

[Cite as *In re L.C.*, 2016-Ohio-8055.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104255

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**IN RE: L.C.**  
**A Minor Child**

[Appeal By W.C., Mother]

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**JUDGMENT:**  
**AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. AD-14907012

**BEFORE:** Keough, P.J., E.A. Gallagher, J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** December 8, 2016

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} Appellant-mother (“mother”), appeals from the judgment of the Cuyahoga County Common Pleas Court, Juvenile Division, granting permanent custody of her minor child, L.C., to appellee, the Cuyahoga County Department of Children and Family Services (“CCDCFS”). For the reasons that follow, we affirm.

{¶2} On June 2, 2014, CCDCFS filed a complaint alleging that L.C., age 12, was neglected and dependent; requesting a disposition of temporary custody to CCDCFS. After the hearing that followed, the trial court granted CCDCFS predispositional temporary custody, and placed L.C. with her maternal grandmother. On July 31, 2014, the trial court conducted an in camera interview with L.C., and as a result of that interview, the court issued an order requiring CCDCFS to find a new, non-family placement for the child within seven days.

{¶3} In September 2014, L.C. was adjudicated neglected and committed to the temporary custody of CCDCFS. During that time, a case plan was established for mother, with the intention of reunification. Counseling and services were also provided for L.C. However, on February 3, 2016, a permanent custody hearing was held on CCDCFS’s January 27, 2015 motion to modify temporary custody to permanent custody. Following the hearing, the trial court issued a journal entry terminating mother and father’s parental rights and ordering L.C. to be placed in the permanent custody of CCDCFS.

{¶4} Mother appeals, contending in her sole assignment of error that the trial court abused its discretion in awarding permanent custody to CCDCFS because the award is against the manifest weight of the evidence and is not supported by clear and convincing evidence.

{¶5} When reviewing a trial court's judgment in child custody cases, the appropriate standard of review is whether the trial court abused its discretion. *Masters v. Masters*, 69 Ohio St.3d 83, 85, 630 N.E.2d 665 (1994). An abuse of discretion is more than an error of law or judgment; it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). "When reviewing the trial court's custody decision, an appellate court must make 'every reasonable presumption in favor of the lower court's judgment and finding of facts.'" *In re M.S.*, 8th Dist. Cuyahoga No. 101693, 2015-Ohio-1028, ¶ 6, quoting *In re Brodbeck*, 97 Ohio App.3d 652, 659, 647 N.E.2d 240 (3d Dist.1994).

{¶6} Termination of parental rights is an alternative of last resort but is sanctioned when necessary for the welfare of a child. *In re Wise*, 96 Ohio App.3d 619, 624, 645 N.E.2d 812 (9th Dist.1994). Before a juvenile court may terminate parental rights and award permanent custody of a child, it must find by clear and convincing evidence that (1) the grant of permanent custody to the agency is in the best interest of the child; 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) is abandoned; (c) is orphaned and no relatives are able to take permanent custody of the child; or (d) has been in the temporary custody of one or more public or

private children services agencies for twelve or more months of a consecutive twenty-two month period. R.C. 2151.414(B)(1).

{¶7} “Clear and convincing” evidence is more than a mere “preponderance of the evidence,” but does not rise to the level of certainty required by the “beyond a reasonable doubt” standard in criminal cases. *In re Awkal*, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994), citing *Lansdowne v. Beacon Journal Publishing Co.*, 32 Ohio St.3d 176, 180-181, 512 N.E.2d 979 (1987). It produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Id.* Where clear and convincing evidence is required at trial, a reviewing court will examine the record to determine whether the trier of fact had sufficient evidence before it to satisfy the degree of proof. *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 24, citing *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990); *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, 782 N.E.2d 665, ¶ 16 (7th Dist.).

{¶8} In this case, the trial court determined that the second prong of R.C. 2151.414(B)(1) was satisfied because L.C. could not be placed with either of her parents within a reasonable period of time or should not be placed with her parents. R.C. 2151.414(B)(1)(a). When making this determination, the court must consider the factors contained in R.C. 2151.414(E), which provides that if the court determines at a hearing that one or more of the factors set forth in this section exist as to each of the child’s parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent. *In re I.K.*, 8th Dist. Cuyahoga No. 96469, 2011-Ohio-4512, ¶ 8.

{¶9} Upon review of the trial court’s journal entry and findings of fact, we glean that the court determined factors (1)-(4), and (14) of R.C. 2151.414(E) were relevant as applied to mother.<sup>1</sup> However, the existence of any one of these factors is sufficient to determine that a child cannot be placed with a parent within a reasonable period of time. *In re C.C.*, 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360, ¶ 10 (8th Dist.), citing *In re William S.*, 75 Ohio St.3d 95, 661 N.E.2d 738 (1996).

{¶10} Under R.C. 2151.414(E)(1), the court must consider whether, despite “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 failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside their home.”

{¶11} R.C. 2151.414(E)(2) requires the court to consider whether, “chemical dependency of the parent is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year \* \* \*.”

{¶12} In this case, L.C. and her sister were removed from mother’s care in June 2014. After their removal, CCDCFS provided mother with a case plan designed to resolve those issues that led to removal, specifically, a substance abuse assessment and treatment, mental health assessment, extensive parenting education, and family

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<sup>1</sup>Relevant to L.C.’s alleged father, the court found R.C. 2151.414(E)(10) applicable — that L.C. was abandoned. This finding has not been challenged on appeal, and the alleged father is not a party to the appeal.

counseling. Although mother substantially completed programs addressing some of these issues, the record reflects that she has not derived sufficient benefit from the programs to remedy the conditions that led to L.C.'s removal.

{¶13} Following the substance abuse assessment, which mother did not complete until September 2014, it was determined that mother was alcohol, marijuana, and PCP dependent. Mother was recommended for intensive outpatient treatment, and she began her treatment program at Recovery Resources. However, she was discharged from the program twice after failing to consistently attend meetings and testing positive for marijuana and PCP during treatment. The positive drug screens were consistent from September 2014 until December 2015, approximately two months prior to the permanent custody hearing.

{¶14} Mother was again referred for a substance abuse assessment in September 2015, and again was recommended for intensive outpatient treatment. Instead of attending the program at New Visions as directed, mother sought treatment at Matt Talbot Catholic Charities. Through Matt Talbot, mother regularly attended meetings and tested negative for drugs and alcohol. At the time of the permanent custody hearing, mother was still participating in the program, needing to complete the sponsor objective. Additionally, it was stated that mother would need to engage in aftercare or a chronic relapse prevention program for approximately five weeks following completion of the 12-step program.

{¶15} Although mother was not diagnosed with any mental health condition, it was recommended that she engage in extensive parenting education and anger management.

Mother was repeatedly referred for parenting education that she did not attend in September 2014, February 2015, and June 2015. Rather than attending a program as referred, she again chose to attend a parenting education class at Beech Brook, which she completed in November 2015. Additionally, mother obtained a certificate of completion in December 2015 for basic anger management from Beech Brook. However, due to the fact that CCDCFS does not have a contract with Beech Brook, CCDCFS was unable to obtain details about mother's completion other than the basic fact that mother attended the classes. Notwithstanding mother's technical completion of the Beech Brook parenting education program and basic anger management, Lashawn Robinson, the social worker for CCDCFS assigned to mother's case, had concerns that mother had not sufficiently benefitted from the program. She explained:

Well, in regards to — the conversations between [mother] and [L.C.], she just doesn't react well or respond well or seem as if she's taken from whatever she's learned in parenting class to calm [L.C.] down or to even calm herself down before it gets explosive — so that's what I feel that she's not benefitting from.

(Feb. 3, 2016, tr. 54.)

{¶16} The testimony presented at the permanent custody hearing established that mother failed to substantially remedy the conditions that led to L.C.'s removal, including her chemical dependency. Accordingly, clear and convincing evidence was presented to support the trial court's decision that factors (1) and (2) of R.C. 2151.414(E) existed.

{¶17} Under R.C. 2151.414(E)(3), the court must consider whether mother has neglected the child between the date of the original complaint was filed and the date of the filing of the motion by failure to communicate. Additionally, R.C. 2151.414(E)(4),

requires the court to consider whether the “parent has demonstrated a lack of commitment toward the child by \* \* \* other actions showing an unwillingness to provide an adequate permanent home for the child.” Finally, under R.C. 2151.414(E)(14), the court must consider whether the parent for any reason is unwilling to provide food, clothing, shelter, or other basic necessities for the child or to prevent the child from suffering physical, emotional abuse or physical, emotional, or mental neglect.

{¶18} In this case, the trial court found that mother demonstrated a lack of commitment by failing to communicate with the child when able to do so, and that mother is unwilling to prevent L.C. from suffering emotional and mental neglect as evidenced by her unwillingness to successfully complete a case plan so she can provide for the child. The record supports these findings.

{¶19} In addition to the other services recommended and offered to mother, she was also required to participate in family counseling. Robinson testified that while visits between mother and her younger daughter went well, visitation with L.C. got “a bit explosive at times” when they would yell at each. She further testified that she has prevented these arguments from becoming physical at times. According to Ms. Robinson, mother and L.C. did not have any interaction with each other during the visits and that they do not have a bond between them. Therefore, she opined that due to mother’s inconsistency with working her case plan, her past history, and mother not benefitting from doing any of the services, permanent custody should be granted to CCDCFS.

{¶20} Additionally, Rebekah Wiland, L.C.’s mental health therapist, testified that L.C. and mother were at an impasse during family counseling. Wiland testified that L.C. and mother’s visits were not healthy for their relationship or L.C.’s mental well-being. She testified that based on prior experiences, L.C. had no faith in mother’s ability to follow through with counseling. Wiland describe mother’s cooperation at the meetings as “generally defensive” and “appears easily agitated, confrontational.” Wiland opined that mother and L.C. would not benefit from counseling together because they both “need individual work before they would be at a healthy place to continue [or] begin family counseling.” (Feb. 3, 2016, tr. 41.)

{¶21} Although this court recognizes that mother has completed aspects of her case plan, mere completion is insufficient.

A parent’s successful completion of the terms of a case plan is not dispositive on the issue of reunification. The ultimate question under R.C. 2151.414(A)(1) is whether the parent has substantially remedied the conditions that caused the child's removal. A parent can successfully complete the terms of a case plan yet not substantially remedy the conditions that caused the children to be removed — the case plan is simply a means to a goal, but not the goal itself. Hence, the courts have held that the successful completion of case plan requirements does not preclude a grant of permanent custody to a social services agency.

When counseling is a stated goal in a case plan, it presupposes that counseling will work to remedy the conditions causing the children to be placed outside the home. By no means does the completion of any form of counseling suggest, by itself, that the parent has remedied the condition that led to a child’s removal from the home. The goals of any form of counseling are to give the patient insight into a problem and teach the skills necessary to deal with the problem.

(Citations omitted). *In re C.C.*, 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360,

¶ 25 and 26 (8th Dist.).

{¶22} In this case, the record and the testimony at the permanency hearing reveal that the completion of parenting education and anger management provided a good start to remedying the conditions that led to L.C.'s removal, but that much work needs to be invested to mend the bond that was destroyed between mother and now teenage daughter. Additionally, while mother may have been compliant with her substance abuse treatment, it is noted that at the time of the hearing, she had only been negative for substances for less than two months during her 18-month program. The record is clear that the time frame for remedying the conditions that led to L.C.'s removal extends well beyond the time frame encompassed in the case plan.

{¶23} Accordingly, there was clear and convincing evidence supporting the trial court's determination that L.C. cannot be placed with either parent within a reasonable period of time or should not be placed with her parents — satisfying the second prong of R.C. 2151.414(B)(1). Having made this determination, the trial court was then required under the first prong of R.C. 2151.414(B)(1) to make a finding that permanent custody was in L.C.'s best interest under the factors set forth in R.C. 2151.414(D)(1)-(5).

{¶24} When considering the best interest of a child in a permanent custody hearing, the juvenile court is required under R.C. 2151.414(D)(1) to consider all relevant factors, including, but not limited to: (a) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents, 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; (c) the custodial history of the child; (d) the child's need for a legally secured permanent placement and whether that type of

placement can be achieved without a grant of permanent custody to the agency; and (e) whether any of the factors in R.C. 2151.414(E)(7) to (11) apply in relation to the parents and child. Although a trial court is required to consider each of the R.C. 2151.414(D)(1) factors in making its permanent custody determination, “[o]nly one of these factors needs to be resolved in favor of the award of permanent custody.” *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17.

{¶25} In this case, the trial court considered all relevant factors, including those listed in R.C. 2151.414(D)(1)-(5). A review of the record clearly and convincingly supports the trial court’s finding that permanent custody is in L.C.’s best interest. It was relayed through L.C.’s guardian ad litem and testified to by Robinson that L.C. did not wish to be reunified with her mother. L.C. has been in and out of the foster care system through her life, with the most recent placement in 2014, when L.C. was 12 years of age. The testimony at trial evidenced that no familial relationship exists between L.C. and mother. Family counseling was stopped due to L.C.’s unwillingness to participate, mother’s failure to interact with L.C., and the overall decision that it was not beneficial or healthy for L.C.’s mental well-being.

{¶26} Through the most recent placement, L.C. has adapted to her foster family and is progressing well. Her grades in school have significantly improved, and she has been able to control her behavior and anger. Additionally, she continues with her individual counseling.

{¶27} Upon review of the record, we find that the trial court weighed all relevant factors and made a decision in the best interest of L.C. This court finds clear and

convincing evidence supporting the trial court's decision. Accordingly, the trial court did not abuse its discretion in granting permanent custody of L.C. to CCDCFS. Mother's assignment of error is overruled.

{¶28} Judgment 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 said 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and  
SEAN C. GALLAGHER, J., CONCUR