

[Cite as *In re A.M.*, 2009-Ohio-6002.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

IN THE MATTER OF A.M. & J.M. :

: C.A. CASE NO. 2009 CA
41

: T.C. NO. N37213/N37214

: (Civil appeal from Common
Pleas Court, Juvenile

Division)

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OPINION

Rendered on the 13th day of November, 2009.

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FROELICH, J.

{¶ 1} R.M. appeals from a judgment of the Greene County Court of
Common Pleas, Juvenile Division, which granted permanent custody of her sons,
A.M. and J.M., to Greene County Children Services (“GCCS”). For the following
reasons, the judgment of the trial court will be affirmed.

I

{¶ 2} On February 3, 2006, GCCS was granted emergency custody of A.M. and J.M., who were ages nine and seven respectively. GCCS had been involved with R.M.'s family for many years, including a period when the agency had temporary custody of the children, but in early 2006, A.M. and J.M. had been with R.M. Shortly after their removal, GCCS filed a Complaint seeking temporary custody of the children. On March 30, 2006, the trial court adjudicated the children to be neglected based on R.M.'s failure to provide subsistence, education, and medical care, and to be dependent based on the conditions in which they had been living. The court awarded temporary custody to GCCS. GCCS developed a Case Plan aimed at reunifying A.M. and J.M. with R.M.¹

{¶ 3} On April 13, 2006, a relative sought and was granted temporary custody of A.M. and J.M. In February 2007, the children returned to the temporary custody of GCCS because the relative was unable to meet their needs. Thereafter, the boys were placed in "therapeutic foster homes" where the foster parents had received special training.

{¶ 4} In March 2008, GCCS filed a Motion Requesting Modification from Temporary Commitment to Permanent Commitment of A.M. and J.M., who were then twelve and nine years old. The court denied the Motion, but granted an extension of temporary custody. In February 2009, GCCS again sought

¹A third child was also removed from the home, but she went to live with her paternal grandmother and was not part of the permanent custody proceedings.

permanent commitment of the children.² After a hearing, the trial court granted GCCS's Motion Requesting Modification from Temporary Commitment to Permanent Commitment with respect to each of the boys in two separate judgments.

{¶ 5} R.M. raises three assignments of error on appeal.

II

{¶ 6} R.M.'s first assignment of error states:

{¶ 7} "THE TRIAL COURT ABUSED ITS DISCRETION IN CONCLUDING BY CLEAR AND CONVINCING EVIDENCE THAT IT IS IN THE BEST INTEREST OF THE CHILDREN TO GRANT PERMANENT CUSTODY TO THE AGENCY."

{¶ 8} R.M. claims that the trial court abused its discretion in concluding that the best interest of the children would be served by granting permanent custody to GCCS.

{¶ 9} The United States Supreme Court has recognized that parents' interest in the care, custody, and control of their children "is perhaps the oldest of the fundamental liberty interests recognized" by the Court. *Troxell v. Granville* (2000), 520 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49. In a proceeding for the termination of parental rights, all of the court's findings must be supported by clear

²In the following weeks, several successive motions for modification to permanent commitment were filed, each of which requested that the previous motion be dismissed. The differences in these motions are not significant to this appeal. An Amended Complaint was also filed with respect to A.M., because R.M. named a different man as his father after the man she had first named was excluded through genetic testing. The trial court found that this second man had never been involved with A.M. and had abandoned him. Thus, the paternity issues are likewise irrelevant to this appeal.

and convincing evidence. R.C. 2151.414(E); *In re J.R.*, Montgomery App. No. 21749, 2007-Ohio-186, at ¶9. However, the court's decision to terminate parental rights will not be overturned as against the manifest weight of the evidence if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established. *In re Forrest S.* (1995), 102 Ohio App.3d 338, 344-345. We review the trial court's judgment for an abuse of discretion. See *In re C.F.*, 113 Ohio St.3d 73, 83, 2007-Ohio-1104, at ¶48 (applying abuse of discretion standard to trial court's findings under R.C. 2151.414).

{¶ 10} R.C. 2151.414(B) sets forth the circumstances under which a court may grant permanent custody of a child to a children services agency. Pursuant to R.C. 2151.414(B)(1)(a), the court may grant permanent custody of a child to the agency if the court determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the children services agency and that 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.

{¶ 11} R.C. 2151.414(D) directs the trial court to consider all relevant factors when determining the best interest of the child, including but not limited to: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers, and any other person who may significantly affect the child; (2) the wishes of the child, as expressed directly or through the guardian ad litem, with due regard for the maturity of the child; (3) the custodial history of the

child, including whether the child has been in the temporary custody of one or more public children services agencies for twelve or more months of a consecutive twenty-two month period; (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 to the agency; and (5) whether any of the factors in R.C. 2151.414(E)(7) through (11) are applicable. The factors in R.C. 2151.414(E)(7) through (11) include the parents' convictions of specific crimes and a parent's refusal to participate in treatment two or more times when required to do so in a journalized Case Plan.

{¶ 12} GCCS presented the following evidence in support of its claim that A.M.'s and J.M.'s best interests would be served by awarding permanent custody to the agency.

{¶ 13} A.M. struggles in school and needs consistent mental health treatment. His problems at school were so severe that, eventually, Xenia schools refused to take him back, and he went to a "partial hospitalization program" for kids with "serious mental health issues" who are not able to attend traditional schools. A.M. also suffers from emotional and behavioral problems and depression, is mildly mentally retarded, and has been diagnosed with attention deficit disorder and post-traumatic stress disorder. A.M. has very limited ability to process his feelings and to manage his anger. He takes four psychotropic medications. According to his mental health therapist, because of his complex mental and emotional needs, A.M. needs a parent "who could be consistent with parenting, firm with boundaries," who will participate in his treatment, and who will stay in close

contact with his school and his counselors.

{¶ 14} J.M. also suffers from behavioral and emotional issues. He has had numerous angry outbursts at school that have resulted in numerous suspensions. He also suffers from and takes medication for depression, inability to control urinary and bowel function throughout the day and night, and allergies. J.M. wears pull-up diapers, but his foster mother described it as a “constant struggle” to remind him to use the restroom, to clean up after him, and to help him with his hygiene. The source of J.M.’s urinary and bowel problems is emotional, rather than physical.

{¶ 15} In 2005, after the children had spent time in foster care and GCCS had worked with R.M. toward the completion of a Case Plan, the trial court ordered that the children be returned to R.M., over GCCS’s objections. When the agency attempted to return the children to R.M., the caseworkers had difficulty contacting her. She was living with her mother in conditions that caused the caseworker to be concerned for the children’s safety. For example, the house was so cluttered that the mattress on which the children were to sleep was upright and could not be laid down. There were also spiders and roaches in the kitchen, and there was no food in the house. R.M. remedied these problems, and the children were returned to the home where R.M. lived with her mother, although the children remained under the protective supervision of GCCS.

{¶ 16} After the children were returned to R.M.’s custody in 2005, they were not enrolled in school for at least a week. The caseworkers often had trouble contacting R.M., and she would sometimes disappear for several days, leaving the children with her mother. Cleanliness continued to be a concern in the home.

{¶ 17} In October 2005, A.M.'s school expressed concern to GCCS that he was having pain and swelling in his jaw and teeth that had not been addressed. After the caseworker spoke with R.M. about this problem, R.M. waited over 24 hours to take A.M. to the emergency room and another 24 hours before she filled his prescriptions. Due to concerns that A.M. was not taking his psychotropic medications consistently, his school took over primary responsibility for administering the medications. On weekends, R.M. did not give A.M. his medications because she did not want him to take them. R.M. failed to refill one of A.M.'s prescriptions for at least three weeks. The caseworker and the school mostly managed A.M.'s problems without R.M.'s help. R.M. was inconsistent in getting A.M. to his medical appointments. According to caseworkers, on at least one occasion, the children were left in the care of an autistic uncle. The children were removed from R.M.'s home in early 2006 because caseworkers concluded that they were in immediate danger from their surroundings.

{¶ 18} Psychologist Richard Bromberg evaluated R.M. twice after the children were removed from her custody in 2006. He testified that it was difficult for him to conduct psychological evaluations on R.M. because she was very distracted during their visits and impatient to leave. R.M.'s husband brought her to the appointments and remained at the facility, and R.M. texted and called him during the assessment, concerned about keeping him waiting. Bromberg also could not conduct some personality tests because R.M.'s reading level was too low.

{¶ 19} Bromberg reported that R.M. had barely started high school before

she stopped attending school, had very little history of holding a job, and was “borderline,” meaning that it would be difficult for her to function in today’s world because of her intellectual limitations. He further testified that R.M. exhibited “borderline depression,” temper problems, and characteristics of personality disorder, including narcissism, histrionic and schizoid personality traits, and obsessive-compulsive disorder. R.M. believed that she had three or four completely different personalities. She was somewhat defensive in her answers to questions, which, in Bromberg’s experience, tended to show an underestimation of problems. R.M. did not understand why she was being evaluated by Bromberg and expressed to him that she believed the pending legal proceedings were “stupid.”

{¶ 20} With respect to her children, R.M. stated to Bromberg that A.M. had caused her a “great deal of problems.” Bromberg observed that A.M. was not her “hoped-for child” and that she was detached from him. R.M. had many similar problems with J.M. According to Bromberg’s evaluation, R.M. had characteristics similar to known child abusers, did not understand or was oblivious to her children’s needs, and had “no clue” what her sons’ needs would be over the next one to five years. Bromberg concluded that R.M. demonstrated serious psychological impairment and that she was not a good candidate for treatment because she denied the need for it; he also concluded that R.M. was not likely to make significant changes and that her prognosis was not good. Bromberg believed that, based on R.M.’s status when he evaluated her, it would have been “close to impossible” for her to parent her children.

{¶ 21} Bromberg also evaluated R.M.'s husband. According to Bromberg's testing, the husband's child abuse potential was also high. Bromberg recommended that the husband have a psychological assessment and substance abuse assessment and treatment; without these interventions, Bromberg did not believe that the husband would be able to effectively parent special needs children.

{¶ 22} According to the GCCS caseworkers, after the children were removed from the home, the goals of R.M.'s Case Plan were focused on reunification. These goals of the Case Plan were modified and updated several times while the children were in GCCS's temporary custody, but the central elements were for R.M. to: obtain stable housing and employment; submit to a psychological evaluation and parenting psychological assessment and comply with the recommendations; visit and maintain regular contact with the children and be active in their therapy; understand what mental health and educational services were available to assist the children; and participate in marriage counseling. The Case Plan also called for R.M.'s husband to have a substance abuse assessment and comply with the recommendations.

{¶ 23} The caseworkers testified that R.M. made progress on some aspects of the Case Plan, but not on others. R.M. and her husband obtained housing, learned about the resources that were available to help the children, and completed the parenting psychological assessment. R.M. did not obtain verifiable employment, although she testified that she babysat for her brother's children. R.M.'s mental health counselor testified that she had not completed her therapy, had not been

invested in it, and had sometimes been nonresponsive during their sessions. R.M. also sometimes brought children that she was babysitting with her to the sessions, which was not conducive to therapy. R.M. was not permitted to participate in some of A.M.'s and J.M.'s counseling sessions because she had not met the prerequisites established by the mental health agencies, such as addressing a prior incident of domestic violence. For four months, R.M. also did not complete an orientation that was required for her participation at visits with the children held at the visitation center. She occasionally attended meetings about the children, but did not participate when she did attend, and was sometimes texting or using her cell phone during the meetings. R.M. did not attend the children's counseling or psychological appointments, and she did not do research on their medications so that she would understand their purposes, as requested by the caseworker. Her visits and telephone contact with the boys were sporadic, which was sometimes very upsetting to the children.

{¶ 24} The boys' counselors and foster mothers also testified at the hearing. Both foster mothers work in the foster care system at Oesterlen Services for Youth as well as serving as foster mothers in therapeutic foster homes. A.M.'s foster mother, A.S., initially provided foster care for both A.M. and J.M., but J.M. was eventually placed in another home because A.S. could not handle the needs of both boys and of her other foster child. A.S. described life with A.M. as more stable than when he arrived, but still "like a roller coaster." According to A.S., A.M. is "very aggressive verbally and physically," and he has difficulty managing his anger and other feelings. She administers his medication and had frequent

contact with his school. A.S. testified that phone calls from R.M. and her husband had been sporadic.

{¶ 25} A.S. described an incident that occurred in 2008 when the boys were both in her care and had gone to visit R.M. During this visit, R.M. threatened her husband with a knife in front of the children because of his drinking. The frightened children called A.S. to pick them up. Thereafter, visitation with R.M. did not occur at R.M.'s home and was supervised at the visitation center.

{¶ 26} J.M.'s foster mother, D.S., testified that he takes numerous medications, which he is able to administer himself with some prompting. She stated that he has had many behavioral problems at school which have resulted in disciplinary action against him. As discussed above, D.S. described dealing with J.M.'s medical and emotional problems, particularly his urinary and bowel incontinence, as a "constant struggle" to avoid accidents and clean up after them. Like A.S., D.S. described R.M.'s contact with J.M. as infrequent and sporadic.

{¶ 27} The guardian ad litem's reports documented A.M.'s poor school performance, both academically and behaviorally, and his need for counseling to deal with anger management issues, social skills, and hygiene. At age 13, A.M. was learning to identify and write simple "sight words." According to the reports, he has been aggressive with his bus driver and is verbally and physically abusive in his foster home. He struggles to use appropriate skills to resolve conflict. "Sometimes he is happy and uses his coping skills but at other time he is sad and angry and lashes out." With respect to J.M., the guardian ad litem reported some success in school, but that he was "seriously acting out" by being aggressive and

disrespectful, name calling, and throwing things.

{¶ 28} The guardian ad litem recognized that R.M. and her husband had made some progress with their Case Plan, particularly with housing and obtaining work, but he characterized R.M. as “difficult to work with and *** uncooperative many times through-out this process.” The guardian ad litem noted that neither the therapist nor the psychological assessment of R.M. recommended reunification.

In February 2009, the guardian ad litem saw “remarkable progress” in the boys for the first time in four years, noting that they were in foster care and received constructive guidance from their foster parents. The guardian ad litem did not believe that the boys’ progress would continue if they were returned to R.M. Thus, the guardian ad litem concluded that it was in A.M.’s and J.M.’s best interests for permanent custody to be awarded to GCCS.

{¶ 29} After hearing all of this evidence, the trial court concluded that the children’s best interests would be served by granting permanent custody to GCCS. The court found that R.M. and her husband had satisfied the Case Plan goals of obtaining housing and financial resources and of identifying resources available to the children in the community. The court found, however, that R.M.’s participation with visitation had been “mediocre,” as had her attendance at her own mental health therapy. The court found that R.M. and her husband had resisted mental health and marriage counseling because they did not believe that they needed it. Similarly, the husband denied that he needed substance abuse counseling, despite at least two incidents of domestic violence in which R.M. attacked or threatened her husband because of his drinking. When the couple finally did attend marital

counseling, they did not disclose the history of domestic violence to the counselor. The court recognized the children's special needs. The court acknowledged that A.M. wished to be reunited with his mother, but concluded that granting permanent custody to GCCS was in his best interest. The trial court made virtually identical findings with respect to J.M., except that J.M. did not express a desire to be reunified with his mother.

{¶ 30} The trial court's conclusions about the best interests of A.M. and J.M. find ample support in the record. Sadly, both the mother and the children exhibited severe impairments. The children have mental, emotional, behavioral, physical, and social needs that present challenges with which R.M. was almost totally unable and unwilling to cope. Her own mental impairments and intellectual limitations made it impossible for her to manage the boys' care for even short periods of time, and she resisted the suggestion that the treatments prescribed for the boys were even necessary. She showed little commitment to the children or to meeting their needs. On the unusual occasions when R.M. did attend a meeting or counseling session related to one of the boys, she engaged in disruptive and unhelpful behaviors such as looking for, texting, or telephoning her husband during the session. The psychologist who evaluated R.M. concluded that it would be nearly impossible for her to parent her children, and both a relative and other foster parents – who were presumably better equipped to deal with the boys' problems than R.M. was – had been unable to cope with caring for them. The boys had found some degree of stability with their specially-trained foster families.

{¶ 31} The trial court did not abuse its discretion in concluding that GCCS

had shown, by clear and convincing evidence, that the best interests of A.M. and J.M. would be served

{¶ 32} by awarding permanent custody to the agency.

{¶ 33} The first assignment of error is overruled.

III

{¶ 34} R.M.'s second and third assignments of error state:

{¶ 35} "THE TRIAL COURT ABUSED ITS DISCRETION IN CONCLUDING THAT THE AGENCY HAD MADE REASONABLE CASE PLANNING AND DILIGENT EFFORTS TO ASSIST THE PARENTS TO REMEDY THE PROBLEMS THAT CAUSED THE REMOVAL OF THE CHILDREN.

{¶ 36} "THE TRIAL COURT ABUSED ITS DISCRETION IN CONCLUDING THAT THE CHILDREN COULD NOT BE RETURNED TO THE MOTHER WITHIN A REASONABLE LENGTH OF TIME."

{¶ 37} R.M. contends that the trial court abused its discretion in concluding that GCCS had made reasonable efforts to reunify her family and that the children could not be returned to her custody within a reasonable period of time. Since the trial court did not make a finding in its judgments that the children could not be returned within a reasonable period of time, we will construe R.M.'s argument to be that the trial court should have made such a finding.

{¶ 38} R.C. 2151.414(B)(1) provides:

{¶ 39} "**** [T]he 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:

{¶ 40} “(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 [R.C. 2151.413 (D)(1)], 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.

{¶ 41} “(b) The child is abandoned.

{¶ 42} “(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶ 43} “(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 [R.C. 2151.413(D)(1)], the child was previously in the temporary custody of an equivalent agency in another state.

{¶ 44} “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.”

{¶ 45} A.M. and J.M. were adjudicated neglected and dependent on March 30, 2006. The hearing on GCCS's Motion for Modification of Temporary Commitment to Permanent Commitment was held on April 7, 2009. From April 2006 until February 2007, A.M. and J.M. were in the custody of an aunt, but they were otherwise in the custody of GCCS throughout this period. They were in the temporary custody of GCCS, without interruption, from February 2007 through April 2009. Because A.M. and J.M. were in the custody of GCCS for twelve or more months of a consecutive twenty-two month period, R.C. 2151.414(B)(1)(d) applied. Although R.C. 2151.414(B)(1)(a), which applies to children who have **not** been in the custody of an agency for twelve or more months of a consecutive twenty-two month period, does require the court to find that the child[ren] cannot be placed with either parent within a reasonable period of time, R.C. 2151.414(B)(1)(d) does not impose such a requirement. Under the circumstances presented in this case, the trial court was not required to find that A.M. and J.M. could not be placed with R.M. within a reasonable period of time.

{¶ 46} Moreover, the court did find that, “[d]espite reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child[ren] to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the conditions which caused the child[ren] to be placed outside his [sic] home.” Even if R.C. 2151.414(B)(1)(a) applied, we construe this statement as a finding that GCCS had made reasonable

case planning and diligent efforts to return A.M. and J.M. to their mother, but that such placement could not be made within a reasonable period of time.

{¶ 47} R.M. also argues that the trial court abused its discretion in finding that GCCS had done reasonable case planning and made diligent efforts to assist her in remedying the problems that had caused the removal of the children. In fact, the trial court was not required to make such a finding. Pursuant to R.C. 2151.414(E)(1), such a finding is relevant to a court's conclusion that a child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent. As we have already discussed, such a finding was not required under the facts of this case. The statute that R.M. cites in support of her argument, R.C. 2151.419(A)(1), does not apply to proceedings conducted under R.C. 2151.414.

{¶ 48} The language of the trial court's judgments does suggest, however, that it believed GCCS had engaged in reasonable case planning and diligent efforts to assist R.M. in reunification of the family. This conclusion is supported by the record. Although the trial court did not outline these efforts in its judgments, the testimony offered at the hearing established that GCCS had offered a wide variety of services to R.M. and to the children. It had also provided transportation to these services. R.M. consistently met GCCS's efforts with resistance and avoidance; she continually denied that she needed any help and, to a somewhat lesser extent, denied that the boys needed any help. She did not complete mental health counseling herself and did not participate in the boys' counseling in any meaningful way, despite the caseworkers' strong encouragement that she do so. The court's

conclusion that GCCS had provided reasonable case planning and diligent efforts to remedy the family's problems, though unnecessary, was supported by the record.

{¶ 49} The second and third assignments of error are overruled.

IV

{¶ 50} The judgments of the trial court will be affirmed.

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DONOVAN, P.J. and BROGAN, J., concur.

Copies mailed to:

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