

[Cite as *In re C.M.*, 2016-Ohio-4568.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103704

IN RE: C.M. and D.M.

[Appeal by C.A.M., Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 12916780 and AD 12916781

BEFORE: Blackmon, J., E.A. Gallagher, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: June 23, 2016

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PATRICIA ANN BLACKMON, J.:

{¶1} CA.M. (“Mother”) appeals the juvenile court’s decision terminating her parental rights and awarding permanent custody of her children C.M. and D.M. to the Cuyahoga County Department of Children and Family Services (“CCDCFS”). Mother assigns the following error for our review:

I. The award of permanent custody to the agency is against the manifest weight of the evidence and constitutes a denial of due process of law.

{¶2} Having reviewed the record and pertinent law, we affirm. The apposite facts follow.

{¶3} On October 9, 2012, CCDCFS filed a complaint requesting temporary custody of C.M., whose date of birth is September 12, 2012, and protective supervision of D.M., whose date of birth is April 7, 2009, because Mother tested positive for drugs at C.M.’s birth. The complaint additionally alleged that “Mother has seven other children who were adjudicated due to her substance abuse problem and mental health issues. Six of those children were placed in the permanent custody of the agency.” Mother tested positive for drugs again on October 26, 2012. On November 15, 2012, the court granted emergency custody of both children to CCDCFS.

{¶4} Mother completed substance abuse treatment and, on May 17, 2013, the court ordered that custody of C.M. and D.M. be returned to Mother under the protective supervision of CCDCFS. Between May and September of 2013, Mother did not test positive for drugs. On October 24, 2013, the court granted CCDCFS’s motion for extension of protective supervision for a six-month period.

{¶5} On April 3, 2014, the court held a hearing regarding CCDCFS's second motion for extension of protective supervision. The court found that Mother had drug relapses in November 2013 and February 2014, and "has refused to take any drug screens since her positive test in February 2014." Subsequently, the court denied the motion and committed the children to the temporary custody of CCDCFS.

{¶6} On September 16, 2015, the court held a hearing regarding CCDCFS's motion for permanent custody of both children. On October 13, 2015, the court granted permanent custody of both children to CCDCFS.

{¶7} It is from this order that Mother appeals.

Permanent Custody Standard of Review

{¶8} It is well established that the right to parent one's children is fundamental. *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).

{¶9} The termination of parental rights is governed by R.C. 2151.414, which sets forth a two-part test courts must apply when deciding whether to award permanent custody to a public services agency. First, courts must find, by clear and convincing evidence, that granting permanent custody to the agency is in the best interest of the child under R.C. 2151.414(D). Second, courts must find by clear and convincing evidence that 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). *See also In re M.A.*, 8th Dist. Cuyahoga No. 102539, 2015-Ohio-3240.

Custody Hearing Testimony

{¶10} At the hearing for permanent custody of C.M. and D.M., the following evidence was presented: Tammy Lebron, who is a social worker supervisor at CCDCFS, testified that she was assigned C.M. and D.M.'s cases in October 2012, because Mother tested positive for drugs at C.M.'s birth in addition to Mother's prior history with CCDCFS "with six children removed and placed up for adoption." Lebron also testified that the objectives in Mother's case plan were substance abuse, mental health, and parenting.

{¶11} Mother attended an intensive outpatient program for substance abuse from October 2012 to May 2013. At this point, she "was doing what she needed to do and she was on the right path to get her children back." She did not test positive for drugs, she was "engaged with services" to treat bipolar disorder and major depression, and she completed a parenting program.

{¶12} In May 2013, Mother was referred to an aftercare program, but she did not attend. She tested positive for marijuana in June or July 2013, and in November 2013, she began the aftercare program. In March 2014, Mother was discharged from the aftercare program for lack of attendance and a positive screen for marijuana. Mother attended another aftercare program and was discharged for two positive tests for marijuana.

{¶13} Lebron testified that, beginning in the summer of 2013, Mother had sporadic positive urine screens and sometimes failed to complete drug tests. Mother "had to start all over" again, and sometime in May or June of 2014, she entered another intensive inpatient program. She completed this program in August 2014 and was referred to aftercare, but once again, did not participate. In October 2014, she tested positive for cocaine and marijuana.

{¶14} Lebron testified that Mother never completed an aftercare program. Additionally, the alleged father of D.M. and the alleged father of C.M. failed to establish paternity and failed to participate in any agency services regarding the children.

{¶15} On cross-examination, Lebron testified that at the beginning of the case plan, Mother had “a little bit more” than six months sobriety, she had appropriate housing for the children, “she was able to provide for their basic needs,” she and the children “had bonded,” and “she was attentive to the children.” However, starting in the summer of 2013, Lebron began having difficulty reaching Mother to check on the children. From April 2014, when CCDCFS most recently took temporary custody of the children, Mother’s visits with them were sporadic. By September and October 2014, “it started to get to the point where [Lebron] was searching for [Mother] to complete her visits with her children.”

{¶16} In November 2014, CCDCFS social worker Barbara Solomon took over C.M. and D.M.’s case. Solomon testified that Mother “was pretty evasive the first couple months.” In December 2014, Mother refused to submit to a drug screen. From November 2014 to March 2015, Mother’s visits with the children were inconsistent. “[E]ither she was a no-show or she * * * didn’t stay for the full visit.”

{¶17} Mother had another intake evaluation for substance abuse in March 2015, and the recommendation was intensive outpatient treatment. Subsequently, her visitation with the children became more consistent and Solomon testified that the visits she observed were “appropriate.” Mother began treatment on March 26, 2015, and, as of the September 16, 2015 custody hearing, Mother was still attending this program.

{¶18} Mother was scheduled to graduate from treatment in June 2015, but she missed graduation and tested positive for cocaine and opiates on July 14, 2015, and positive for cocaine

on August 3, 2015. Mother was a no-show for a drug test on September 3, 2015. After this last relapse, Mother was placed in a more intensive outpatient program.

{¶19} Solomon testified that Mother had not substantially completed the substance abuse portion of her case plan. Additionally, Solomon testified that Mother was not “fully compliant” with the mental health portion of her case plan, because she has not been meeting with her counselor and she was not taking her medication consistently.

{¶20} Tracie Lynch, who is Mother’s case manager and counselor at Mother’s current treatment facility, testified that Mother was scheduled to complete the program in October 2015. However, Lynch testified that, because of Mother’s substance abuse relapse history, she would benefit from further treatment. Lynch testified that Mother actively participated in her current program; however, Mother has tested positive for drugs while in treatment.

{¶21} The children’s guardian ad litem (the GAL) testified that the children understand they are not living with Mother, but they are too young to “really understand all the matters regarding custody * * *.” D.M. told her that not being with Mother “makes him sad and angry,” but neither child asked to return home. The GAL testified that Mother has “problems with maintaining her sobriety,” first with marijuana, then escalating to cocaine. “At this time [Mother] does not have the sobriety to take custody of her children. I don’t believe that the children should continue to wait for mom to gain her sobriety. I believe at this point permanent custody is in their best interest.”

Analysis

{¶22} In rendering its decision to terminate Mother’s parental rights, the court found, by clear and convincing evidence, that the children cannot be placed with Mother within a reasonable time and that the alleged fathers have neglected and/or abandoned the children. The

court further found that Mother “has a chronic mental illness and or chemical dependency that is so [severe] that it makes the mother unable to provide an adequate permanent home for the child[ren]” and that Mother failed to follow through with services and her case plan for reunification.

{¶23} When permanent custody of C.M. and D.M. was granted to CCDCFs on October 13, 2015, the children had been in the agency’s custody for approximately 18 consecutive months. *See* R.C. 2151.414(B)(1)(d). Mother had reported to her social worker that she had no relatives to take custody of the children. *See* R.C. 2151.414(D)(2)(d). Neither of the children’s fathers had established paternity or participated in the case plans, and were not viable options for custody. *See* R.C. 2151.414(E)(10). The court found that the children could not be placed with Mother within a reasonable time because of her chronic and severe substance abuse issues. *See* R.C. 2151.414(B)(1)(a). Although there is evidence in the record that Mother and the children had bonded, neither child expressed a wish to return to Mother. *See* R.C. 2151.414(D)(1)(a) and (b).

{¶24} All three witnesses testified that, after diligent efforts by CCDCFs and various treatment facilities, Mother has “failed continuously and repeatedly to substantially remedy the conditions causing the child[ren] to be placed outside the child[ren]’s home.” *See* R.C. 2151.414(E)(1). Mother’s failure to remain sober dates back to her parental rights being involuntarily terminated concerning six other children. *See* R.C. 2151.414(E)(2) and (11). There is evidence in the record that when Mother relapses, she fails to regularly visit with her children in foster care. *See* R.C. 2151.414(E)(4).

{¶25} Given Mother’s well-documented history with substance abuse and multiple relapses, we find that there is clear and convincing evidence that permanent custody is in the best

interest of the children and that they cannot be placed with Mother within a reasonable time. Accordingly, Mother's sole assigned error is overruled and the juvenile court's decision terminating Mother's parental rights and awarding permanent custody of C.M. and D.M. to CCDCFS is affirmed.

It is ordered that appellee recover of 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 Juvenile Division of the Cuyahoga County Common Pleas 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

EILEEN A. GALLAGHER, P.J., and
TIM McCORMACK, J., CONCUR