

[Cite as *In re A.P.*, 2016-Ohio-5849.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104130

**IN RE: A.P. AND C.S.
Minor Children**

[Appeal By Father]

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 14908907 and AD 14908908

BEFORE: S. Gallagher, J., McCormack, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: September 15, 2016

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SEAN C. GALLAGHER, J.:

{¶1} Appellant appeals from the trial court’s decisions that awarded permanent custody of two children, A.P. and C.S., to the Cuyahoga County Department of Children and Family Services (“CCDCFS”). Upon review, we affirm.

{¶2} Appellant has appealed the decision with respect to each child. He is the biological father of C.S., but he is not the biological father of A.P. We recognize that appellant has no parental rights to enforce as to A.P. A decision to grant permanent custody to a children services agency “divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.” Juv.R. 2(Z). Nevertheless, a party to a juvenile court proceeding may include a “person specifically designated by the court.” Juv.R. 2(Y). Because appellant was permitted to participate as a party in the proceedings with regard to both children, we shall consider the appeal as to both children.¹

{¶3} On July 14, 2014, CCDCFS filed a complaint for abuse, neglect, and temporary custody of A.P., who was then nine years old, and C.S., who was then two years old. The children have the same mother. CCDCFS also filed a motion for

¹ Compare *In re Phillips*, 12th Dist. Butler No. CA2003-03-062, 2003-Ohio-5107, ¶ 6 (“[A]n individual may have standing in a permanent custody proceeding where that person is permitted to participate in the proceeding * * *.”) with *In re B.C.-I*, 4th Dist. Athens Nos. 14CA43 and 14CA48, 2015-Ohio-2720, ¶ 32 (finding nonbiological father “lacks standing to challenge the trial court’s judgment awarding [the children services agency] permanent custody of [child].”) We shall not address the issue of standing because it was not raised in the lower court or on appeal.

predispositional temporary custody. Following a hearing, the children were committed to the emergency custody of CCDCFS on July 14, 2014.

{¶4} The children were adjudicated neglected and abused and were placed in the temporary custody of CCDCFS in October 2014. In July 2015, CCDCFS filed a motion to modify temporary custody to permanent custody. A hearing was held on the motion on January 7, 2016. At the time of the hearing, A.P. was 11 years old and C.S. was four years old. Prior to the hearing, the trial court held an in camera interview with A.P.

{¶5} The trial court heard testimony and accepted evidence in the matter. The record reflects that the children were committed to CCDCFS due, in part, to concerns of domestic violence, unstable housing, and the inability to meet the children's basic needs. The children were placed with their maternal great-aunt and great-uncle, with whom they remained throughout the entirety of the cases.

{¶6} The father of A.P. did not engage in any case plan services, did not communicate with the agency or A.P. during the entirety of the case, and his whereabouts were unknown.

{¶7} Case plans were developed for appellant and the children's mother, which included objectives for domestic violence, substance abuse, mental health, and basic needs. Mother and appellant made a few visits with the children from July until October 2014. No visits or contact was made from October 2014 until June 2015. Further, despite monthly attempts by CCDCFS to engage the parents, no case plan services were engaged in until June 2015, which was almost a year after the children were committed to

the custody of CCDCFS. At that time, mother and appellant moved to Alliance, Ohio. They began to engage in case plan services, and visitation began to occur once a week for two to four hours. Mother was nurturing and caring with the children, and they have a good relationship. Appellant's visitation with the children was appropriate. Mother and appellant were living in a two-bedroom apartment. The housing was satisfactory, but the second bedroom had no furniture. At the time of the hearing, the case plans were not complete with respect to mental health and domestic violence, for which no certificates of completion were provided.

{¶8} Testimony from the great-aunt revealed that the children, along with mother and appellant, came to live with the great-aunt and great-uncle in September 2013. She described fighting between the parents. In early 2014, appellant went to Oregon, followed by mother, and they left the children behind. When they returned, the parents stayed in hotels while the children remained with their great-aunt and great-uncle. That was the situation until CCDCFS became involved in July 2014. During the pendency of the cases, the children have remained in the care of their great-aunt and great-uncle. They reside in a three-bedroom home, and great-aunt and great-uncle have ensured that the children's educational needs and basic needs are met. The children have a strong bond with the relatives with whom they have been placed. The children were doing well until visitation with their parents resumed, at which point C.S. began having behavioral problems and A.P. began to struggle in school. Mother and appellant did not provide any

support or other assistance to the children during the entire time the children were in the custody of CCDCFS.

{¶9} A social worker involved in the case testified to her belief that permanent custody was in the best interest of the children. The guardian ad litem for the children recommended an award of permanent custody to CCDCFS.

{¶10} On January 22, 2016, the trial court issued a journal entry for each child that terminated all parental rights and awarded permanent custody to CCDCFS. This appeal followed.²

{¶11} Appellant raises three assignments of error for our review, all of which challenge the trial court's decision to award permanent custody to CCDCFS. "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).

{¶12} Under his first assignment of error, appellant claims that the trial court erred in awarding permanent custody despite the failure of CCDCFS to make reasonable efforts

² An appeal was also filed by the mother of the children. This court also affirmed the grant of permanent custody in that case. *In re A.P. & C.S.*, 8th Dist. Cuyahoga No. 104129 (Sept. 15, 2016).

to eliminate the continued removal of the children from their home and to return the children to their home. Appellant argues that the trial court failed to make findings regarding “reasonable efforts” pursuant to R.C. 2151.419 and that CCDCFS failed to make reasonable efforts at reunification.

{¶13} R.C. 2151.419, which requires a trial court to determine whether a children services agency made reasonable efforts to prevent removal or to return a child to the child’s home, applies only at “adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children.” *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 41. The Ohio Supreme Court has held that “R.C. 2151.419(A)(1) does not apply in a hearing on a motion for permanent custody filed pursuant to R.C. 2151.413.” *Id.* at ¶ 43.

Nonetheless, with narrow exceptions, the state must still make reasonable efforts toward reunification and “[i]f the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time.” *Id.*

{¶14} Our review reflects that in adjudicating each child to be neglected and abused, the trial court found that CCDCFS “made reasonable efforts to prevent removal of the child, to eliminate the continued removal of the child from his home, or to make it possible for the child to return home.” At that time, the court found that relevant services were provided to the family but were not successful because of the lack of participation and/or completion of case plan services, the failure of the parents to

consistently visit with the child, and a lack of stable housing. Additionally, the trial court held a “reasonable efforts” hearing on July 27, 2015. Therefore, at the permanent custody hearing, CCDCFS was not required to demonstrate reasonable efforts, and a finding was not required.

{¶15} Nevertheless, in its decision to grant permanent custody to CCDCFS, the trial court found CCDCFS had made reasonable efforts. The record supports the trial court’s determination: CCDCFS prepared a case plan for appellant; appellant was referred to appropriate services; CCDCFS made reasonable attempts to engage appellant; appellant participated in services; and appellant had visitation with the children. Although an issue arose concerning signed releases and the ability of the social worker to obtain information from service providers, testimony was presented regarding the services that were engaged in by appellant, and the trial court’s finding was supported by the record. Appellant’s first assignment of error is overruled.

{¶16} Under his second assignment of error, appellant claims that the decision to award permanent custody was against the manifest weight of the evidence. A trial court’s decision to grant permanent custody will not be reversed as being against the manifest weight of the evidence if the record contains some competent, credible evidence from which the court could have found that the essential statutory elements for permanent custody had been established by clear and convincing evidence. *In re K.N.*, 1st Dist. Hamilton No. C-120111, 2012-Ohio-2189, ¶ 12.

{¶17} R.C. 2151.414(B) allows a court to grant permanent custody of a child to a children services 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.

{¶18} In the case of each child, the trial court found that the child had been abandoned (R.C. 2151.414(B)(1)(b)). “Abandoned” is defined by R.C. 2151.011(C), which provides that “a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.” Evidence was presented that appellant and mother did not visit or contact the children from October 2014 until June 2015, which was a period in excess of 90 days.

{¶19} Although the children were abandoned, the trial court also found in each case 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(B)(1)(a)) and made the relevant considerations under R.C. 2151.414(E). The court found that each child was abandoned; that following the placement of the child outside the child’s home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home; and that the parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with

the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child.

{¶20} Additionally, the trial court found in each case that the child had been in the temporary custody of CCDCFS for 12 or more months of a consecutive 22-month period (R.C. 2151.414(B)(1)(d)). The record reflects the children were placed in the custody of CCDCFS on July 14, 2014, and had continuously remained in the temporary custody of CCDCFS through the time of the permanent custody hearing on January 7, 2016.

{¶21} If any of the conditions outlined in R.C. 2151.414(B)(1)(a)-(e) exists, the trial court may proceed to consider whether the grant of permanent custody to the agency is in the best interest of the child. *In re J.G.*, 8th Dist. Cuyahoga No. 100681, 2014-Ohio-2652, ¶ 44. In conducting a best-interest 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.

{¶22} In determining the best interest of a child, R.C. 2151.414(D)(1) directs the trial court to 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 parents 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; (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; and (5) whether any of the factors set forth in R.C. 2151.414(E)(7) to (11) apply. R.C. 2151.414(D)(1)(a)-(e).

{¶23} Here, the 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[.]” The children had been in the temporary custody of CCDCFS since July 2014. Appellant and mother did not participate in case plan services or establish a stable residence until June 2015. They did not visit or contact the children for many months and had abandoned the children. When visitation began after the lengthy absence, C.S. began having behavioral problems and A.P. began to struggle in school. The court held an in camera interview with A.P. The guardian ad litem and the social worker advocated that permanent custody be awarded to CCDCFS. The children have been residing with their great-aunt and great-uncle, with whom they have a strong bond. The record supports the determination that permanent placement could not be achieved without a grant of permanent custody.

{¶24} We recognize that appellant eventually engaged in services required by the case plan. While commendable, this does not of itself preclude a grant of permanent custody to a children services agency. Substantial compliance with a case plan does not mean that the parent has achieved the ultimate goals of the plan or that the parent has substantially remedied the conditions that caused the children to be removed. *In re J.B.*,

8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 139. Although appellant participated in case plan services and had appropriate visitation, he had abandoned the children and he did not provide any support or other assistance to the children during the entire time the children were in the temporary custody of CCDCFS.

{¶25} We also recognize that the right to parent one's child is a fundamental right. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, at ¶ 28. However, "neglected and dependent children are entitled to stable, secure, nurturing and permanent homes in the near term * * * and their best interest is the pivotal factor in permanency case." *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 35.

{¶26} Further, 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. "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).

{¶27} The record contains sufficient competent, credible evidence to support the trial court's decisions under a clear and convincing standard. Appellant's second assignment of error is overruled.

{¶28} Under his third assignment of error, appellant claims that the trial court failed to discuss the wishes of the children and their relationship with appellant in making the best interest determinations. We find no merit to this argument. R.C. 2151.414 does

not require the court to specifically discuss each factor it found applicable before making its determination that permanent custody is not in the child's best interest. *In re J.B.*, 8th Dist. Cuyahoga No. 97995, 2012-Ohio-3087, ¶ 21. Here, the trial court set forth the relevant factors it considered under R.C. 2151.414, and the record supports the trial court's determinations in each child's case. Finding no reversible error, we overrule appellant's third assignment of error.

{¶29} Upon our review of the record, we find the trial court's decision in each child's case was supported by clear and convincing evidence. We affirm the trial court's decisions awarding permanent custody of each child to CCDCFS and terminating appellant's parental rights.

{¶30} 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

TIM McCORMACK, P.J., and
ANITA LASTER MAYS, J., CONCUR

KEY WORDS:

Appeal No. 104130 In re: A.P. and C.S.

Parental rights; permanent custody; clear and convincing; manifest weight; R.C. 2151.414; compliance; case plan; best interest. Trial court's decisions to award permanent custody of two children to the children services agency were supported by clear and convincing evidence in the record. The trial court made the appropriate considerations under R.C. 2151.414, and the record contained sufficient competent, credible evidence to support the trial court's determinations.