

[Cite as *In re E.C.*, 2016-Ohio-4870.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103968

IN RE: E.C. and G.C.

[Appeal by Father]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 14905079 and AD 14905080

BEFORE: McCormack, P.J., Blackmon, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: July 7, 2016

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TIM McCORMACK, P.J.:

{¶1} Appellant G.C., father of E.C., age 9, and G.C., age 6, appeals from the juvenile court’s decision granting permanent custody of his children to the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “agency”). After a careful review of the record and applicable law, we affirm the juvenile court’s decision.

Background

{¶2} Both G.C. (“father” hereafter) and the children’s mother, D.P. (“mother” hereafter) had a drug abuse problem involving heroin and marijuana. On April 19, 2014, father overdosed on heroin in the presence of the children and was taken to the hospital. Mother also abused drugs around the same time. Three days after father overdosed, on April 21, 2014, CCDCFS filed a motion for predispositional temporary custody. The children were ordered into its emergency custody. A month later, on July 20, 2014, the children were adjudicated abused and neglected. On July 31, 2014, the court granted temporary custody of the children to the agency. On April 3, 2015, the agency filed a motion for permanent custody of the children.

{¶3} It is most noteworthy that during the pendency of the custody proceeding, father and mother were both involved in burglaries and were both subsequently convicted and incarcerated for their respective offenses. Father has been incarcerated since September 2014. He is currently sentenced to remain in prison until 2064. Mother was incarcerated in the county jail from September 2014 to March 2015. She was

incarcerated again in October 2015 for probation violations, and will not be released until September 2018.

{¶4} Two weeks before the hearing on the motion for permanent custody scheduled for November 10, 2015, maternal grandfather Girard Panagopoulos filed a motion, pro se, to intervene and requested legal custody of the children. The motion, however, was not served on either the GAL or CCDCFS.

{¶5} At the November 10, 2015 permanent custody hearing, the trial court first addressed the grandfather's motion to intervene. It denied the motion but allowed the parents' counsel to make an argument in support of the grandfather's request for legal custody.

Testimony

{¶6} Felicia Daniels, the social worker involved in this case, testified that the agency developed a case plan for both father and mother to achieve the goal of unification with the children. For mother, the case plan addressed parenting skills as well as drug and alcohol abuse issues. Mother completed her parenting classes while incarcerated. She had a drug and alcohol assessment in March 2015 when she was released from jail. She did not, though, provide the social worker with the result of the assessment. An April 2015 drug test did show negative results. As for father, his case plan addressed parenting skills, substance abuse assessment, mental health assessment, treatment recommendations for both, and parenting classes. Father, however, did not complete the

substance abuse services provided for him and never participated in the mental health or parenting program.

{¶7} The social worker testified that the agency made attempts to place the children with maternal grandfather Girard Panagopoulos. However, a background check revealed that in 2014, while the custody proceeding was pending, grandfather was convicted of domestic violence against his daughter, mother of the two children. The agency decided that the conviction disqualified him as a suitable placement.

{¶8} The agency also initiated an investigation regarding a potential placement with a maternal relative couple, but the couple lacked the room for the children. The agency next investigated the paternal grandmother, but discovered that she had a prior history with the agency. Other grandchildren had been removed from her home.

{¶9} The agency subsequently approved placement of the children in the home of a maternal cousin, Adwina Panagopoulos, whom maternal grandfather Girard Panagopoulos resided with in a house owned by Adwina's mother. Adwina, however, did not want to provide a permanent home for the children. The agency then approved placement with another maternal relative couple and did place the children in the couple's home in June 2015. Two months later, in August 2015, they were removed from that home. Because the agency had a difficult time working with the couple and, due to their limited resources, the couple no longer wanted to care for the children. The children were then returned to the foster parent they had stayed with before the placement. They have successfully remained with the foster parent since August 2015.

{¶10} The social worker testified that since the children have been with the foster parent, E.C. has progressed significantly in her reading level. Her foster mother spent a great deal of time working with her on her school work. G.C. had six badly decayed teeth when he came into the agency's custody, but received proper dental treatment once he was in the foster care. The foster parent is being considered for an adoption placement. She has indicated she is willing to allow the children to have contact with their biological family.

{¶11} Grandfather Girard Panagopoulos testified that he resided with his niece Adwina in a house owned by Adwina's mother, his sister. In April 2014, he moved out and rented a place where he allowed his daughter and her children to stay with him. A disagreement between him and his daughter led to a charge of domestic violence against him. He received three years of probation for his domestic violence conviction. He also acknowledged he was required to go to AA meetings to address his past substance abuse problem.

{¶12} Grandfather Panagopoulos has since moved back to the residence he shared with Adwina. He testified that his reason for filing for the legal custody of his grandchildren was because he loved them. He stated that he would be able to take care of them and provide for them. On cross-examination, however, he appeared to be unaware of the children's specific educational, health, or other needs.

{¶13} The children's GAL, Thomas Kozel, filed a report prior to the permanent custody hearing. He noted that the children like their foster placement, but were too

young to express their long-term wishes. The foster mother reported significant academic improvement — E.C. was placed in second grade initially but is now in fourth grade after one year. G.C. initially did not know the alphabet and numbers but now did well in kindergarten and was reading. Both children indicated the foster mother helped them with their reading and math every day. The GAL recommended permanent custody to the agency. He believed the need of the children for a permanent home can only be achieved by the granting of permanent custody.

{¶14} At the hearing, the GAL commended the foster parent for the progress the children have made since coming to her care and for the safe, appropriate, and stable environment she has provided for the children. Having heard the grandfather's testimony, the GAL expressed concerns about the grandfather's ability to provide for the children, his past history of alcohol abuse, his very recent conviction of domestic violence, and his term of probation.

{¶15} The trial court granted permanent custody to the agency. Father now appeals. On appeal, he raises three assignments of error. They state:

- I. The trial court committed prejudicial error by not providing appointed counsel for the maternal grandfather who had filed motions to intervene in a permanent custody proceeding and for legal custody of the minor children.
- II. The trial court committed an abuse of discretion and denied appellant due process of law by denying the maternal grandfather's motion for continuance to perfect service on the agency and the guardian ad litem and by denying appellant's motion for continuance to provide time for the guardian ad litem to investigate the feasibility of awarding legal custody or temporary custody to the maternal grandfather and to enable appellant to prepare a defense centered on

placement of the children with the maternal grandfather as an alternative to an award of permanent custody to the agency.

- III. The judgment of the trial court is against the manifest weight of the evidence because the agency failed to prove, by clear and convincing evidence, that the best interest of the children requires an award of permanent custody where a suitable family member is ready, willing, and able to accept legal custody of the children and because the agency failed to prove, by clear and convincing evidence, that the agency had made reasonable efforts to remedy the conditions that gave rise to the removal of the children from the home and to reunite the family.

{¶16} Both the first and second assignments of error concern the maternal grandfather's motion to intervene. We address them together.

Standing

{¶17} As a fundamental matter, the agency argues father has no standing to raise the first two assignments of error because he was not aggrieved by the trial court's decision not to continue the hearing or a lack of appointed counsel for the maternal grandfather regarding his motion to intervene. In support of its contention, the agency cites *In re Stanley*, 9th Dist. Summit Nos. 20128, 20131, and 20132, 2000 Ohio App. LEXIS 4803 (Oct. 11, 2000).

{¶18} *Stanley* has no bearing on the instant case. In that case, the trial court did not allow the grandparents to intervene as parties. The court of appeals dismissed the

grandparents’ appeal from the trial court’s decision granting permanent custody on the ground that, as nonparties, the grandparents did not have standing to appeal. Here, however, father is the one who filed the appeal and father is a party in this custody matter. Therefore, *Stanley* is inapposite. While the agency is correct that “[a]ppeal lies only on behalf of a party aggrieved by the final order appealed from,” *In re Hiatt*, 86 Ohio App.3d 716, 721, 621 N.E.2d 1222 (4th Dist.1993), the agency’s contention that father was not aggrieved by the juvenile court’s decision to grant permanent custody lacks merit, because a grant of custody permanently divests him of his parental rights. Father has standing to appeal the trial court’s decision granting permanent custody and assign any purported errors committed by the trial court in its decision granting permanent custody. As we explain in the following, however, father’s assignments of error lack merit.

Grandfather’s Motion to Intervene

{¶19} The courts have held that extended family members do not have a right to intervene merely by virtue of the familial relationship. *In re Schmidt*, 25 Ohio St.3d 331, 496 N.E.2d 952 (1986). Specifically, intervention by grandparents in a permanent custody proceeding is appropriate only where “the grandparents have stood in loco parentis to their grandchild, or where the grandparents have exercised significant parental control over, or assumed parental duties for the benefit of, their grandchild.” *In re J.W.*, 10th Dist. Franklin Nos. 06AP-864, 06AP-1062, and 06AP-875, 2007-Ohio-1419, ¶ 27, citing *In re Schmidt*. See also *In re R.W.*, 2015-Ohio-1031, 30 N.E.3d 254, ¶ 18 (8th Dist.). We review the trial court’s denial of a grandparent’s motion to intervene for an

abuse of discretion. *In re Goff*, 11th Dist. Portage No. 2001-P-0144, 2003-Ohio-6768, ¶ 11.

{¶20} Here, there is nothing in the record to suggest that the trial court abused its discretion in denying the grandfather's motion to intervene. Although the grandfather resided with his daughter and the children briefly, there is no evidence that he ever stood in loco parentis to his grandchildren, or exercised significant parental control over, or assumed parental duties for the benefit of, his grandchildren. As the Supreme Court of Ohio explained, notwithstanding the interest of a relative in the disposition of custody of a child, where there is no showing that the relative stood in loco parentis to the child, the trial court acts within its sound discretion in refusing to join such a relative as a party. *Stanley*, 9th Dist. Summit Nos. 20128, 20131, and 20132, 2000 Ohio App. LEXIS 4803, citing *Schmidt* at 336-337.

{¶21} On appeal, appellant father challenges the trial court's denial of his oral motion to continue the permanent custody hearing. At the beginning of the hearing, his counsel asked the trial court to continue the hearing to allow the GAL to further investigate the suitability of the grandfather's home as a placement.

{¶22} The decision whether to grant a continuance is within the sound discretion of the trial court. *In re Zhang*, 135 Ohio App.3d 350, 734 N.E.2d 379 (8th Dist.1999); *In re R.C.*, 3d Dist. Wyandot Nos. 16-09-11, 16-09-12, and 16-09-13, 2010-Ohio-3800, ¶ 20.

{¶23} Here, in denying the motion, the trial court noted the motion to intervene was filed very late in the proceeding and that the permanent custody hearing had already

been previously continued. The court determined it was not in the best interest of the children to continue the hearing. The court, however, allowed additional time for appellant's counsel to prepare the grandfather as a witness. The record reflects that the grandfather testified extensively as to his desire to have the custody of the children and his ability to care for them. Given this record, the trial court did not abuse its discretion in denying the request to continue the hearing.

{¶24} Appellant father also claims the trial court erred in not providing the grandfather counsel in the proceeding. This claim lacks merit as well. Pursuant to Juv.R. 4(A), “[e]very party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding.”

{¶25} The grandfather, however, was not made a party nor a person in loco parentis. He did not have the right to court-appointed counsel under Juv.R. 4(A). *In re E.J.*, 5th Dist. Muskingum No. CT11-0022, 2011-Ohio-5608, ¶ 19-21 (the maternal relatives were never persons in loco parentis and therefore not included as persons entitled to representation under Juv.R.(4)(A). The first and second assignments of error are overruled.

{¶26} Under the third assignment of error, father argues the agency failed to prove by clear and convincing evidence that permanent custody is in the best interest of the

children in this case, where a family member was ready, willing, and able to accept legal custody.

Two-Part Analysis for Permanent Custody

{¶27} A juvenile court's termination of parental rights and award of permanent custody to an agency is not reversed unless the judgment is unsupported by clear and convincing evidence. *In re Dylan C*, 121 Ohio App.3d 115, 121, 699 N.E.2d 107 (6th Dist.1997).

{¶28} R.C. 2151.414 sets forth a two-part analysis to be applied by a juvenile court in adjudicating a motion for permanent custody. R.C. 2151.414(B). The statute authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that any of the four following factors apply: (a) the child is not abandoned or orphaned, but the child cannot be placed with either parent within a reasonable time or should not be placed with the child's parents; (b) the child is abandoned; (c) the child is orphaned, and there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a)-(d). Only one of the four factors must be present for the first prong of the permanent custody analysis to be satisfied.

{¶29} When any of these four factors exists, the trial court proceeds to analyze whether, by clear and convincing evidence, it is in the best interests of the child to grant permanent custody to the agency.

{¶30} In this case, the trial court found R.C. 2151.414(B)(1)(a) factor to be present: the children cannot be placed with either parent within a reasonable time or should not be placed with the parents. In order to find the presence of this factor, R.C. 2151.414(E) requires the trial court to consider 16 enumerated factors. Here, the trial court found four enumerated factors to be present: R.C. 2151.414(E)(1), (4), (10), and (12).

{¶31} The trial court found that following the placement of the children outside the home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the children to be removed from the parents, the parents have failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside the home. R.C. 2151.414(E)(1).

{¶32} The trial court also found the parents have shown a lack of commitment toward the children by failing to regularly support, visit, or communicate with the children when able to do so, or by other actions have shown an unwillingness to provide an adequate permanent home for the children. R.C. 2151.414(E)(4).

{¶33} The trial court additionally found the mother has abandoned the children. Her last visit with them was in June 2015 even though she was not incarcerated at that

time nor incarcerated during the next three months. R.C. 2151.414(E)(10). Finally, the trial court found the parents were incarcerated at the time of the filing of the motion for permanent custody and will not be available to care for the children for at least 18 months after the permanent custody filing. R.C. 2151.414(E)(12).

{¶34} Our review reflects that the trial court's findings under R.C. 2151.414(E) are supported by clear and convincing evidence from the record.

{¶35} Regarding the best interest of the child, R.C. 2151.414(D) mandates that the juvenile court consider all relevant factors, including, but not limited to, the following:

- (1) 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;
- (2) 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;
- (3) 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 * * *;
- (4) 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;
- (5) Whether any of the factors in division (E)(7) to (11) of [R.C. 2151.414] apply in relation to the parents and child.

{¶36} Regarding the best interest of E.C. and G.C., the trial court stated it considered all pertinent factors under R.C. 2151.414(D)(1) and found the factors weighed in favor of permanent custody. The court noted that both parents were incarcerated.

Father would be incarcerated for an extended period of time. Mother had abandoned the children. CCDCFS has investigated multiple relatives for a permanent placement to no avail. A placement with a maternal cousin and her husband was terminated after only two months.

{¶37} Appellant argues the agency failed to prove permanent custody was in the best interest of the children where the maternal grandfather expressed a desire to have legal custody of the children.

{¶38} The trial court found the grandfather not to be a suitable permanent legal custodian for the children. While a trial court must find by clear and convincing evidence that the parents are not suitable placement options, the court is not required to invoke the same standard with regard to a grandparent. *In re A.D.*, 8th Dist. Cuyahoga No. 85648, 2005-Ohio-5441, ¶ 12. Here, the trial court noted that the grandfather filed a belated request for custody of the children, 18 months after the children were removed from the home. At the time, he was serving three years of probation for domestic violence against his daughter, the children's mother. When asked about his ability to care for his grandchildren, he responded that his grandchildren loved him. His response reflected a lack of the necessary full comprehension of the permanent nature and most significant and sacred responsibilities of legal custody. For these reasons, the trial court found the grandfather not to be a suitable permanent legal custodian for the children. The finding is supported by the evidence.

{¶39} The record reflects the grandfather was well-intended in his desire to be granted custody of the two children. We find his willingness exemplary. We must distinguish here by emphasizing that “a child’s best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security.” *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 11, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991). The willingness of a relative to care for a child does not alter what a court considers in determining whether to grant permanent custody. *Id.*, citing *In re A.D.* at ¶ 12. The court is not required to favor a relative if, after considering all R.C. 2151.414(D) factors, it is in the child’s best interest for the agency to be granted permanent custody. *Id.*, citing *In the Matter of B.H.*, 5th Dist. Fairfield No. 14-CA-53, 2014-Ohio-5790, ¶ 72. As the Ohio Supreme Court instructed in *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, in deciding what is in a child’s best interests, R.C. 2151.414 does not make the availability of a relative placement an all-controlling factor; the statute does not even require the court to weigh that factor more heavily than other factors. *Id.* at ¶ 63.

{¶40} The record in this case reflects the parents are not available for a permanent placement for the children due to their incarceration. The agency made good faith and reasonable efforts to place the children with their blood relatives, but the relatives were either unwilling or unsuitable or both. The foster home is the environment where the children have truly thrived. Despite the willingness of the grandfather to assume legal

custody of the children, clear and convincing evidence supports the trial court's determination that permanent custody is in the best interest of the children.

{¶41} The juvenile court's judgment granting permanent custody 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 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.

TIM McCORMACK, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR