

[Cite as *In re M.A.*, 2015-Ohio-3240.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102539

IN RE: M.A., ET AL.
Minor Children

[Appeal by Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD-12919711 and AD-12919712

BEFORE: Blackmon, J., Keough, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: August 13, 2015

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant D.P. (“mother”) appeals the juvenile court’s decision terminating her parental rights and granting permanent custody of her children to the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “agency”). She raises the following assigned errors:

I. The lower court erred when it determined that it was in the best interest of the children to grant permanent custody under the terms of Ohio Revised Code Section 2151.414(D).

II. Whether the children could be returned to one of the parents within a reasonable period of time pursuant to the terms of Ohio Revised Code Section 2151.414(B)(2).

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

{¶3} D.P.’s first child was born on October 10, 2010, and her second child was born on December 25, 2011.¹ On November 6, 2012, the mother and CCDCFS agreed that custody of the children would be placed with CCDCFS for 30 days. At that time, the mother was pregnant with a third child and living with her boyfriend who had committed domestic violence against her. Because he was placed in jail, they were evicted from their home. Attempts at contacting the children’s father were unsuccessful.

{¶4} After the 30 days, CCDCFS filed a motion for temporary custody due to concerns with the mother’s parenting skills, mother’s mental health, no stable housing,

¹Although the juvenile court dealt with the disposition of three of D.P.’s children by two different fathers, this appeal only deals with the disposition of her two children who both have the initials, M.A. D.P. did not file an appeal regarding the disposition of the third child, A.P.

and domestic violence by the mother's boyfriend against the mother. On February 25, 2013, the juvenile court awarded temporary custody to CCDCFS.

{¶5} A case plan with the objective of reunifying the children with the mother was approved. The case plan had the following objectives: (1) the mother was to receive counseling for her drug abuse, (2) seek medical help for her mental health problems, (3) receive domestic violence counseling, (4) take parenting classes, and (5) obtain stable housing.

{¶6} CCDCFS filed a motion for permanent custody on October 25, 2013. The matter was continued several times to attempt to locate and notify the children's father and for the mother to undergo further psychological evaluation. After attempts to locate the father failed and the psychological evaluation was completed, a hearing was conducted before a magistrate on November 20, 2014.

{¶7} At the hearing, psychologist Dr. Douglas Waltman testified that he worked for the Juvenile Court Diagnostic Clinic. He evaluated the mother on April 3 and July 31 of 2014. He diagnosed the mother as suffering from schizotypal personality disorder, which means the mother has social and interpersonal deficits with a reduced capacity for close relationships. According to Dr. Waltman, during the interview, the mother seemed "detached and aloof" and maintained a blank expression on her face. Dr. Waltman also concluded that the mother suffers from impaired concentration, irritability, and was hypervigilant that something was going to harm her, which could be the result of

her being a victim of ongoing sexual abuse as a child. The mother also has a seizure disorder that requires medication.

{¶8} In Dr. Waltman's opinion, the mother was not capable of adequately caring for her children, one of whom has ADHD and suffers from seizures. The other child has speech delays. When he observed her with the children, she acted appropriately. However, he stated that on the evaluation questionnaire, the mother only answered one of six questions correctly regarding how to properly handle a situation with a child. In his opinion, the mother needed ongoing psychiatric counseling, needed to take parenting classes, and based on the mother testing positive twice for PCP, needed drug abuse counseling.

{¶9} Social worker Antoinette Willis testified that although the mother had completed some of the case plan objectives, she still has failed to receive counseling for her mental disorder and drug abuse. She said that it was difficult to get the mother to comply with drug screens. In February 2014, the mother agreed to random urine screens, but the agency still had to be persistent to get the mother to participate. From February until August, they were unable to get her to comply. The last drug screen in August was negative.

{¶10} According to the social worker, although the mother attended visitations with the children, she needed to be directed to interact with the children. For instance, at one visit the social worker left the room, but was observing the mother without her knowledge. The mother talked on her cell phone while the children were jumping on the

couch and fighting with each other. She had to tell the mother to get off the cellphone and deal with the children. At another visit, the children began to fight, and the mother looked lost in thought and failed to address the situation. The social worker had to take the lead and redirect the children. At another visitation, the mother engaged minimally with the children, and her eyes were glassy and she was sweating profusely. After a urine screen was conducted, it was discovered she had engaged in substance abuse.

{¶11} According to the social worker, once the boyfriend, who is the father of a third child of the mother's, was permitted to join visitations, the visits went much better because he engaged with the children.

{¶12} The social worker recently attended a birthday party for one of the children at a Chuck-E-Cheese, where the foster mother was present along with the mother. The mother showed up late to the party and would not respond to the social worker when she tried to engage her. The boyfriend tried to encourage the mother to speak. Near the end of the party, the mother suffered a seizure.

{¶13} The social worker stated that although the mother and boyfriend are renting a home, housing is considered stable when the person has lived at the address for three months or more. The mother has lived in the current home for almost three months. The mother has no source of income, but has recently applied for food stamps and medicaid and obtained a social security card. However, she is totally dependent on the boyfriend's income to support her other needs.

{¶14} According to the social worker, the children’s needs, including their medical needs, are being provided and addressed by the foster mother. The foster mother would like to adopt both children.

{¶15} The guardian ad litem (“GAL”) recommended that permanent custody be awarded to CCDCFS. He stated that the children have been in foster care for over two years, which is half of their lives. In his opinion, the mother is still not ready to take care of the children due to her failure to receive mental health treatment and drug counseling. He reminded the trial court that the children were removed from the mother’s care because of domestic violence and housing problems and that the mother’s mental health and drug use contributed to those events. He concluded that because the mother did not resolve those problems, the problems causing removal would be repeated.

{¶16} 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 the mother appeals.

Permanent Custody

{¶17} We will address the mother’s first and second assigned errors together because they both concern whether the record supports the award of permanent custody to CCDCFS. She contends CCDCFS failed to provide clear and convincing evidence that

the children could not be reunited with their mother within a reasonable time period or that it was in the children's best interest to award permanent custody to the agency.

{¶18} 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).

{¶19} 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) 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. R.C. 2151.414(B)(1)(a)-(d). *In re J.M-R.*, 8th Dist. Cuyahoga No. 98902, 2013-Ohio-1560, ¶ 26.

{¶20} The trial court did not err by concluding that the children could not be placed with the mother within a reasonable period of time. The children had been in the custody of the agency for over a 22-month-consecutive period. Moreover, the trial court concluded that several of the factors in R.C. 2151.414(E) were present. The trial court found that, “in spite of planning and diligent efforts by the agency to assist in remedying the problems that initially caused the child[ren] to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the conditions causing the child[ren] to be placed outside the home.” This is a factor under R.C. 2151.414(E)(1). The court also found that the mother has “failed to timely address her mental health needs,” which constitutes a factor under R.C. 2141.414(E)(2).

{¶21} We conclude these findings were supported by clear and convincing evidence. Although the mother contends she has substantially complied with the case plan objectives, substantial compliance with a case plan is not dispositive in and of itself on the issue of reunification and does not preclude a grant of permanent custody to a social services agency. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 139. “The issue is not whether the parent has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child’s removal.” *Id.*, quoting *In re McKenzie*, 9th Dist. Wayne No. 95CA0015, 1995 Ohio App. LEXIS 4618 (Oct. 18, 1995).

{¶22} Here, although the mother has completed parenting classes, the social worker stated that her observations of the mother at visitations indicated that there were

still problems with the mother's parenting skills. The mother has found a home with her boyfriend, but at the time of the hearing, they had only lived there for less than three months. Moreover, if she and her boyfriend were to break up, she would have no income and no home. Thus, her stability is reliant on the boyfriend. The boyfriend's sole income is from SSI and some construction work he does "under the table." As the social worker stated, it is financially tight for the couple right now. How they would also support the children's needs is a concern.

{¶23} Most concerning is the fact that the mother has failed to address her mental health needs. This was a crucial factor in her inability to provide for the children. Based on the psychologist's testimony and the social worker's observations of the mother with the children, this factor alone was sufficient to find that the children could not be reunited with her within a reasonable time period. Moreover, while the mother's recent drug test had come back negative, it had been difficult to get the mother to comply with random screens. As Dr. Waltman stated, the negative result could be due to the mother's submitting to the test when she is aware she will test negative. Thus, there is still a need for the mother to obtain drug counseling.

{¶24} We also conclude the trial court did not err by finding permanent custody was in the children's best interest. 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.

{¶25} 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.

{¶26} Under R.C. 2151.414(D)(1)(c), the court may consider the custodial history of the child, including whether the child has been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period. “This factor is significant because it reflects the child's need for security, which comes from a safe and secure home.” *In re D.S.*, 8th Dist. Cuyahoga No. 101906, 2015-Ohio-2042, ¶ 25. The children have been in foster care for 22 consecutive months, or as the GAL stated, for half of their lives. Although there is a chance the mother will successfully obtain

treatment for her mental health and drug issues, she has failed to do so during the two years the children have been in foster care.

{¶27} The children are in need of a permanent placement now. Pursuant to R.C. 2151.415(D)(4), CCDCFS can no longer offer any further extensions of temporary custody, and the mother is not able to take immediate custody. However, if permanent custody is granted to CCDCFS, the children's foster mother has submitted a statement that she would like to adopt the children. According to the social worker, the children's needs, including their medical needs have been adequately provided for by the foster mother. After reviewing the record, we conclude that the trial court's award of permanent custody to CCDCFS was supported by clear and convincing evidence. Accordingly, the mother's first and second assigned errors are overruled.

{¶28} Judgment is 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 the 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

KATHLEEN ANN KEOUGH, P.J., and

EILEEN T. GALLAGHER, J., CONCUR