[Cite as *In re J.R.*, 2017-Ohio-1056.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105007

IN RE: J.R.
A Minor Child

[Appeal By N.R., Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 13913021

BEFORE: Boyle, J., Stewart, P.J., and Jones, J.

RELEASED AND JOURNALIZED: March 23, 2017

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MARY J. BOYLE, J.:

{¶1} Appellant, N.R. ("mother"), appeals the juvenile court's judgment granting permanent custody of her minor child, J.R. (d.o.b. August 7, 2011), to the Cuyahoga County Division of Children and Family Services ("CCDCFS" or "the agency"). Mother raises one assignment of error for our review:

> The trial court abused its discretion in awarding permanent custody to the agency and finding it was in the child's best interest because the award is against the manifest weight of the evidence and is not supported by clear and convincing evidence.

{¶2} Finding no merit to mother's appeal, we affirm.

I. Procedural History and Factual Background

{¶3} On September 6, 2013, CCDCFS moved for predispositional ("emergency") temporary custody of J.R. and simultaneously filed a complaint alleging that J.R. was a dependent child, requesting temporary custody of him. According to the complaint, J.R. has Type I ("juvenile") diabetes. On September 1, 2013, he was admitted to the hospital after becoming unconscious due to diabetic ketoacidosis ("insulin overdose"). CCDCFS alleged that J.R. had been given a significantly higher dose of insulin than prescribed. The complaint further alleged that mother has "cognitive delays that prevent her from being able to meet the special medical needs of the child." The complaint further stated that mother had been given services to assist her in understanding the medical needs of the child but that she had been unable to comprehend and independently demonstrate an ability to care for the child.

{¶4} After a predispositional hearing was held that same day, the juvenile court granted CCDCFS's motion, placing J.R. in the emergency temporary custody of CCDCFS. A case plan was filed, with the goal being reunification with mother. The juvenile court held an adjudicatory hearing on November 4, 2013. Mother stipulated to the complaint as amended. She stipulated that her cognitive delays "impact her ability" to care for J.R. She further stipulated that she had been offered services to assist her in caring for J.R., but she did not agree that she could not independently care for him. The trial court adjudicated J.R. a dependent child.

{¶5} A magistrate held a dispositional hearing on January 13, 2014, finding that J.R. was a dependent child and recommending that the previous order granting emergency temporary custody be terminated and that CCDCFS be granted temporary custody of J.R. The trial court approved, affirmed, and adopted the magistrate's decision on February 12, 2014.

{¶6} CCDCFS eventually moved to modify temporary custody of J.R. to permanent custody on April 8, 2015, asserting that J.R. could not be placed with mother within a reasonable time or should not be placed with mother, that one or more factors under R.C. 2151.414(E) applied, and that it was in J.R.'s best interest to be placed in the permanent custody of CCDCFS. CCDCFS alleged that despite its best efforts to assist and teach mother how to care for J.R., "mother consistently demonstrates that she does not know what to feed J.R., how much insulin to give him, or when to give J.R. his insulin."

{¶7} The trial court held a hearing on CCDCFS's motion in August 2016. The following facts were presented at the hearing.

{¶8} Barbara Lightner, a pediatric nurse practitioner at MetroHealth Hospital, testified that she is J.R.'s diabetes care provider. Lightner has been a nurse for 30 years and a nurse practitioner for 18 years. She is also a certified diabetes educator, with over 5,000 hours of diabetes training. She has been working with patients with diabetes for 20 years.

{¶9} Lightner explained that at Metro, they do not just have a course on diabetes where they instruct people what to do. They first teach families three things before they go home from the hospital: how to check the blood sugar, how to give insulin, and what to do for a low blood sugar. The families then come back to Metro on a weekly basis or every few weeks and learn more about diabetes at each session. When families come back after their first visit, Lightner teaches them about Type I diabetes, different kinds of insulin actions, how to store insulin, how to administer the insulin using "pins or vial and syringe," what to do for low blood sugars, what a glucose kit is, what ketone testing is, sick day management, school management, and physical activity. Lightner explained that she asks parents to call in blood sugar readings in between visits, and she talks to them on the phone in between visits.

{¶10} Lightner first met mother and J.R. in January 2013, at their first office visit. Lightner said that mother and stepfather came to the first office visit, and then came a month later, and then did not come for six months. Lightner testified that she had only

seen stepfather once in several years. Lightner said that mother now comes to training with foster mother, but she said there have been "several no show appointments."

{¶11} Lightner testified that she has "current concerns" about mother caring for J.R. She explained that although mother can check J.R.'s blood sugar, Lightner did not feel that mother was "able to process what to do with that number." Lightner stated that there have been several times where mother has given too much insulin, and J.R. ended up "being low." There were other times when mother did not give the correct amount of insulin because she was afraid that J.R. would be too low, and then his sugar would be above 500, which was "too high for the meter to read." Lightner said that in "more cases," J.R. was on the "high side, which is very damaging and life-threatening to him." Lightner explained that when blood sugar is too low, it can cause seizure and death. When it is too high, the patient can go into "diabetes ketoacidosis," which is where the body does not have enough insulin and the patient ends up with ketones, which can make the patient "very sick and go into a coma and die."

{¶12} Lightner stated that when mother has visits with J.R., she is supposed to keep a log where she writes down J.R.'s blood sugar reading, what he ate, and how much insulin she gave to him based on his blood sugar reading. Lighter explained that just "two visits ago," mother brought in her log. Lightner said that there were several times when J.R. was "high" and had no food, but insulin was not given. Lightner asked mother why she did not give J.R. insulin; mother responded, "it was a bad day."

{¶13} Lightner stated that with children who have Type I diabetes, their blood sugar should be between 80 and 150. She explained that there is a "cognitive decision" that must be made based on what is going to happen in the future. For example, if children have a blood sugar reading of 60, they should receive 15 grams of carbohydrates. If children have a reading of 180, and they are going to go outside and play, they should not receive insulin. But if they are going to sit down and eat a meal, then they should receive insulin. Lightner explained that even with automatic machines that give a continuous glucose reading and with insulin pumps, a parent still needs to be able to understand those machines, give carbohydrates, and to know what to do with the readings and pumps. Lightner said that there is nothing you can "just put on a child" that takes care of everything.

{¶14} Lightner testified that while J.R. is young, he should remain with foster mother or someone who can provide care for him. When he is older and can monitor himself, his biological mother should be reevaluated at that time.

{¶15} J.R.'s foster mother testified that she had been J.R.'s foster mother for nearly three years (as of the month following the hearing). She stated that mother has unsupervised visits in mother's home for six hours each week. Foster mother picks J.R. up at mother's home. Foster mother stated that there have been times when she picked J.R. up at mother's home and his sugar was low, but mother did not have anything in the house to give J.R. to increase his sugar. One time, foster mother stated that mother told

her that she had drunk the juice that was in the house. Other times, mother had not documented what she had given J.R., which was important for foster mother to know.

{¶16} Foster mother stated that although mother had gained knowledge about how to handle J.R.'s diabetes, foster mother still had concerns about mother handling a crisis situation. Mother would still call foster mother for help when mother ran into "trouble."

{¶17} Foster mother further testified that J.R. and his mother and stepfather have a loving relationship. Foster mother stated that if the agency was granted permanent custody, she intended to adopt J.R. She said that she would still involve mother and stepfather in J.R.'s life.

{¶18} Monica Seigers, the social worker assigned to J.R.'s case as of August 2014, testified that J.R.'s biological father is unknown. When she received the case, she reviewed the case with her supervisor and met with mother and stepfather.

{¶19} Seigers stated that before filing for permanent custody, CCDCFS investigated relatives who could possibly take legal custody of J.R. Maternal grandmother was investigated, but she did not have sufficient housing or income to meet J.R.'s needs. They also investigated stepfather's aunt, but she was not a proper placement either.

{¶20} Mother and stepfather had a case plan. Stepfather was supposed to participate in learning about diabetes, parenting, and address his substance abuse issues. Although stepfather completed diabetes training in 2014 and 2015, Seigers stated that he still lacked an understanding of J.R.'s diabetes. At one family meeting, stepfather

indicated that he believed J.R. was supposed to receive insulin every four hours. Seigers further testified that stepfather came to meetings intoxicated; he had to be asked to leave one of the meetings. Seigers has observed stepfather intoxicated at family meetings. Stepfather completed a substance abuse assessment in 2014, where he tested positive for marijuana. Although the report indicated stepfather had not been drinking when he had the assessment, it also said that stepfather "was not very honest about his use of substance." Stepfather also completed a program at Laurelwood in 2015, but he continued to use alcohol after the program. He told Seigers that he would not stop using alcohol.

{¶21} Housing was also on mother and stepfather's case plan. When Seigers took over the case, mother and stepfather had been evicted. Although they had issues with housing, they did have stable housing at the time of the hearing. But Seigers had just learned that mother and stepfather may have broken their lease and may be terminated.

{¶22} Mother's case plan included parenting, housing, and diabetes education. Mother completed a parenting class in 2014 and 2015. She also completed two diabetes trainings, in 2014 and 2015. Seigers testified that although mother made progress in her diabetes education, she still struggles with appropriately managing J.R.'s medical needs due to her cognitive delays.

{¶23} Seigers stated that mother has unsupervised visits with J.R. once a week. Mother never received overnight visits because J.R.'s medical provider had concerns that mother could not properly care for J.R.

{¶24} Seigers stated that permanent custody was in J.R.'s best interest because mother still did not understand how to appropriately care for his medical needs.

{¶25} Seigers agreed that there had been an amended case plan in October 2015, where it stated that mother should continue diabetes training. Seigers agreed, however, that nowhere on her logs did she refer mother to more diabetes training. But Seigers said that if mother continued to show up for J.R.'s medical appointments, she would continue to learn more about diabetes.

{¶26} Seigers further agreed that her activity logs only consisted of 23 pages since she had the case. But she disagreed that she had not visited the family in the six months preceding the permanent custody hearing. She said that she had visited them at least five or six times, and had visited J.R. at least once a month.

{¶27} The child's guardian ad litem, James Skelton, testified regarding his final report filed on December 18, 2015. He stated that mother and stepfather have a strong bond with J.R., but unfortunately, due to J.R.'s "serious medical condition," it was too dangerous for J.R. to be left in the care of mother and stepfather at this time. He stated that he wished he could recommend a permanent planned living arrangement for J.R., but J.R. was too young. He further stated that he wished the court could continue the case for three more years, when J.R. could possibly handle his own medications, but he did not

think the court would permit it. He also stated that he wished the foster parents would agree to take legal custody rather than adoption, so that mother's parental rights did not have to be terminated, but "that's not available at this time." Based on the "limited opinions" he had, he recommended that the agency receive permanent custody of J.R.

{¶28} At the close of the hearing, the juvenile court granted CCDCFS's motion for permanent custody. It is from this judgment that mother appeals, asserting that the court erred in doing so.

II. Standard of Review

{¶29} An appellate court will not reverse a juvenile court's decision awarding permanent custody to an agency if the judgment is supported by clear and convincing evidence. *In re J.M.–R.*, 8th Dist. Cuyahoga No. 98902, 2013-Ohio-1560, ¶ 28. Clear and convincing evidence is defined as:

> "that measure or degree of proof which is more than a mere 'preponderance of the evidence' but not to the extent of such certainty required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established."

In re Awkal, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994), fn. 2, citing *Lansdowne v. Beacon Journal Publishing Co.*, 32 Ohio St.3d 176, 512 N.E.2d 979 (1987).

III. Permanent Custody Determination

{¶30} The termination of parental rights is governed by R.C. 2151.414. *In re M.H.*, 8th Dist. Cuyahoga No. 80620, 2002-Ohio-2968, ¶ 22. R.C. 2151.414 sets forth a

two-part test courts must apply when deciding whether to award permanent custody to a public services agency. First, a court must find by clear and convincing evidence one of the following factors: (a) the child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent because one of the 16 factors in R.C. 2151.414(E) apply; (b) is abandoned; (c) is orphaned and no relatives are able to take permanent custody of the child; (d) 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; or (e) the child or another child in the custody of the parent has been adjudicated an abused, neglected, or dependent child on three separate occasions. R.C. 2151.414(B)(1)(a)-(e). *J.M.–R.* at ¶ 26.

{¶31} As relevant to this case, R.C. 2151.414(E) provides that a 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 if the court determines, by clear and convincing evidence, that one or more of the following exist as to the child's parents:

> (1) 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. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.
>
> (2) Chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or chemical dependency of the parent that 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 after the court holds the [permanent custody hearing[.]

R.C. 2151.414(E)(1) and (2).

{¶32} Second, a court must find, also by clear and convincing evidence, that granting permanent custody of the child to the agency is in the best interest of the child under R.C. 2151.414(D).

{¶33} When determining whether a grant of permanent custody is in the children's best interest, the juvenile court must consider the following factors under R.C. 2151.414(D)(1):

> (a) 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;
>
> (b) 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;
>
> (c) 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 * * *;
>
> (d) 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;
>
> (e) Whether any of the factors in divisions (E)(7) to (11) apply in relation to the parents and child.

{¶34} This court has "consistently held that only one of the factors set forth in R.C. 2151.414(D) needs to be resolved in favor of the award of permanent custody in order for

the court to terminate parental rights." *In re Z.T.*, 8th Dist. Cuyahoga No. 88009, 2007-Ohio-827, ¶ 56.

IV. Analysis

{¶35} Mother contends that the trial court's findings under the two-part permanent custody determination are not supported by clear and convincing evidence. We disagree.

{¶36} In this case, the juvenile court found that CCDCFS proved the allegations in its permanent custody motion by clear and convincing evidence. The court found that J.R. had been in the temporary custody of CCDCFS for 12 or more months of a consecutive 22-month period and no longer qualified for temporary custody. This finding is supported by clear and convincing evidence; J.R. had been in the temporary custody of CCDCFS since September 2013. CCDCFS filed its motion for permanent custody on April 8, 2015. The juvenile court heard the motion on August 11 to 12, 2016. This finding by the juvenile court satisfies the first prong of R.C. 2151.414(B) because a trial court need only find one of the factors listed in R.C. 2151.414(B)(1)(a)-(e); the trial court's finding falls under R.C. 2151.414(B)(1)(d).

{¶37} But in this case, the trial court made an additional finding under R.C. 2151.414(B)(1)(a) that CCDCFS established that J.R. could not be placed with either parent within a reasonable period of time or should not be placed with either parent because one of the 16 factors in R.C. 2151.414(E) applies. The court found 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.
>
> Despite completion of reasonable case plan services, the mother has been unable to demonstrate her ability to meet the treatment needs of the child's Type I diabetes and administer medication and food, when the parent has the means and training to provide the treatment and food.

{¶38} The court noted that although mother had demonstrated a commitment to the child by regularly supporting and visiting the child, and has shown her willingness to provide adequate housing for the child, she had been unable to "continuously and repeatedly demonstrate her ability to manage" the child's treatment needs. The court noted the serious nature of Type I diabetes and found that placing the child with mother would be a threat to the child's safety and well-being.

{¶39} These findings are supported by clear and convincing evidence. The state presented several witnesses at trial, including the nurse practitioner who had been caring for J.R. since January 2013, the social worker assigned to the case, J.R.'s foster mother, and the guardian ad litem. Each witness testified that mother was unable to understand the complexities of Type I diabetes and manage J.R.'s medical needs on her own (or with the help of stepfather, who also did not understand how to properly and safely care for a child with Type I diabetes).

{¶40} The court further found, after considering the best interest factors under R.C. 2151.414(D)(1), that it was in J.R.'s best interest to be placed in the permanent custody of CCDCFS. This finding is also supported by clear and convincing evidence.

{¶41} J.R. was bonded to mother, stepfather, and his foster mother. The child was too young to express his wishes. As we stated, J.R. had been in CCDCFS well over 12 consecutive months of a 22-month period. And J.R.'s need for a legally secure permanent placement could not be achieved without a grant of permanent custody to the agency.

{¶42} Mother argues that even the guardian ad litem struggled with recommending the agency be granted permanent custody of J.R. due to mother's bond with the child. Although the guardian ad litem expressed his regret that J.R. was not older (when he could manage his own diabetes and mother would not have to lose her parental rights), the fact is, J.R. had just turned five years old at the time of the hearing — hence the guardian ad litem's ultimate recommendation. Further, the nurse practitioner testified that the age when a child can effectively and safely manage his or her own diabetes varies from child to child.

{¶43} Mother also contends that the facts presented at the hearing established that she completed or substantially completed all of her case plan objectives. She maintains that CCDCFS should not have taken "the most extreme measure of terminating her parental rights," considering the fact that no one questioned her love and commitment to J.R., or the bond that she had with J.R. But as the state points out:

> 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. *In re Shchigelski* (Oct. 20, 2000), 11th Dist. No. 99-G-2241, 2000 Ohio App. LEXIS 4900; *In re McKenzie* (Oct. 18, 1995), 9th Dist. No. 95CA0015, 1995 Ohio App.

> LEXIS 4618. 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. *In re J.L.*, 8th Dist. No. 84368, 2004-Ohio- 6024, at ¶ 20; *In re Mraz,* 12th Dist. Nos. CA2002-05-011, CA2002-07-014, 2002-Ohio-7278.

In re C.C., 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360, ¶ 25 (8th Dist.).

{¶44} Mother further argues that CCDCFS could have returned J.R. to her legal custody with CCDCFS maintaining protective supervision over J.R., especially considering the fact that J.R. would eventually be able to monitor himself. Unfortunately, protective supervision was not an option. The record established that although mother had made progress in understanding J.R.'s medical needs, she still could not make the potentially life-saving decisions regarding J.R.'s care. The nurse practitioner testified that just two visits before the permanent custody hearing, she reviewed mother's log where she records J.R.'s blood sugar reading, what he ate, and how much insulin she gave to him based on his blood sugar reading. The nurse stated that there were several times in the log where J.R. had a high blood sugar reading and had no food, but insulin was not given. The nurse asked mother why she did not give J.R. insulin; mother responded, "it was a bad day." Mother had not even been given overnight visits with J.R. for this reason. Thus, protective supervision was not possible.

{¶45} Mother further argues that CCDCFS did not make reasonable efforts to reunite her and J.R. because CCDCFS never referred mother to the Board of

Developmental Disabilities for assistance, nor did the agency refer mother to more diabetes training after amending her case plan on October 23, 2015 — indicating that diabetes classes should continue. The agency could have referred mother to the Board of Developmental Disabilities; the social worker even agreed at trial that she could have. But that would not change the fact that mother could not manage J.R.'s care on her own. As for not referring mother for more diabetes classes, mother had already completed two training sessions and still could not understand the complexities of Type I diabetes. And the social worker testified that even though she did not refer mother for more training, mother was continuing to receive ongoing education through the nurse practitioner at J.R.'s medical appointments.

{¶46} After review, we conclude that the trial court's judgment is supported by clear and convincing evidence.

{¶47} 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.

MARY J. BOYLE, JUDGE

MELODY J. STEWART, P.J., and
LARRY A. JONES, SR., J., CONCUR