

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE K.R.B.

: JUDGES:
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:
: Hon. John W. Wise, P.J.
: Hon. Patricia A. Delaney, J.
: Hon. Andrew J. King, J.
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: Case No. 2023 AP 04 0024
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: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County
Court of Common Pleas, Juvenile
Division, Case No. 21JN00009

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

August 14, 2023

APPEARANCES:

For Mother-Appellant:

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ASSISTANT PUBLIC DEFENDER

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For TCJFS-Appellee:

LISA VITALE ARNOLD
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Delaney, J.

{¶1} Mother-Appellant R.M. appeals the March 28, 2023 judgment entry of the Tuscarawas County Court of Common Pleas, Juvenile Division, which granted permanent custody of her minor child, K.R.B. to Appellee Tuscarawas County Job and Family Services.

FACTS AND PROCEDURAL HISTORY

{¶2} Mother-Appellant R.M. and Father P.B. are the biological parents of K.R.B., born in March 2019, and P.B., born in April 2020. Mother and Father are not married.

{¶3} On January 13, 2021, Appellee Tuscarawas County Job and Family Services (“TCJFS”) filed a complaint for neglect, dependency, and custody of K.R.B. and P.B. with the Tuscarawas County Court of Common Pleas, Juvenile Division. In the complaint, TCJFS alleged they became involved due to reports of Mother using methamphetamine. Mother had a prior history with TCJFS after her two children were placed with family members in 2016. Since December 2020, Father had been incarcerated in Pennsylvania on federal drug charges for methamphetamine. Father was arrested during a police raid on the home while Mother and the children were present. Father eventually pled guilty to complicity to distribute methamphetamines and was to be sentenced in June 2023 where he could be sentenced to a term of 5 to 40 years in federal prison.

{¶4} On January 7, 2021, TCJFS reported to Maternal Grandmother’s home where Mother was residing with the children. The home was found to be in deplorable condition with insects, seven cats, and the smell of cat urine. The children were dirty, with matted hair and bed bugs. Mother admitted to using methamphetamine in the past two

weeks. After a drug screen, she tested positive for amphetamine, methamphetamine, and THC.

{¶5} The juvenile court appointed a Guardian ad Litem for the children on January 13, 2021.

{¶6} The juvenile court held an adjudicatory hearing on February 12, 2021. Via judgment entry filed February 22, 2021, Mother and Father stipulated to the dependency and neglect findings. The children were placed in the temporary custody of TCJFS, where they were placed together in a Tuscarawas County foster home. The court adopted Mother's case plan, which required her to attend counseling, participate in random drug screens, get a psychological assessment, attend Goodwill Parenting classes, earn sufficient income, obtain housing, and meet with the caseworker monthly. Father was not on a case plan because he was in prison. Mother was not permitted visitation with the children.

{¶7} The juvenile court held a review hearing on March 15, 2021. The children were ordered to remain in the temporary custody of TCJFS. If Mother received a second negative drug screen, Mother would be permitted supervised visitation with the children.

{¶8} Mother completed her psychological assessment on April 26, 2021. She started using marijuana at the age of 13 and was using methamphetamine for approximately 8 years but stopped using in January 2021. Mother had a very traumatic childhood. She had her first pregnancy at age 13 and then a second child while still a teenager. Those children were removed from her care. The assessment diagnosed Mother with limited reasoning ability affecting her ability to parent independently, stimulant abuse disorder, persistent depressive disorder, generalized anxiety disorder, and

dependent personality traits. The assessment recommended the Goodwill Parenting program, a drug treatment program, random drug testing, increased visitation with children if Mother remained drug-free and followed the case plan, contact the Developmental Disability Board for services, and individual therapy.

{¶9} The children were placed in the same foster home. P.B. required the use of a helmet for seven to eight months to correct his flattened skull. P.B. was not meeting developmental markers. The children had behavioral issues.

{¶10} After a review hearing on April 26, 2021, the juvenile court ordered that the children remain in the custody of TCJFS. Mother had completed a drug and alcohol assessment and was in IOP. She completed her psychological assessment and was doing individual therapy. She was scheduled for Goodwill Parenting classes. She had gotten a job and applied for housing.

{¶11} The GAL report prepared for the Semi-Annual Review stated that Mother had remained off drugs, completed IOP in June 2021, obtained new employment, obtained her driver's license, and was approved for subsidized housing. Mother remained in a relationship with Father while he was in prison. Mother was scheduled to start Goodwill Parenting in September 2021. Mother's supervised visitation with the children was not positive because Mother did not know how to parent. She had trouble engaging with the children. Mother yelled at the children to change their behaviors, instead of redirection.

{¶12} On December 7, 2021, TCJFS filed a motion to extend temporary custody to allow Mother to complete her case plan services.

{¶13} After the annual review hearing on January 10, 2022, the juvenile court granted the motion to extend temporary custody for 6 months. Mother would continue supervised visitation with the children.

{¶14} In April 2022, the GAL reported that Mother's visitation with the children had improved. Mother was still living in Maternal Grandmother's home, which was in unsafe condition. On June 7, 2022, TCJFS filed a motion to extend temporary custody for 6 months to allow Mother to find housing and complete services.

{¶15} After a review hearing on July 11, 2022, the juvenile court granted the motion to extend temporary custody for 6 months. Mother was permitted to have visitation expanded to monitored and unsupervised at the discretion of TCJFS. Mother did not successfully complete the in-class Goodwill Parenting, but TCJFS permitted Mother to participate in the Goodwill home-based program since she had obtained appropriate housing in July 2022. For Mother to obtain housing, TCJFS paid the deposit, first month's rent, and Mother's \$3,000 past due electric bill.

{¶16} The matter came on for a review hearing on October 17, 2022. Prior to the hearing, the GAL filed his report on October 11, 2022. The GAL reported that Mother and the children's situations had deteriorated. Mother had stopped individual counseling in August 2022. Mother had an apartment, but it appeared she was using the apartment only for visitation and was living with a friend from work because Mother was afraid to stay alone. The apartment was very bare and had limited food. Goodwill provided Mother with vouchers to pay for supplies for the home. When the GAL visited the apartment, Mother was at the apartment with a man who she could identify only by his first name. Mother was allegedly still in a relationship with Father.

{¶17} Mother was discharged from the Goodwill home-based parenting program and her visitation was changed to supervised due to concerns with care for the children. K.R.B. reported that Mother spanked P.B. during visitation. One of the Goodwill supervisors witnessed P.B. choke on a hot dog served by Mother after the supervisor cautioned Mother that she was not serving him the hot dog correctly. The supervisor observed the children eating crayons. P.B. and K.R.B. had been placed in separate foster homes. When the children were together, they fought and were difficult to manage. P.B. was exhibiting significant developmental delays and was going to be tested for autism. He was expelled from his preschool due to his negative behaviors. K.R.B. was faring better in her foster home, but the foster parent noted that she was dirty and not fed when she returned from visitation. K.R.B. had started exhibiting self-harming behaviors.

{¶18} On December 1, 2022, TCJFS filed a motion to modify prior disposition to permanent custody. TCJFS argued the children could not be placed with Mother or Father within a reasonable time. Further, the children had been in the temporary custody of the TCJFS for more than 12 of the previous 22 months. On February 21, 2023, Mother filed a motion to return custody or return custody with protective supervision. In support of her motion, she argued that P.B.'s behaviors were not due to Mother's lack of care because P.B.'s behaviors were the same with his foster family.

{¶19} The GAL issued his final report on March 14, 2023. He noted the children's behaviors and Mother's parenting improved during supervised visitation. He recommended permanent custody be granted to TCJFS.

{¶20} On March 21, 2023, the juvenile heard Mother's motion, and the motion of TCJFS. During the hearing, witnesses testified to the facts as stated above. An issue that

was raised at the hearing was familial placement for the children. After the case was opened, the caseworker sought names and contact information for friends, family, and next of kin. Mother indicated there was no one who could take placement of the children. She did not want K.R.B. to be placed with her older children due to allegations of sexual abuse by the children's Maternal Grandfather. Even though Father was in a relationship with Mother, Father was still married to his first wife. The first wife, who lived in Washington state, showed interest in placement of the children. Identification of the first wife was too late in the custodial process for the ICPC home study. There was also the complication that first wife and Father were still married because if Father's custody to the children was terminated, Father could not have contact with the children. TCJFS through the Connect to Family Specialist contacted 44 family members to provide support for parents and the children. Only 13 responded to be a support to the parents in their care for the children.

{¶21} On March 28, 2023, the juvenile court issued its judgment entry detailing its findings of fact and conclusions of law. The court found that the children could not be placed with Mother or Father within a reasonable time despite the reasonable efforts of TCJFS. The court further found it was in the best interests of the children to be placed in the permanent custody of TCJFS.

{¶22} It is from this judgment that Mother now appeals.

ASSIGNMENTS OF ERROR

{¶23} Mother raises one Assignment of Error:

"THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING
PERMANENT CUSTODY TO TUSCARAWAS COUNTY JOB AND FAMILY

SERVICES AS THERE WAS NOT CLEAR AND CONVINCING EVIDENCE
TO SUPPORT THE AWARD WAS IN THE CHILD'S BEST INTEREST."

ANALYSIS

Standard of Review

{¶24} R.C. 2151.414(B)(1) states permanent custody may be granted to a public or private agency if the trial court determines by clear and convincing evidence at a hearing held pursuant to division (A) of R.C. 2151.414 that it is in the best interest of the child and 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.

(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.

{¶25} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) 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.

{¶26} 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.

{¶27} If the child is not abandoned or orphaned, the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. 2151.414(E), the trial court must consider all relevant evidence before making this determination. The trial court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the factors enumerated in R.C. 2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶28} The Ohio Supreme Court has defined “clear and convincing evidence” as “[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being

more than a mere preponderance, but not to the extent of such certainty, as required beyond a reasonable doubt, as in criminal cases.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954); *In re: Adoption of Holcomb*, 18 Ohio St.3d 361, 481 N.E.2d 613 (1985). In reviewing whether the trial court based its decision upon clear and convincing evidence, “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.” *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990); see also *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978). If the trial court's judgment is “supported by some competent, credible evidence going to all the essential elements of the case,” a reviewing court may not reverse that judgment. *Schiebel*, 55 Ohio St.3d at 74.

{¶29} Moreover, “an appellate court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the findings of fact and conclusion of law.” *Id.* Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984): The 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. Deferring to the trial court on matters of credibility is “crucial in a child custody case, where there may be much evident in the parties’ demeanor and attitude that does not translate to the record well.” *Davis v. Flickinger*, 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997); see also, *In re: Christian*, 4th Dist. Athens

No. 04CA10, 2004-Ohio-3146; *In re: C.W.*, 2nd Dist. Montgomery No. 20140, 2004-Ohio-2040.

R.C. 2151.414(B)(1)(d)

{¶30} In the instant case, R.C. 2151.414(B)(1)(d) applies to the children, to wit, the children were in the temporary custody of TCJFS for twelve or more months of a consecutive twenty-two-month period. TCJFS received temporary custody of the children on January 12, 2021. Adjudication was on February 12, 2021. TCJFS filed its motion to modify disposition to permanent custody on December 1, 2022.

{¶31} 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 D.H.*, 5th Dist. Licking No. 2022 CA 00025, 2022-Ohio-4495, ¶ 59 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.

Best Interests

{¶32} In her sole Assignment of Error, Mother contends the juvenile court abused its discretion when it awarded permanent custody of the child to TCJFS because the clear and convincing evidence did not support it was in the child's best interest. We disagree.

{¶33} 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.

{¶34} A child's best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security. We have frequently noted, “[t]he 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 E.H.*, 5th Dist. Stark No. 2022CA00007, 2022-Ohio-1682, 2022 WL 1579856, ¶ 101 quoting *In re Mauzy Children*, 5th Dist. No. 2000CA00244, 2000 WL 1700073 (Nov. 13, 2000), citing *In re Awkal*, 85 Ohio App.3d 309, 316, 642 N.E.2d 424 (8th Dist. 1994). 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 TCJFS.

{¶35} The facts of this case showed that both children displayed challenging behavioral issues with their foster families, as well as when they were with Mother. The record described the children as a “handful,” which was a milder way of describing the children's behaviors. The evidence showed that P.B. was biting, kicking, and spitting on his preschool classmates, which necessitated his dismissal. K.R.B. was pulling her hair

out, slamming her head into the wall, and abusing family pets. The children were placed in separate foster homes where they could receive individual attention. Mother contends on appeal that based on the children's behaviors in foster care, the children would be in as good a placement with Mother as they would be with TCJFS and foster placement. A review of the record does not support Mother's arguments.

{¶36} The GAL's meticulous and frequent reports and the juvenile court's multiple review hearings presented an exceptionally detailed timeline of this case. With support from TCJFS, Goodwill Parenting, and supervised visitation, Mother was admirably able to complete a majority of her case plan objectives. She got herself off drugs. She obtained not one but two jobs. She got her driver's license. Supervised visitation with the children started to improve. Mother did not successfully complete in-class Goodwill Parenting but because she had progressed so well in her case plan objectives, Mother was permitted to do Goodwill Parenting on an in-home basis. As soon as Mother was weaned off agency support through independent housing and in-home visitation, Mother's progress with the children stopped. She did not live in her apartment because she was afraid to live alone. There was limited food and supplies in the apartment even though Mother was given vouchers to help purchase such items. The Goodwill in-home supervisor observed that Mother struggled with the children's behaviors, such as knowing how to safely feed them, preventing them from eating crayons, or how to discipline without physical punishment. The foster parents reported the children returned from in-home visitation dirty, hungry, and emotionally dysregulated. When supervised visitation started again, the children's behaviors improved.

{¶37} In this case, Mother was given the opportunity and she did not demonstrate she could meet the exceptional needs of these children without intensive supervision from TCJFS. The children are bonded with their foster families. The foster families are independently responding to the children's complicated behavioral issues with therapy, a different preschool provider, and an assessment to determine if P.B. is autistic.

{¶38} We find the juvenile court did not err in finding it was in the best interest of the children to be placed in the permanent custody of TCJFS. Mother's sole Assignment of Error is overruled.

CONCLUSION

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

By: Delaney, J.,

Wise, John, P.J. and

King, J., concur.