

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE F.A.

: JUDGES:
:
: Hon. W. Scott Gwin, P.J.
: Hon. William B. Hoffman, J.
: Hon. Patricia A. Delaney, J.
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: Case No. 2022CA0010
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: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Coshocton County
Court of Common Pleas, Juvenile
Division, Case No. 21930029

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

October 18, 2022

APPEARANCES:

For CCDJFS-Appellee:

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Delaney, J.

{¶1} Father-Appellant D.R. appeals the February 8, 2022 judgment entry of the Coshocton County Court of Common Pleas, Juvenile Division granting permanent custody of the minor child F.A. to Plaintiff-Appellee Coshocton County Department of Job and Family Services.

FACTS AND PROCEDURAL HISTORY

{¶2} Mother T.A. and Father-Appellant D.R. are the biological parents of R.R., (born in September 2011), J.R. (born in October 2015), F.A. (born in March 2019), and Z.A. (born in December 2020). Mother and Father began their relationship in 2011 and are not married.

{¶3} Mother has a prior history with the Muskingum County Department of Job and Family Services. In 2006 and 2008, Muskingum County JFS investigated Mother for mental health concerns, poor living conditions and non-cooperation regarding her two children from a prior relationship, born in 2005 and 2008. The two children were removed from her care and legal custody granted to family members. In 2008 and 2011, the Muskingum County Court of Common Pleas, Juvenile Court ordered Mother to undergo a psychological evaluation regarding her custody of one of the children. The psychologist diagnosed Mother with a personality disorder and a cognitive disorder due to which it was the evaluator's opinion that Mother would not do well if allowed to regain custody of her three-year old child. During the Muskingum County proceedings, Mother demonstrated non-compliance with the case plan, mental health concerns, and threatened violence to the caseworkers and staff.

{¶4} Father has three children from a prior relationship who were removed from his care through civil actions.

Complaint

{¶5} On March 20, 2018, Plaintiff-Appellee Coshocton County Department of Job and Family Services (“CCDJFS”) received a report of bug infestation when R.R. was observed at school with bed bugs and cockroaches on her body and in her school bags. It was also reported that R.R. at six years old was responsible for the care of her younger sister. CCDJFS attempted to gain entrance into Mother and Father’s home to investigate but Parents would not allow them access.

{¶6} On June 4, 2018, CCDJFS filed a complaint seeking protective supervision of R.R. and J.R. CCDJFS obtained a court order to allow them access to the home. The investigator observed the home was cluttered and in disarray. There were boxes stacked to the ceiling, medications laying in reach of the children, dirty dishes, cockroaches, and hole in the bathroom floor. The juvenile court granted protective supervision on June 26, 2018. CCDJFS filed a motion for ex parte temporary custody, which the juvenile court granted, and the children were placed in foster care. There were no kinship placements available for the children. R.R. and J.R. were placed in separate foster homes because R.R. was parentified. She behaved as if she was responsible for J.R.’s care and became aggressive with J.R. or others who tried to care for J.R. On June 28, 2018, the juvenile court held a shelter care hearing and continued the order of temporary custody. A Guardian ad Litem was appointed for the children.

{¶7} After placement in foster care, R.R. was diagnosed by Nationwide Children’s Hospital with a genetic disorder called STAT3 Gain of Function disease. The

disease impacts R.R.'s immune system and her ability to heal from injury or illness. R.R. was required to live in a sanitary environment to protect her health.

{¶8} The original case plan for Mother and Father was filed on July 3, 2018 and an amended case plan was filed on August 6, 2018. The amended case plan was necessary because R.R. moved to a different foster care provider. In the case plan, Parents were required to provide safe, clean, and stable housing, complete parenting classes, obtain a parenting assessment and follow recommendations, maintain employment, and attend visitation.

{¶9} CCDJFS dismissed the cases for R.R. and J.R. on September 4, 2018 and filed new complaints on September 5, 2018. The juvenile court held the preliminary, adjudicatory, and dispositional hearings on October 2, 2018 where R.R. and J.R. were adjudicated neglected and dependent children. The children remained in the temporary custody of CCDJFS.

{¶10} F.A. was born in March 2019. Parents tried to evade CCDJFS at the time of F.A.'s birth, but a hospital social worker independently reported the birth and concerns about Mother's behavior. On March 28, 2019, an ex parte order was issued removing F.A. from Parents' care and placing her in the foster home with J.R. F.A. was adjudicated dependent. An amended case plan was filed on April 11, 2019 to add F.A.

{¶11} The first Annual Court Review was held on May 15, 2019. Parents had moved three times and currently resided in Zanesville. At the time of the hearing, Father was incarcerated for failure to pay child support. Mother was maintaining employment. Parents were attending two-hour supervised visits with R.R. and J.R. once a week. Parents had supervised visitation with F.A. for two-hours, three times a week. Parents

completed a parenting assessment with Chrysalis Counseling Center. Father was diagnosed with generalized anxiety disorder and major depressive episode severe. The evaluator assessed that Father accepted no responsibility for his actions and was unwilling or unlikely to implement long-term changes necessary to provide a stable, safe, and nurturing home for the children. Mother was diagnosed with bipolar disorder and borderline personality disorder, requiring intensive individual counseling. Mother was regularly attending counseling. Parents had completed parenting classes. The annual review reported that R.R. and J.R. required extensive dental work – R.R. needed three fillings, one root canal, and seven crowns and J.R. had a cavity in every tooth, except one. The GAL recommended that CCDJFS work towards permanency for the children with their current foster placements or whomever CCDJFS approved.

{¶12} On June 24, 2019, CCDJFS filed a motion to reduce Parents' visitation with the children. Parents opposed the motion. The juvenile court denied the motion on August 6, 2019, finding that while Parents had failed to comply with the supervised visitation guidelines, it was in the best interest of the children and the goal of reunification to maintain visitation.

{¶13} In July 2019, J.R. and F.A. were rehomed in a foster-to-adopt home. F.A. was diagnosed with the STAT3 Gain of Function disease.

{¶14} In October 2019, R.R. was demonstrating behavior that caused concerns for the safety of the foster care provider's children. R.R. was rehomed with a foster provider who could provide more singular attention to R.R. and address her behavioral needs. R.R. was acting out by intentionally clogging a toilet and setting fires in the home. The foster provider reported that she felt R.R. liked her but was not bonded with her. The

foster provider was not a foster-to-adopt home. R.R. wanted to go home to be with her sisters.

{¶15} The second Annual Court Review was heard on March 20, 2020, along with a motion for second six-month extension for J.R. and R.R. and the first six-month extension for F.A. It was determined that Parents had obtained housing in October 2019. The ongoing caseworker had attempted unannounced home visitation accompanied by law enforcement (due to Mother's threats in her previous case), but Father refused access to the home. The GAL visited the home and observed that Mother's brother, a man, and a child also lived in the small home. The home was clean but cluttered. Father and Mother were employed. Of most significance, the ongoing case worker reported that Parents' supervised visitation was not progressing. Mother and Father were not utilizing the skills offered by parenting coaching. The visitation observer witnessed Parents being harsh with the children, especially with R.R. Parents occasionally mocked the children if they cried. They struggled to care for three children with different age-appropriate needs. Father was disengaged from the visitation, either laying on the floor, sleeping, or crocheting while Mother did most of the parenting work. Father was asked to stop crocheting during visitation, but he was observed crocheting under the table during visitation.

{¶16} Following the second Annual Court Review, the COVID 19 pandemic suspended visitation, but resumed in June 2020.

{¶17} A new ongoing caseworker was assigned in December 2020. She noted there had been little improvement in the Parents' visitation with the children as to parenting skills or their reception to parenting coaching.

{¶18} Parents had a fourth child, Z.A. in December 2020. The juvenile court denied removal of the child but placed the child under protective supervision.

{¶19} The ongoing caseworker was able to conduct a home visit. She found the home to be too small for a family of six and smelled of cigarette smoke and animal odors. Mother complained to her that Father did not assist with the home or the care of Z.A.

{¶20} On September 10, 2020, CCDJFS filed a motion for permanent custody of R.R., J.R., and F.A. CCDJFS filed a motion to suspend visitation on November 25, 2020.

Hearings

{¶21} The juvenile court first held hearings on the pending motion to suspend visitation on December 22, 2020 and February 9, 2021. After the hearing, the juvenile court suspended Parents' visitation due to the evidence presented and compounded by Parents failure to act appropriately by laying in their bed during a remote hearing appearance.

{¶22} The hearings on the pending motion for permanent custody were held on July 15, 2021, July 16, 2021, and July 22, 2021. At the hearing, while the evidence demonstrated that Parents had completed a portion of their case plan, such as graduating from parenting classes, maintaining employment, and obtaining housing, witnesses testified that Parents had failed to progress in their relationship with the children despite the reasonable efforts of CCDJFS. Multiple witnesses testified that this was the longest case they had where the parents had not progressed from supervised visitation. The ongoing caseworker and visitation supervisor could not recommend unsupervised visitation. Mother had made some effort during visitation, but Father continued to make little to no effort to engage with the children or assist Mother parent the children. In the

two years that Parents had been engaged in visitation with the children, the witnesses did not observe any progression in Parents' parenting skills.

{¶23} The psychological evaluators testified at the hearing as to their reports on Mother and Father. Mother was diagnosed with a personality disorder that could not be resolved with medication but would require intensive, long-term individual counseling. Mother was attending weekly counseling. The evaluators opined that reunification with Parents was unlikely if Parents' psychological conditions were not appropriately addressed.

{¶24} The foster parents to F.A. and J.R. testified that the children were bonded with them and their other children. They were interested in adopting the children. The children wanted to remain with the foster family.

{¶25} The foster parent for R.R. testified that she loved R.R. but she was not sure this was a permanent placement for R.R. R.R. expressed that she wanted to be with her sisters and because of COVID and scheduling, had not had an opportunity to visit with them. The juvenile court conducted an in camera interview with R.R. on July 23, 2021.

{¶26} The GAL recommended the children be placed in the permanent custody of CCDJFS.

{¶27} Mother testified at the hearing that she was meeting the case plan expectations. She was also caring for Z.A., working, and attending counseling.

Judgment Entry

{¶28} On February 8, 2022, the juvenile court issued an 11-page, thoroughly analyzed judgment entry awarding permanent custody of R.R., J.R., and F.A. to CCDJFS. The juvenile court found that despite the reasonable efforts of CCDJFS, Mother and

Father had not remedied the issues that caused the children to be removed from their care. R.R., J.R., and F.A. had been in the temporary custody of CCDJFS for 12 out of 22 consecutive months. The juvenile court next found it was not in the best interests of the children to be placed with Mother and Father. Both Parents exhibited cognitive and/or psychological issues that would require intensive, long-term therapy to mitigate. The children had been in the temporary care of CCDJFS for two years and Parents had not progressed in their relationship with the children past supervised visitation. The children were placed in foster homes that were meeting their emotional needs and the specific health needs of R.R. and F.A.

{¶29} It is from this judgment entry that Father now appeals.

ASSIGNMENT OF ERROR

{¶30} Father raises one Assignment of Error:

{¶31} “I. THE TRIAL COURT ERRED BY FINDING THAT THE BEST INTEREST OF THE MINOR CHILDREN WOULD BE SERVED BY THE GRANTING OF PERMANENT CUSTODY TO COSHOCTON COUNTY JOB & FAMILY SERVICES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

ANALYSIS

{¶32} In his sole Assignment of Error, Father contends the juvenile court erred when it found it would be in the best interests of R.R., J.R., and F.A. to be placed in the permanent custody of CCDJFS. We disagree.

{¶33} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent, and credible evidence upon which the fact finder could base its judgment. *Cross Truck v.*

Jeffries, 5th Dist. Stark No. CA5758 (Feb. 10, 1982). Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶34} R.C. 2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court schedule a hearing and provide notice upon the filing of a motion for permanent custody of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

{¶35} Following the hearing, R.C. 2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (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; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶36} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D)(1) mandates the trial court must 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 parents 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; (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; and (e) whether any of the factors in division (E)(7) to (11) of R.C. 2151.414 apply in relation to the parents and child.

{¶37} Therefore, R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶38} In this case, we find there was competent, credible evidence to support the juvenile court's decision that it was in the best interest of the children to be placed in the permanent custody of CCDJFS. The witness testimony from multiple caseworkers and visitation observers shows limited interaction or interrelationship between Father and the children. The evidence demonstrates Father made little to no effort to engage with the children or assist Mother with parenting the children during visitation. During visitation, Father was observed laying on the floor, sleeping, snoring, or crocheting. The children at one point played with Father by crawling on his body as he laid on the floor. Mother was observed parenting the children on her own, without Father's assistance. Mother complained to caseworkers that Father did not assist her with the children. Multiple witnesses testified that this was the longest case they had where the parents had not

progressed from supervised visitation. The ongoing caseworker and visitation supervisor could not recommend unsupervised visitation. In the two years that Parents had been engaged in visitation with the children, the witnesses did not observe any progression in Parents' parenting skills.

{¶39} The juvenile court conducted an in camera interview with R.R., but that interview was not provided to this Court on appeal. There was evidence R.R. expressed that she wished to be reunified with her family. Upon investigation, it appeared that R.R. wished to be reunified with her sisters, which unfortunately was not in R.R.'s best interests due to her parentification. The children's current foster placements were meeting their specialized health and emotional needs.

{¶40} Father concedes the children have been placed in the temporary custody of CCDJFS for 12 or more months of a consecutive 22-month period. This Court has adopted the position that proof of temporary custody with an agency for twelve or more months of a consecutive twenty-two-month period alone is sufficient to award permanent custody. *In re R.M.*, 5th Dist. Stark No. 2021CA00085, 2021-Ohio-4378, 2021 WL 5879225, ¶ 36 citing *Matter of O.M.*, 5th Dist. Coshocton No. 20CA0017, 2021-Ohio-1310, 2021 WL 1424200, ¶ 33 citing *In the Matter of A.S., V.S., and Z.S.*, 5th Dist. Delaware No. 13 CAF 050040, 2013-Ohio-4018. Therefore, a finding that grounds existed for permanent custody cannot be against the manifest weight of the evidence. *Matter of L.G.*, 5th Dist. Stark No. 2020-CA-00139, 2021-Ohio-743, ¶ 36.

{¶41} The record in this case demonstrates the juvenile court thoroughly considered the best interests of the children pursuant to R.C. 2151.414(D)(1). The

manifest weight of the evidence shows R.R., J.R., and F.A. need legally secure placement which can only be obtained by awarding permanent custody to CCDJFS.

{¶42} Father's sole Assignment of Error is overruled.

CONCLUSION

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

By: Delaney, J.,

Gwin, P.J. and

Hoffman, J., concur.