

[Cite as *In re A.R.*, 2016-Ohio-1229.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103450

**IN RE: A.R. AND K.R.
Minor Children**

[Appeal By Mother]

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD-15-904081 and AD-15-904082

BEFORE: S. Gallagher, J., Kilbane, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: March 24, 2016

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SEAN C. GALLAGHER, J.:

{¶1} Appellant mother appeals from the orders awarding permanent custody of her two children, A.R. and K.R., to the Cuyahoga County Department of Children and Family Services (“CCDCFS”). Upon review, we affirm.

{¶2} On March 26, 2015, CCDCFS filed a complaint for abuse, dependency, and permanent custody of A.R. and K.R. CCDCFS also filed a motion for predispositional temporary custody. Following a hearing, the children were committed to the emergency temporary custody of CCDCFS.

{¶3} The allegations of the complaint, as amended, included the following:

1. Complaints for abuse, dependency and permanent custody were previously filed on December 11, 2014 * * *. Said cases could not be resolved within ninety days and were dismissed without prejudice.
2. [CCDCFS] previously filed for Temporary Custody of the children. * * * Those cases were dismissed when [CCDCFS] filed its complaint for permanent custody.
3. The child K.R. sustained a right and left mandibular (jaw) fracture while in the care of Mother and her boyfriend, [R.F.]. The injury is inconsistent with the explanation given by mother and [R.F.]. Mother and [R.F.] have changed their explanation of how the injury occurred.
4. As a result of K.R.’s injuries, Mother pled guilty to obstruction of justice. There is a no contact order between mother and K.R. See CR-14-589245-A. Mother’s boyfriend [R.F.] was also charged with felonious assault and child endangering. There is a no contact order between [R.F.] and K.R. See CR-14-589245-B.
5. K.R. has cerebral palsy. He doesn’t walk or talk and he is developmentally delayed. He suffers from seizures and requires a g-tube for feeding.

6. [R.F.], a registered sex offender, resided in the family home. There was a police investigation regarding [R.F.'s] sexual abuse of A.R. As a result, [R.F.] was charged with rape, gross sexual imposition and kidnapping. There is a no contact order between [R.F.] and A.R. See CR-14-590779-A.

7. At the age of two months, K.R. suffered non-accidental head trauma. Father, [D.R.], is currently incarcerated for child endangering as a result. See CR-10-541880.

8. The children have previously been adjudicated abused (K.R.) and dependent (A.R.). See AD 10915629-30.

9. Mother is diagnosed with depression.

Reasonable efforts were made by [CCDCFS] to prevent the removal of the children from the home, and removal is in the best interest of the children.

{¶4} On April 24, 2015, the paternal grandmother filed a motion for temporary custody and legal custody. The trial court held a hearing and denied the motion for temporary custody.

{¶5} An adjudicatory hearing was held on May 15, 2015. Mother and father, each of whom was represented by counsel, admitted to the allegations of the complaint. The trial court adjudicated the children to be abused and dependent.

{¶6} The guardian ad litem filed a report expressing concerns for the children and recommending a grant of permanent custody to CCDCFS.

{¶7} A dispositional hearing was held on June 25, 2015. The trial court heard testimony and accepted evidence in the matter, which substantiated the allegations in the amended complaint.

{¶8} The child protection specialist involved in the matter testified to the family's history with CCDCFS dating back to 2010. Her testimony indicated that although

mother engaged in case plan services, she had not benefitted from the parenting classes and the safety of the children remained an ongoing concern. CCDCFS had concerns that mother provided inconsistent statements regarding the injuries to K.R. inflicted by mother's boyfriend; that mother lied to protect her boyfriend and pled guilty to obstructing official business; that mother visited with the boyfriend after he went to prison; that mother waited seven months to provide the agency with K.R.'s necessary medical equipment; that mother allowed a registered sex offender to reside at her home who abused A.R.; that, when the abuse was disclosed, mother told A.R. she should have told her and A.R. ended up consoling her mother; and that mother demonstrated an inability to properly protect and care for the children.

{¶9} At the time of trial, mother had been referred to her third parenting class, which was not yet completed; mother had not yet completed her mental health counseling; she was living with her cousin and had not obtained her own independent housing; and she was not self-sufficient.

{¶10} Both children have special needs. When K.R. was placed in the foster home, the child had a broken jaw, was malnourished, and had numerous medical conditions, including cerebral palsy. K.R. requires virtually around-the-clock care. When A.R. was placed into the foster home, the child was malnourished, required treatment for cystic fibrosis, and had been sexually abused. The foster home was a “medically fragile home” and a “therapeutic home.”

{¶11} The trial court heard testimony regarding the paternal grandmother's motion for legal custody. It was acknowledged that the paternal grandmother is a very nice person who loves the children. The paternal grandmother is employed as a special education teacher, and there was testimony to the suitability of her home for the children. However, there were concerns for the safety of the children. Although the paternal grandmother testified that she considered her son guilty and he was facing the consequences of his actions, the child protection specialist expressed concern that the paternal grandmother did not believe father caused K.R.'s injuries. The paternal grandmother testified that she allowed father to speak to K.R. on the phone after father had been convicted, and she did not see any harm in doing so. The paternal grandmother expressed her belief in love and family, and in second chances. Other witnesses testified in support of the paternal grandmother.

{¶12} The guardian ad litem for the children expressed her concerns for the children's safety with their parents and the paternal grandmother. She expressed her belief that the parents should lose custody of the children and that it would be in the children's best interest to deny the paternal grandmother's motion for legal custody. Her recommendation was that permanent custody be granted to CCDCFS.

{¶13} On July 30, 2015, the trial court issued a journal entry for each child that terminated the parental rights of mother and father, and awarded permanent custody to CCDCFS. This appeal followed.¹

¹ Paternal grandmother appealed the award of permanent custody separately. *In re K.R.*

{¶14} Mother raises two assignments of error for our review. Under her first assignment of error, mother challenges the trial court’s decision to award permanent custody to the agency. Under her second assignment of error, mother claims the trial court erred by denying the paternal grandmother’s motion for legal custody.

{¶15} “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. “Clear and convincing evidence is that measure or degree of proof which 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).

{¶16} R.C. 2151.414(B) allows a court to grant permanent custody of a child to an agency if, after a hearing, the court determines, by clear and convincing evidence, that permanent custody is in the best interest of the child and that any of the four conditions set forth in R.C. 2151.414(B)(1)(a)-(e) applies. As to each child, the trial court applied R.C. 2151.414(B)(1)(a), which condition requires that

- (a) The child is not abandoned or orphaned, has not 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 * * *, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

{¶17} Although mother claims the trial court did not fully state this finding because only the first portion was initially stated, the court did reach the conclusion on placement later in its entry. Additionally, the court considered the factors for determining whether the children “cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.” In making this determination, pursuant to R.C. 2151.414(E), the court is to consider all relevant evidence. Further, if the court finds, by clear and convincing evidence, that one or more of the listed factors apply, then “the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent[.]” R.C. 2151.414(E). The trial court found that the allegations of the complaint had been proven by clear and convincing evidence and listed multiple factors that applied. The record supports the trial court's determinations.

{¶18} In conducting a best-interests analysis under R.C. 2151.414(D), “[t]he court must consider all of the elements in R.C. 2151.414(D) as well as other relevant factors. There is not one element that is given greater weight than the others pursuant to the statute.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56.

{¶19} The trial court made the appropriate considerations in this case and found that “continued residence of the child in or return to the home would be contrary to the

child's best interest." The court also considered the paternal grandmother's motion for legal custody, noted the special needs of the children, and recognized the paternal grandmother's capabilities for caring for the children. Nevertheless, the court found placement with the paternal grandmother would not be in the children's best interest. Although mother challenges the court's statement that the paternal grandmother failed to offer a statement of understanding, the trial court heard the testimony and evidence presented and made the requisite considerations as to each child.

{¶20} The trial court considered all the relevant factors pursuant to R.C. 2151.414(D) and found by clear and convincing evidence that "a grant of permanent custody is in the best interests of the child and the child cannot be placed with father within a reasonable time or should not be placed with mother or placed with paternal grandmother to avoid any future contact with, or retraumatization caused by either parent."

{¶21} It is evident that the paternal grandmother loves the children. Although mother argues preferential treatment should be given to suitable family members pursuant to R.C. 2151.412(H)(2), the preference applies only to case plans, not custody determinations. *In re C.H.*, 8th Dist. Cuyahoga No. 103171, 2016-Ohio-26, ¶ 26. Further, even that provision recognizes that the health and safety of the child is of paramount concern. R.C. 2151.412(H).

{¶22} In determining permanent custody, although family unity and "blood relationship" are important factors to consider, neither is controlling, nor is the mere

existence of a good relationship. *In re T.W.*, 8th Dist. Cuyahoga Nos. 86084, 86109, and 86110, 2005-Ohio-6633, ¶ 15. “[R.C. 2151.414(D)] does not make the availability of a placement that would not require a termination of parenting rights an all-controlling factor [and] does not even require the court to weigh that factor more heavily than other factors.” *Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, at ¶ 63. Rather, the statute “requires the court to find the best option for the child[.]” *Id.* Indeed, “[a] child’s best interests require permanency and a safe and secure environment.” *In re Holyak*, 8th Dist. Cuyahoga No. 78890, 2001 Ohio App. LEXIS 3105 (July 12, 2001).

{¶23} Upon our review of the record, we find the trial court’s determinations were supported by clear and convincing evidence. We affirm the trial court’s decision granting permanent custody to CCDCFS and terminating mother’s parental rights.

{¶24} 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 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.

SEAN C. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR