

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

J.P.

K.P.

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JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Patricia A. Delaney, J.

Hon. Earle E. Wise, Jr., J.

Case Nos. 2021CA00069

2021CA00070

OPINION

CHARACTER OF PROCEEDING:

Appeals from the Court of Common
Pleas, Family Court Division, Case
Nos. 2019JCV00724 & 2019JCV00725

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

November 16, 2021

APPEARANCES:

For Appellant-Father

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For Appellee-Agency

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Wise, Earle, J.

{¶ 1} Appellant-father, A.P., appeals the June 3, 2021 judgment entries of the Court of Common Pleas of Stark County, Ohio, Family Court Division, terminating his parental rights and granting permanent custody of his two children to appellee, Stark County Job and Family Services.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On July 26, 2019, appellee filed complaints alleging two children to be neglected, abused, and/or dependent: J.P. born July 2017 (Case No. 2019JCV00724) and K.P. born September 2018 (Case No. 2019JCV00725).¹ Father is A.P., appellant herein; mother is J.D. Appellee sought temporary custody of the children.

{¶ 3} Adjudicatory and dispositional hearings were held on October 17, 2019, wherein the trial court found K.P. to be neglected and J.P. to be dependent, and placed the children in appellee's temporary custody.

{¶ 4} On December 22, 2020, appellee filed motions for permanent custody of the children. A hearing was held on May 18, 2021. By judgment entries filed June 3, 2021, the trial court terminated appellant's parental rights and granted appellee permanent custody of the children. Findings of fact and conclusions of law were filed contemporaneously with the judgment entries.

¹These children were the subject of mother's appeals, Case Nos. 2021CA00067 and 2021CA00068. Mother had a third appeal, Case No. 2021CA00066, involving a third child belonging to mother and another father and this third child is not a part of this appeal. In these three cases, this court affirmed the trial court's decision to terminate mother's parental rights.

{¶ 5} Appellant filed appeals, one for each child, and this matter is now before this court for consideration. Assignments of error are identical and are as follows:

I

{¶ 6} "THE TRIAL COURT'S JUDGMENT THAT J.P. AND K.P. CANNOT BE PLACED WITH APPELLANT WITHIN A REASONABLE PERIOD OF TIME WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

II

{¶ 7} "THE TRIAL COURT'S JUDGMENT THAT THE BEST INTERESTS OF THE MINOR CHILDREN WOULD BE SERVED BY THE GRANTING PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

I, II

{¶ 8} In his first assignment of error, appellant claims the trial court erred in finding the children could not be placed with him within a reasonable period of time. Appellant challenges the finding that appellee made reasonable efforts toward reunification.

{¶ 9} In his second assignment of error, appellant claims the trial court erred in finding the best interests of the children would be best served by granting permanent custody to appellee.

{¶ 10} Appellant challenges the manifest weight and sufficiency of the evidence. We disagree with appellant's arguments.

{¶ 11} Sufficiency of the evidence "is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict [decision] is a question of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

{¶ 12} On review for manifest weight, the standard in a civil case is identical to the standard in a criminal case: a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury [or finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction [decision] must be reversed and a new trial ordered." *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). In *Thompkins, supra*, at 387, quoting Black's Law Dictionary 1594 (6th Ed.1990), the Supreme Court of Ohio explained the following:

Weight of the evidence concerns "the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*." (Emphasis sic.)

{¶ 13} In weighing the evidence however, we are always mindful of the presumption in favor of the trial court's factual findings. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517.

{¶ 14} R.C. 2151.414(B)(1) states permanent custody may be granted if the trial court determines, by clear and convincing evidence, that it is in the best interest of the child and:

(a) The child is not abandoned or orphaned * * * 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 * * *.

(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.

{¶ 15} Clear and convincing evidence is that evidence "which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. See *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 481 N.E.2d 613 (1985). "Where the degree of proof required to sustain an issue must be clear and convincing, a

reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Cross* at 477.

{¶ 16} R.C. 2151.414(E) sets out the factors relevant to determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Said section states in pertinent part the following:

(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, 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:

(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.

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

(16) Any other factor the court considers relevant.

{¶ 17} R.C. 2151.414(D)(1) sets forth the factors a trial court shall consider in determining the best interest of a child:

(D)(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

(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) of this section apply in relation to the parents and child.

{¶ 18} For the purposes of R.C. 2151.414(B)(1), "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."

{¶ 19} Appellant does not contest the fact that the children were adjudicated and placed in appellee's temporary custody on October 17, 2019, the motion for permanent custody was filed on December 22, 2020, and the hearing on permanent custody was

held on May 18, 2021. As found by the trial court, the children have been in appellee's custody for over twelve months of a consecutive twenty-two-month period. R.C. 2151.414(B)(1)(d).

{¶ 20} Having made this finding, the trial court was not required to make findings under subsection (E). Nevertheless, the trial court additionally found the children "cannot be placed with either parent within a reasonable period of time and should not be placed with the parents," and made findings consistent with several factors under subsection (E). See, *In re DA.J.*, 8th Dist. Cuyahoga No. 110393, 2012-Ohio-3102, ¶ 61.

{¶ 21} Appellant argues the trial court's findings pursuant to R.C. 2151.414(E) were not proven by clear and convincing evidence.

{¶ 22} During the May 18, 2021 hearing, the trial court heard from the ongoing family caseworker, appellant, mother J.D., and the guardian ad litem for the children. The trial court also had a report from the guardian ad litem. As explained by our brethren from the Second District in *In re A.J.S. & R.S.*, 2d Dist. Miami No. 2007CA2, 2007-Ohio-3433, ¶ 22:

Accordingly, issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. In this regard, "[t]he underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77,

80, 461 N.E.2d 1273. Finally, an appellate court must adhere to every reasonable presumption in favor of the trial court's judgment and findings of fact. *In re Brodbeck*, 97 Ohio App.3d 652, 659, 647 N.E.2d 240, citing *Gerijo, Inc. v. Fairfield* (1994), 70 Ohio St.3d 223, 226, 1994-Ohio-432, 638 N.E.2d 533.

{¶ 23} Further, " 'the discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned.' " *In re Mauzy Children*, 5th Dist. Stark No. 2000CA00244, 2000 WL 1700073, *2 (Nov. 13, 2000), quoting *In re Awkal*, 95 Ohio App.3d 309, 316, 642 N.E.2d 424 (8th Dist.1994).

{¶ 24} In its findings of fact and conclusions of law filed June 3, 2021, the trial court found the following in both cases:

11. Father did appear for the May 18, 2021 hearing for permanent custody.

12. The SCDJFS case plan for father included the following requirements: 1) Substance Abuse Assessment; 2) Parenting Evaluation; 3) Obtain independent housing; 4) Obtain employment; 5) Psychiatric Evaluation; 6) Anger Management; and 7) Sex Offender Risk Assessment.

13. Father did complete a parenting evaluation but did not attend recommended Goodwill Parenting sessions nor did he complete the

program. He also did not complete recommended counseling services but does take the required medications.

14. He did complete a sex offender risk assessment.

15. Father did not complete anger management.

16. Father did complete a substance abuse assessment but did not follow through with resulting treatment recommendations.

17. The conditions of the home continue to be a concern and the parents face an eviction May 21, 2021.

* * *

24. Again, the parent's home is not a safe environment with no heat during the winter due to rodents chewing through the heating elements, no working refrigerator, a kitchen sink that does not drain properly, and it is infested with bed bugs and lice.

25. The parents have not paid rent for several months and is being evicted May 21, 2021.

26. The parents were unwilling to move to a shelter and did not qualify for other housing services.

{¶ 25} These findings are amply supported in the record. T. at 6-8, 15-21, 22-27, 32-44, 58-67. Although appellant completed a sex offender risk assessment, he did not follow through with the recommendations to complete "the sex offender treatment and also the anger management there at Melymbrosia." T. at 23. The caseworker testified to the reasonable efforts extended to the family to try to facilitate reunification for over

eighteen months. T. at 24-26. The parents "have been in crisis several times." T. at 25. When questioned if giving appellant an extension of time would help him, the caseworker answered in the negative, stating "things are getting worse instead of better." T. at 43.

{¶ 26} As for best interests, the trial court found J.P. "has delayed speech and is nonverbal." The child has made "tremendous developmental progress since the case began." When K.P. was removed from the home, the child was very malnourished and has made immediate gains regarding weight while in foster care. J.P. and K.P. "had a rash from bed bugs, lice, scabies, ringworm, impetigo, lip ulcers, and diaper rashes." The children are placed in foster care together, their needs are being addressed, and they have made tremendous progress since being placed in the foster home. The trial court concluded the children deserve to be in a stable, loving environment where they can thrive and have their needs met on a daily basis.

{¶ 27} The guardian ad litem recommended granting permanent custody to appellee which was in the best interests of the children. T. at 87-88. The children are bonded to the foster family, and the foster parents are interested in adopting the children. T. at 75.

{¶ 28} Again, the trial court's findings are amply supported in the record. T. at 27, 70-75, 77-80, 83-84.

{¶ 29} Upon review, we find sufficient clear and convincing evidence to support the trial court's decision to grant appellee permanent custody of the children, and do not find any manifest miscarriage of justice.

{¶ 30} Assignments of Error I and II are denied.

{¶ 31} The judgments of the Court of Common Pleas of Stark County, Ohio, Family Court Division, are affirmed.

By Wise, Earle, J.

Gwin, P.J. and

Delaney, J. concur.

EEW/db