved without a grant of permanent custody to the agency.

{¶65} Mother's sole assignment of error is overruled.

{¶66} 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.

MARY J. BOYLE, JUDGE

LARRY A. JONES, SR., P.J., and
MELODY J. STEWART, J., CONCUR