

[Cite as *In re V.V.F.*, 2017-Ohio-1562.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105010

IN RE: V.V.F.-G. II, ET AL.
Minor Children

[Appeal by Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD13918329 and AD16901078

BEFORE: Laster Mays, J., E.A. Gallagher, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: April 27, 2017

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ANITA LASTER MAYS, J.:

{¶1} Appellant-mother K.S., mother of P.S. and V.V.F.-G., appeals the trial court's decision to award permanent custody of P.S. and V.V.F.-G. to the Cuyahoga County Division of Children and Family Services ("CCDCFS"). We affirm the trial court's decision.

I. FACTS

{¶2} In 2013, CCDCFS filed a complaint against K.S. alleging that her child P.S. was abused and neglected, and the trial court granted CCDCFS temporary custody of P.S. P.S. tested positive for opiates at the time of P.S.'s birth and suffered withdrawal symptoms and seizures. While P.S. remained hospitalized, K.S. was ordered to participate in training so she would be prepared to take care of P.S. However, K.S. failed to attend the training. Upon P.S.'s release from the hospital, K.S. failed to pick him up, and P.S. was placed in foster care in December 2013.

{¶3} A case plan was created for K.S., and K.S. completed 180 days of inpatient treatment for her drug addiction. Afterwards, K.S. violated her probation in a Medina county case and was sentenced to jail for three months. CCDCFS then asked the court to remove P.S. from temporary custody and place P.S. in the permanent custody of CCDCFS. Having been pregnant when she was incarcerated, K.S. gave birth to V.V.F.-G. in January 2016. When V.V.F.-G. was born, according to CCDCFS, K.S. did not have suitable housing for her and the baby, was not compliant with the services

offered to her including mental health and domestic violence counseling, and did not have an income to support her or her children. CCDCFS thereafter took temporary custody of V.V.F.-G.

{¶4} CCDCFS considered the possibility of placing both children with K.S.'s parents, but K.S.'s mother was not eligible because of her prior felony convictions. As a result of K.S.'s inability to care for her children, K.S.'s lack of participation in the reunification plan, and relatives being disqualified to take care of the children, the trial court determined that it would be in the best interest of the children if CCDCFS was given permanent custody of V.V.F.-G. and P.S. K.S. has filed this timely appeal and assigns two identical errors for our review, which we will review together.

- I. The trial court erred by granting permanent custody to CCDCFS when the decision was not supported by competent and credible evidence; and
- II. The trial court erred in finding that permanent custody was in the best interest of the children.

II. PERMANENT CUSTODY

A. Standard of Review

{¶5} Where,

an appellant claims that the trial court's permanent custody determination is not supported by clear and convincing evidence, the 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). An appellate court will not reverse a juvenile court's termination of parental rights and award of permanent custody to an agency unless the judgment is not 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.

In re V.C., 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991, ¶ 37.

B. Law and Analysis

{¶6} In K.S.’s assignments of error, she argues that the trial court erred by granting permanent custody to CCDCFS and finding that it was in the best interest of the children.

In accordance with R.C. 2151.414(B), a trial court may grant permanent custody of a child to a county children’s services agency if the court determines, by clear and convincing evidence, (1) the existence of at least one of the four conditions enumerated in R.C. 2151.414(B)(1)(a) through (d) and (2) that granting permanent custody to the agency is in the child’s best interest. “Clear and convincing evidence” is that measure or degree of proof that is more than a “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 M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 8, citing *In re Awkal*, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994). It “produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.” *In re M.S.* at ¶ 8.

Id. at ¶ 36.

{¶7} R.C. 2151.414(B)(1)(a)-(e) states,

(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

(a) The child is not abandoned or orphaned, has not 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, or has not 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 if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents 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.

(d) 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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed, has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

{¶18} P.S. was in temporary custody of CCDCFS from December 23, 2013, until December 2015 when CCDCFS was granted permanent custody. During the two years P.S. was in the temporary custody of CCDCFS, K.S. did not complete her reunification plan, did not comply with her probation requirements, was imprisoned for harboring a

felon, lived in an unsuitable environment for children, and had another baby placed in foster care. As a result, CCDCFS asked the court to grant them permanent custody of P.S. and V.V.F.-G.

{¶9} The trial court considered the factors in R.C. 2151.414(B)(1)(a)-(e) and determined that it had been proven by clear and convincing evidence that “it is in the best interest of the child to be placed in the permanent custody of the Cuyahoga County Division of Children and Family Services.” Journal Entry, page 2. The trial court also stated,

[u]pon considering the interaction and interrelationship of the child with the child’s parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private placing agency under one or more separate orders of disposition of twelve or more months of a consecutive twenty-two-month period; the child’s need for legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody; and, the report of the Guardian ad Litem, the court finds by clear and convincing evidence that a grant of permanent custody is in the best interest of this child and the child cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent.

Id.

{¶10} This court can only reverse the trial court’s decision if we find that it was not supported by clear and convincing evidence. The record reveals that the trial court complied with the statute and placed its findings on the record when it granted permanent custody of P.S. and V.V.F.-G. to CCDCFS. We find that the trial court’s decision was supported by clear and convincing evidence. Finding no merit to appellant’s arguments, we overrule the assignments of error.

{¶11} The juvenile court's judgment is 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 Court of Common Pleas, 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.

ANITA LASTER MAYS, JUDGE

EILEEN A. GALLAGHER, P.J., and
MELODY J. STEWART, J., CONCUR