

[Cite as *In re H.T.*, 2011-Ohio-1285.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
GREENE COUNTY**

IN RE:	:	
	:	Appellate Case Nos. 10-CA-29
H. T. & Z. T.	:	10-CA-30
	:	
	:	Trial Court Case Nos. N40085
	:	N41335
	:	
	:	(Appeal from Common Pleas Court,
	:	Juvenile Division)
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OPINION

Rendered on the 18<sup>th</sup> day of March, 2011.

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HALL, J.

{¶ 1} N.H. and H.T. have filed separate expedited appeals from the trial court's decision and entry terminating their parental rights and awarding permanent custody of their children to Greene County Children Services.<sup>1</sup>

{¶ 2} In her appeal, N.H. advances two assignments of error. First, she contends the trial court erred in finding that her child, Z.T., could not be placed with her within a reasonable time. Second, she claims the trial court erred in finding that granting GCCS permanent custody of Z.T. and her other child, H.T. II, was in the children's best interest.

{¶ 3} In his appeal, H.T. advances one assignment of error. Specifically, he contends the trial court's decision to grant GCCS permanent custody of his child, H.T. II, is against the weight of the evidence. He argues that the agency should have received only an extension of temporary custody.

{¶ 4} After a two-day hearing on GCCS's motion for permanent custody, the trial court made the following comprehensive findings:

{¶ 5} "N.H. is the biological mother of H.T. II, born 8/11/07, and Z.T., born 2/27/09. H.T. is the biological father of H.T. II. These parents initially believed that H.T. was also the father of Z.T.; however, genetic testing conducted in November, 2009, excluded H.T. as this child's father. \* \* \* N.H. is currently pregnant, with the delivery date being June 27, 2010. N.H. believes that H.T. is the father of this child.

{¶ 6} "The agency's involvement with the family commenced in September, 2007, when N.H. was arrested for domestic violence against H.T. N.H. was intoxicated; the agency

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<sup>1</sup>Consistent with this court's policy in parental-rights cases, we will refer to the parties and their children by their initials. In our quotation of the trial court's written decision, *infra*, we also have changed names to initials.

had H.T. submit to drug screens and he tested positive for marijuana and cocaine. N.H. remained in jail until 2/19/08, during which time she engaged in anger management, mental health and substance abuse programs offered to inmates. The agency referred H.T. to the Community Network for drug treatment but he did not follow through. On 2/4/08, H.T. tested positive for cocaine. The agency safety planned H.T. II with R.T., the child's paternal grandfather. The child was returned to H.T. about ten days later after several negative drug screens.

{¶ 7} “On 3/13/08, the police responded to H.T.’s residence regarding a dispute between N.H. and H.T. Both were intoxicated; the issue was resolved by N.H. leaving the house. Later that night, however, N.H. returned and the dispute resumed. H.T. took the child with him into the bathroom and barricaded the door. N.H. tried to pry the door open with a knife. The police arrived and arrested N.H. The agency again safety planned the child with R.T., but this lasted until only 3/17/08 when R.T. called the agency and advised he could no longer provide care.

{¶ 8} “On 3/17/08, the agency obtained an ex parte order of emergency custody. The following day, the agency filed a Complaint of Neglect and Dependency and, during the shelter care hearing, was granted interim custody of H.T. II. The child has been in the same foster home since March 17, 2008.

{¶ 9} “The goal of the case plan, State’s Exhibit 9, was reunification of the child with the parents. The plan identified the following concerns: the parents’ alcohol and drug use, N.T.’s mental health and domestic violence, the parents’ decision making skills and parenting, and the child’s need for a safe and stable environment where his basic needs would be met. The following activities were identified to address those concerns: both parents to be assessed

for alcohol/drug treatment and follow recommendations, remain drug free and submit to random drug screens, participate in a domestic violence program, have psychological and parenting assessments and follow recommendations, complete parenting classes and apply skills acquired, and exercise visitation; N.H. was to have mental health and anger management assessments and follow recommendations (since she was in jail at the time, she was to participate in programs available there); H.T. was to obtain stable housing and seek employment (N.H. was to do the same upon her release from jail). Both parents signed this case plan.

{¶ 10} “The parents were assessed for drug/alcohol treatment but did not comply with the recommendations. N.H. was assessed at TCN for mental health services but did not comply with recommended treatment. She was assessed at Artemis House for domestic violence counseling but did not participate in treatment. Both parties continued to yield positive drug screens.

{¶ 11} “In May 2008, H.T. was arrested for domestic violence against N.H. He was indicted with a felony domestic violence charge. As a condition of his bond, he was not to have contact with N.H. While out on bond, he harbored N.H. at his apartment; he was arrested for violating conditions of bond. In August, 2008, he was sentenced to a year in prison. On June 1, 2009, he was released from prison, placed on parole, and assigned to a half-way house, where he participated in anger management and substance abuse classes.

{¶ 12} “On October 10, 2008, N.H. submitted to a psychological evaluation and parenting assessment by Dr. Richard Bromberg. State’s Exhibit 7 is his written report summarizing the evaluation and his opinions and recommendations. N.H. has a substance dependence disorder; her use of alcohol disinhibits her anger and violent tendencies. She has

similar characteristics as known active child abusers; although she has not abused any of her children, the risk is there and hinges on her maintaining sobriety. Her personality problems are enduring, and her global assessment of functioning indicates that N.H. has a very serious level of psychological impairment. It would be quite difficult to successfully treat N.H. Although Dr. Bromberg observed positive interaction and appropriate behavior during N.H.'s session with H.T. II, Dr. Bromberg opined that N.H. is not able to effectively parent on a consistent basis.

{¶ 13} "N.H. is currently in her third lock-down or residential substance abuse treatment program. The first was in 2006, when she was required to participate in the Greeneleaf Program while serving a misdemeanor sentence in the county jail. She completed the program but continued to abuse alcohol. The second was in February to May, 2009, at the Women's Recovery Center, a residential program. Z.T. was born while N.H. was at W.R.C. She completed that program but, while in temporary housing at the Red Cross Shelter, relapsed on alcohol and was evicted from this housing. She is now participating in the Greeneleaf Program for the second time, as a result of a felony domestic violence conviction, where her mother was the victim. She is doing well in this program. Her anticipated release date is 6/12/10.

{¶ 14} "Z.T. came into the agency's care, through an ex parte order of emergency, on 6/15/09, as a result of N.H.'s relapse while at the Red Cross Shelter. The agency filed a Complaint of Neglect and Dependency on 6/16/09 and was awarded interim custody. On October 9, 2009, the child was adjudicated neglected and dependent. Temporary custody was granted to CSB. Z.T. has remained in the same foster home since his placement on 6/15/09.

{¶ 15} "H.T. did not submit to the psychological evaluation and parenting assessment

by Dr. Bromberg until 12/9/09, although this activity had been in the case plan since March, 2008. H.T.'s excuse is that he did not read the case plans he signed; however, the Court concludes that the agency caseworker followed case plan protocol by meeting with the parent on a monthly basis to review each plan activity and compliance, or lack thereof. Dr. Bromberg's summary of the evaluation is State's Exhibit 8. H.T. has a substance dependency disorder, meaning he would likely suffer withdrawal symptoms if he stopped using drugs. Although H.T. told Dr. Bromberg that it had been three years since his last use of marijuana, drug screens required by CSB show more recent use. In addition, he told the psychologist that he had used cocaine two weeks before the evaluation. This dependency has a serious impact on H.T.'s ability to provide consistent, adequate parenting. His disorder would require long-term, extensive treatment. In his testimony, H.T. admitted that he had started treatment at TCN 'quite a few times' but never completed it. Two weeks before the 3/24/10 hearing, H.T. got re-assessed at TCN and went to his first session the following week.

{¶ 16} "The supervised visits which N.H. and H.T. have exercised with the children have been positive and demonstrated a bond; however, despite reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the children to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside the home.

{¶ 17} "The children are in separate foster homes. They have become integrated into their respective foster families. Both sets of foster parents have expressed a desire to adopt, and would make sure that the children maintained a sibling relationship.

{¶ 18} "H.T. II has been in the agency's temporary custody for more than twelve months of a consecutive twenty-two month period.

{¶ 19} “Z.T. cannot be placed with either of the parents within a reasonable period of time.

{¶ 20} “There are no suitable relative placements available. The children need a legally secure permanent placement, which cannot be achieved without a grant of permanent custody to the agency. The guardian ad litem has recommended that the children be placed into CSB’s permanent custody.

{¶ 21} “It is in the best interest of H.T. II and Z.T. [that they] be in the permanent custody of the agency.” (Doc. #52 in Greene C.P. No. 51335).

{¶ 22} We begin our analysis of the trial court’s ruling with a brief review of the law governing the termination of parental rights. The Revised Code authorizes a trial court to terminate parental rights and grant permanent custody to the State upon a finding, by clear and convincing evidence, that permanent custody is in a child's best interest and that the child has been in the State's custody for at least twelve of the preceding twenty-two months. R.C. 2151.414(B)(1)(d). Alternatively, a trial court is authorized to grant permanent custody to the State if it finds, by clear and convincing evidence, that permanent custody is in the child's best interest and that the child cannot be placed with a parent within a reasonable period of time or should not be placed with either parent. R.C. 2151.414(B)(2).

{¶ 23} When considering a motion for permanent custody, a trial court must apply R.C. 2151.414(E), which identifies factors for determining whether a child cannot or should not be placed with either parent within a reasonable time. If a court finds, by clear and convincing evidence, that any one of the R.C. 2151.414(E) factors exists, “the 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.” *In re M.M.-D.*, Miami App. No. 2008 CA 29, 2009-Ohio-159, ¶16. A trial court also must apply R.C. 2151.414(D), which lists non-exclusive “best interest” factors to be considered. They include the relationships that the child has with his parents and siblings, other relatives, and his foster family; the child's wishes; the child's custodial history, including prior placements outside the home; and the child's need for a legally secure, permanent placement and whether that may be achieved with or without a grant of permanent custody. R.C. § 2151.414(D).

{¶ 24} A reviewing court must affirm a trial court's decision regarding permanent custody unless it is unsupported by clear and convincing evidence, a level of proof that produces a firm belief as to the facts sought to be established. *In re A.U.*, Montgomery App. Nos. 20583, 20585, 2004-Ohio-6219, ¶17. A trial 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 B.F.*, Miami App. No.2008 CA 11, 2008-Ohio-5156, ¶9.

{¶ 25} With the foregoing standards in mind, we turn to N.H.’s appeal. As set forth above, she first contends the trial court erred in finding that Z.T. could not be placed with her within a reasonable time.<sup>2</sup> In reaching its conclusion, the trial court relied on 2151.414(E)(1), which mandates such a finding when, “[f]ollowing the placement of the child outside the child’s home and notwithstanding reasonable case planning and diligent efforts by the agency

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<sup>2</sup>The trial court was not required to make this finding with regard to H.T. II because it is undisputed that he had been in the State’s custody for at least twelve of the preceding twenty-two months.

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."<sup>3</sup>

{¶ 26} On appeal, N.H. essentially argues that she demonstrated some progress toward reaching her case plan objectives and that she should have been given another chance and more time to succeed. Although she was found to have psychological characteristics similar to those of child abusers, N.H. also points out that she has never been accused of abusing either of her children—a fact the trial court itself acknowledged. Rather, the custody issue arose from GCCS's concerns about dependency and neglect. N.H. further contends that she interacts well with both of her children and that she established the existence of a bond with them. Therefore, she maintains that the State failed to prove Z.T. could not be placed with her within a reasonable time.

{¶ 27} Upon review, we find competent, credible evidence from which the trial court could have formed a firm belief that the statutory elements for termination of parental rights had been established. The trial court's factual findings are well supported by a transcript of the hearing on GCCS's permanent custody motion. The trial court's findings suggest that N.H.'s biggest problems are substance abuse and repeated acts of domestic violence that have

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<sup>3</sup>The State contends the trial court relied on two other portions of R.C. 2151.414(E), namely R.C. 2151.414(E)(2) and (E)(13). See Appellee's brief at 9. The former provision applies when chemical dependency makes a parent unable to provide for a child at the time of the hearing and, as anticipated, within one year after the hearing. The latter provision applies when a parent's repeated incarceration prevents the parent from providing for a child. We do not dispute that the trial court made findings regarding substance abuse and incarceration that would be relevant under R.C. 2151.414(E)(2) and (E)(13). The various R.C. 2151.414(E) considerations overlap to some extent, however, and the trial court's ruling makes clear that it only specifically found the R.C. 2151.414(E)(1) factor to be present. See Doc. #52 in Greene C.P. No. 51335, at ¶12. In any event, a parent's substance abuse and repeated incarceration for domestic violence certainly can support an award of permanent custody under R.C. 2151.414(E)(1) when those are the specific problems that initially caused a child to be placed outside the home.

resulted in several periods of incarceration. The evidence supports the trial court's determination that she has failed continuously and repeatedly to overcome these problems and that Z.T. cannot be placed with her within a reasonable time. Accordingly, N.H.'s first assignment of error is overruled.

{¶ 28} In her second assignment of error, N.H. claims the trial court erred in finding that an award of permanent custody to GCCS was in the best interest of Z.T. and H.T. II. Once again, she points out that she is bonded with her children and that she has a positive relationship with them. She further asserts that she was denied an opportunity to demonstrate her ability to overcome her substance abuse problem. N.H. also contends H.T. II could have been placed with his father, H.T.<sup>4</sup> Finally, she reiterates the progress she has made on her case plan and argues that she should receive an opportunity to raise her children.

{¶ 29} Upon review, we do not agree that N.H. was denied a chance to overcome her substance abuse problem or that the trial court improperly deprived her of the opportunity to raise her children. The record reflects that N.H. received several chances to deal with her substance abuse problem. The record also supports the trial court's finding that terminating N.H.'s parental rights was in the best interest of her children. Although we do not dispute the existence of a bond between N.H. and her children, the trial court found that they also were bonded to their foster parents. In light of N.H.'s relapses and limited progress in this case, the trial court acted reasonably in accepting the guardian ad litem's recommendation that her parental rights should be terminated. N.H.'s suggestion that she should have been granted more time to regain custody "overlooks the importance of [her children's] right to [a] 'stable,

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<sup>4</sup>We will address this issue, *infra*, in our analysis of H.T.'s appeal.

secure, nurturing and permanent home in the near term.” *In re S.K., S.K. & J.K.*, Clark App. Nos.2008 CA 67, 2008 CA 68, 2008 CA 69, 2009-Ohio-427, ¶15, quoting *In re Awkal* (1994), 95 Ohio App.3d 309, 317. N.H.’s second assignment of error is overruled.

{¶ 30} We turn now to H.T.’s appeal. As set forth above, he contends the trial court’s decision to grant GCCS permanent custody of H.T. II is against the weight of the evidence. He points out that his interaction with H.T. II was described as being “[v]ery positive” and that he was observed changing the child’s diaper properly. He also stresses that he kept his visitation appointments and met with counselors. Finally, he pledges his willingness to work as hard as necessary to achieve reunification with H.T. II.

{¶ 31} Having reviewed H.T.’s arguments, we reject his claim that the trial court erred in terminating his parental rights. As with N.H., we do not dispute the existence of a bond or positive relationship between H.T. and H.T. II. Although H.T. is capable of interacting positively with H.T. II, the record contains evidence supporting the trial court’s finding that an award of permanent custody to the State is in the child’s best interest. At the time of the permanent custody hearing, H.T. had made limited progress on his case plan. He had continued using illegal drugs and had demonstrated little ability to parent H.T. II consistently and effectively. H.T. suggests that, with additional time, he could become an acceptable parent. Based on the evidence before it, however, the trial court did not err in concluding that terminating H.T.’s parental rights was in the best interest of his child. Accordingly, H.T.’s assignment of error is overruled.

{¶ 32} The judgment of the Greene County Common Pleas Court, Juvenile Division, is affirmed.

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FROELICH and BROGAN, JJ, concur.

(Hon. James A. Brogan, retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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