

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: :
L.C., : No. 12AP-1057
(K.O., : (C.P.C. No. 11JU-11-14606)
Appellant). : (REGULAR CALENDAR)

In re: :
L.B., : No. 12AP-1059
(K.O., : (C.P.C. No. 11JU-11-14607)
Appellant). : (REGULAR CALENDAR)

D E C I S I O N

Rendered on June 20, 2013

Ron O'Brien, Prosecuting Attorney, and *Katherine J. Press*,
for appellee State of Ohio.

Reves and Westbrook, LLP, and *Randal M. Reves*, for
appellant.

APPEALS from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

BROWN, J.

{¶ 1} K.O., appellant, appeals the judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which the court found her two children, L.B. and L.C., were neglected and dependent.

{¶ 2} Appellant is the biological mother of L.B., a boy born in November 2006; L.C., a girl born in December 2010; T.B., a girl, and H.B, a girl. M.R. is the father of L.B., and D.C. is the father of L.C. C.B. is the father of H.B. and T.B. In October 2009, Franklin County Children Services ("FCCS") filed a case alleging that L.C., T.B., and H.B. were neglected and dependent, based upon appellant's drug use and her leaving the children unattended. That case was dismissed when C.B. was granted legal custody of H.B. and T.B., and L.B. was placed with M.R. Appellant also agreed to participate in several services to address her drug problem and parenting deficiencies. Soon thereafter, appellant became pregnant with L.C. In June 2010, appellant was involved in two traffic infractions within a few days of each other, both involving drug or alcohol usage.

{¶ 3} After L.C. was born in December 2010, her father, D.C., assumed care of her. In May 2011, appellant was arrested for driving while under the influence. She was incarcerated on May 25, 2011. On August 16, 2011, FCCS filed complaints alleging L.C. and L.B. were neglected and dependent. M.R. was granted temporary custody of L.B., and D.C. was granted temporary custody of L.C. Appellant was released from jail in October 2011.

{¶ 4} The complaints were dismissed but then re-filed on November 9, 2011. The court subsequently removed L.C. from D.C.'s care because he tested positive for cocaine and had an extensive criminal history. Thereafter, D.C. had no further contact with FCCS.

{¶ 5} A neglect and dependency hearing was held before a magistrate on various dates through January and February 2012, and, on February 14, 2012, the magistrate issued a decision finding L.C. and L.B. were neglected and dependent. Appellant filed objections to the magistrate's decision.

{¶ 6} On November 30, 2012, the trial court issued a decision, overruling appellant's objections and adopting the magistrate's decision finding L.C. and L.B. were neglected and dependent. Appellant appeals the judgment of the trial court, asserting the following assignment of error:

THAT THE JUVENILE COURT ERRED IN THAT THE EVIDENCE LACKED THE CLEAR AND CONVINCING STANDARD THAT THE CHILDREN ARE NEGLECTED AND DEPENDENT CHILDREN PURSUANT TO OHIO REVISED CODE §2151.03 (A)(2) AND §2151.04 (C).

{¶ 7} Appellant argues in her sole assignment of error that the trial court lacked clear and convincing evidence that the children were neglected and dependent. In determining whether a child is abused, neglected or dependent, a trial court must determine whether the record contains clear and convincing evidence of that status. R.C. 2151.35; *In re N.P.*, 10th Dist. No. 07AP-797, 2008-Ohio-1727, ¶ 7. Clear and convincing evidence is more than a mere preponderance but is "that quantum of evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *Id.* On review, we must affirm the trial court if competent, credible evidence going to all the essential elements of the case supports the trial court. *Id.*

{¶ 8} With regard to neglect, R.C. 2151.03(A) provides, in pertinent part:

As used in this chapter, "neglected child" includes any child:

* * *

(2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian.

{¶ 9} "'Adequate parental care' means the provision by a child's parent or parents * * * of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs." R.C. 2151.011(B)(1). The Supreme Court of Ohio has held that a finding of neglect based upon "R.C. 2151.03(A)(2) requires some showing that parents, a guardian, or a custodian is at fault before a finding of a lack of proper (or adequate) care can be made." *In re Riddle*, 79 Ohio St.3d 259, 262 (1997).

{¶ 10} Here, the trial court found that the evidence revealed appellant took so much of her prescribed medication during her pregnancy in early June 2010 that she was charged with driving while under the influence, and she could not provide adequate parental care because her admitted use of prescription drugs prevented her from meeting the needs of her children while they were in her care. Appellant also was involved in a driving offense on June 17, 2010 that involved her use of prescription drugs, and, on May 25, 2011, she was stopped for another alcohol related incident, for which she was incarcerated and unable to care for her children. The trial court also indicated that

appellant's probation order upon release required her to cooperate with FCCS, designate a primary physician, attend AA, and successfully complete drug screens, none of which she completed. The court noted that appellant completed only 15 of 26 required drug screens, and she did not designate a primary care physician or attend AA meetings.

{¶ 11} Appellant argues that the evidence at trial barely touched on the children but focused almost entirely on the faults of appellant. Appellant asserts that the trial court's finding that her use of prescription drugs prevented her from providing adequate parental care was without support, as there was no evidence presented as to the effect of the prescription medications. Appellant contends there was no testimony as to her conduct with the children or whether they received adequate food, clothing, and shelter when with her.

{¶ 12} In the present case, appellant testified that, in June 2010, when she was pregnant with L.C., she was involved in an alcohol related driving offense. Just days after the June 2010 offense, she was involved in a driving offense that involved the overuse of her prescription medications. Appellant said she also tested positive for cocaine while she was pregnant with L.C. In May 2011, appellant was incarcerated for 90 days due to another alcohol related driving offense. She then was incarcerated for another 50 days for one of the June 2010 offenses. She was released in October 2011.

{¶ 13} Appellant admitted that she did not comply with the terms of her probation which included obtaining an AA sponsor and proof of a sponsor, attending three AA meetings per week, and providing proof to the court of attendance at the AA meetings but claimed her probation officer told her she did not need to start these right away because she had so many other things going on in her life. Appellant also admitted she has missed several drug screens and did not complete any screens between January and May 2011. She also tested positive for marijuana on January 9, 2012. Furthermore, appellant gave extensive, but somewhat convoluted, testimony regarding multiple medications she takes from multiple doctors.

{¶ 14} Shannon Flannigan, appellant's probation supervisor at the Ohio Adult Parole Authority, confirmed in her testimony that appellant did not provide her with proof of attending AA meetings which was required by the terms of her probation.

{¶ 15} M.R., the father of L.B., testified that he was concerned appellant was using drugs at the beginning of this case and called FCCS with his concern. He believed appellant had not been using drugs since 2009, and he did not believe she currently has an alcohol problem. He had never seen appellant crush or snort prescription drugs, and he told FCCS that she might be doing so only because he knows people do such a thing. Although L.B. told him that his mother put make-up in her nose, he dismissed L.B.'s statement. M.R. said there was never a time when L.B. did not have food, clothing, and shelter or was without supervision. He said appellant has never made any "mistakes" with drugs or alcohol when L.B. was present, and he did not think she would do anything to hurt her kids. He believed the kids were safe with appellant.

{¶ 16} Kristen Koch, appellant's caseworker, testified that the case with L.B. was dismissed because M.R. had custody of him. However, appellant was still required to have parenting classes, an alcohol and other drug assessment, and random drug screens. She said appellant failed to follow the agreed safety plan by failing to complete a treatment program and drug screens. Appellant also has failed to provide her with access to any doctors or others whom she has seen for treatment. Koch said appellant has been told that she would be provided bus passes if she could not get transportation to drug screens. She testified that D.C. told her in July 2011 that appellant had been arrested after coming to his home screaming and banging on his door at 3:00 a.m. D.C. told her that appellant appeared intoxicated or on a drug. She said M.R. last told her that he believed appellant had an alcohol and/or drug problem in the spring of 2011. Sometime between February 2011 and February 2012, M.R. also told her that appellant cut up her prescription pills and snorted them. Koch said appellant was currently participating in random urine screens but was not completing them all. Appellant was also not completing any drug and alcohol treatment currently.

{¶ 17} William Parker, the owner of American Court Services, which provides drug testing and monitoring for courts, testified that, from November 2011 until February 2012, appellant failed to call in ten times to see whether she had been chosen to have a random drug test and called outside her assigned call window ten times.

{¶ 18} Based upon the testimony above, we cannot find the trial court erred when it found the children neglected. We understand appellant's argument that there existed

little direct evidence of the children's condition. However, there was evidence that appellant used drugs and alcohol during her pregnancy with L.C., and the evidence suggested a threat of further incarceration. Appellant was not attending AA, had not completed a treatment program, had missed many drug screens, had tested positive for marijuana as recently as 2012, and failed to provide her caseworker with access to any doctors or others whom she has seen for treatment. D.C. told Koch in July 2011 that appellant appeared intoxicated or on a drug, and M.R. told her in the spring of 2011 that he thought appellant had an alcohol and/or drug problem. M.R. also told her in the past year that appellant snorted her prescription pills. Although the evidence in this case borders on the line of clear and convincing evidence of neglect, our standard of review in these cases is to determine whether there was competent credible evidence to support the trial court's determination. The trial court found appellant's faults and habits would prevent her from meeting the needs of her children, and there was no evidence appellant had undertaken appropriate actions to remedy these faults and habits. Therefore, we conclude that the court had clear and convincing evidence before it to find the children were neglected.

{¶ 19} With regard to dependency, R.C. 2151.04 provides, in pertinent part:

As used in this chapter, "dependent child" means any child:

* * *

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship.

{¶ 20} A finding of dependency under R.C. 2151.04 focuses on whether the child is receiving proper care and support. *In re Bibb*, 70 Ohio App.2d 117 (1st Dist.1980). Therefore, the determination must be based on the condition or environment of the child, not the fault of the parents. *In re Bishop*, 36 Ohio App.3d 123, 124 (5th Dist.1987); *In re Burchfield*, 51 Ohio App.3d 148, 156 (4th Dist.1988). However, a court may consider a parent's conduct insofar as it forms part of the child's environment. *See In re Burrell*, 58 Ohio St.2d 37, 39 (1979). A dependency finding based on a parent's use of an illegal substance or the abuse of a legal substance under R.C. 2151.04(C) requires some evidence

that the parent's supervision of her children or the environment of her children has been affected in some negative way by the behavior of the parent. *In re R.S.*, 9th Dist. No. 21177, 2003-Ohio-1594, ¶ 20.

{¶ 21} Here, appellant argues that the state presented no evidence as to the condition or environment of the children except that when the matter was filed, the children were living with their respective fathers, and the court granted the fathers temporary custody. Appellant contends there was no evidence presented to show any harm to the children due to their condition, but only evidence as to appellant's faults and habits.

{¶ 22} In addressing appellant's objections to the dependency finding, the trial court found that appellant had three alcohol or drug related offenses, two while she was pregnant with L.C., and was consequently incarcerated. The court also found that D.C. informed FCCS that, as recently as July 2011, appellant was at his house intoxicated in the early morning hours, thereby prompting him to call the police.

{¶ 23} We find the trial court's findings support a finding of dependency. Obviously, appellant's drug and alcohol use while pregnant with L.C. was relevant to L.C.'s condition and environment. Appellant was arrested for two drug and alcohol related driving infractions and tested positive for cocaine all while she was pregnant with L.C. This evidence supports a finding that the environment of appellant's child was affected in a negative way by appellant's drug and alcohol usage. Appellant's incarceration was also relevant because she was unable to care for her children during her incarceration. It is also relevant to the extent that such incarceration poses a risk to the children's future condition and environment because appellant has failed to undergo treatment, testing, and drug screens to remedy this harmful behavior. Appellant's erratic behavior while intoxicated also threatens the children's environment. As explained above, Koch testified that D.C. said appellant was banging on his front door, screaming, and appeared intoxicated or on a drug in July 2011. Although M.R. denied it, Koch also said he told her that appellant cut up her prescription pills and snorted them. Given this testimony, there was evidence to give the trial court a firm conviction that the children's environment was such as to warrant the state to assume the children's guardianship. In arriving at this decision, we are mindful of the rule that children do "not first have to be put into a

particular environment before a court can determine that that environment is unhealthy or unsafe." (Emphasis sic.) *In re Burchfield* at 156, citing *In re Campbell*, 13 Ohio App.3d 34, 36 (12th Dist.1983). For these reasons, appellant's assignment of error is overruled.

{¶ 24} Accordingly, appellant's assignment of error is overruled, and the judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, are affirmed.

Judgments affirmed.

KLATT, P.J., and TYACK, J., concur.
