

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE P.B.

: JUDGES:
:
: 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 0027
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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 Father-Appellant:

PAUL HERVEY
4700 Dressler Ave. NW
Canton, OH 44718

For TCJFS-Appellee:

LISA VITALE ARNOLD
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Delaney, J.

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

FACTS AND PROCEDURAL HISTORY

{¶1} Mother R.M. and Father-Appellant 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.

{¶2} 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.

{¶3} 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.

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

{¶5} 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.

{¶6} 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.

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 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.

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

{¶12} 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.

{¶13} 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.

{¶14} 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.

{¶15} 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.

{¶16} 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.

{¶17} 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.

{¶18} 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.

{¶19} 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. Father provided his brother's name, his nephew's name, and a few friends to the Connect to Family Specialist. Only 13 responded to be a support to the parents in their care for the children. Two people indicated they would be willing to take placement of the children, first wife and the wife of Maternal Grandfather.

{¶20} 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.

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

ASSIGNMENT OF ERROR

{¶22} Father raises one Assignment of Error:

“THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING PERMANENT CUSTODY DESPITE CASEPLAN COMPLIANCE AND APPROPRIATE RELATIVE PLACEMENTS.”

ANALYSIS

{¶23} In his sole Assignment of Error, Father contends the juvenile court abused its discretion when granted permanent custody to TCJFS despite (1) Mother’s case plan compliance and (2) appropriate relative placements. We disagree.

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.

Reasonable Efforts

{¶32} Father contends in his appeal that TCJFS did not make reasonable efforts to reunify Mother with children. He argues TCJFS relied on Goodwill Parenting to

determine whether or not to reunify the family. When Goodwill Parenting discharged Mother as unsuccessful from in-class and in-home parenting programs, Father argues TCJFS moved for permanent custody. Father states in his appellant's brief that TCJFS "tried to solve a million-dollar problem with a cookie-cutter, ten-cent solution." (Appellant's Brief, page 10). We find the detailed record shows the opposite. Father provided this Court with a cookie-cutter, ten-cent description of a million-dollar problem.

{¶33} If the child is not abandoned or orphaned, as is the case here, the focus turns to whether the child cannot be placed with parents within a reasonable period of time or should not be placed with 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.

{¶34} We find TCJFS presented sufficient competent, credible evidence to demonstrate that the children cannot or should not be placed with Mother as notwithstanding reasonable efforts on behalf of the agency, Mother failed to remedy the problems that initially caused removal of the children from the home.

{¶35} Father was not on a case plan because he was incarcerated for the entirety of this case. Mother admirably completed the majority of her case plan. Mother, however, did not complete her case plan as to parenting. There is no factual dispute that Mother was unsuccessful in both in-class and in-home Goodwill parenting classes. Mother's parenting skills improved during the case duration, but when she was weaned off supervised visitation, the evidence showed that Mother struggled to manage the children

while the children's already challenging behaviors deteriorated. Based on Mother's psychological assessment, Mother tested in the extremely low range for cognitive capacity to use reason and judgment. Mother had trouble with abstract reasoning, limited ability to concentrate, poor judgment, and significant difficulty learning. The psychologist testified that with Mother's diagnose, it would be extremely difficult for Mother to parent.

{¶36} A parent's successful completion of the terms of a case plan is not dispositive on the issue of reunification. The ultimate question under R.C. 2151.414(A)(1) is whether the parent has substantially remedied the conditions that caused the child's removal. *In re A.D.*, 5th Dist. Muskingum No. CT2022-0091, 2023-Ohio-1731, ¶ 63 citing *Matter of J.N.*, 2022-Ohio-4373, ¶ 50. In this case, despite the efforts of TCJFS in cooperation with Goodwill, Mother did not substantially remedy the conditions that caused the children's removal.

Familial Placement

{¶37} While Father raises the issue of familial placement in his sole Assignment of Error, Father does not make any argument as to familial placement in his appellant's brief. "If an argument exists that can support [an] assignment of error, it is not this court's duty to root it out." *In re G.H.*, 5th Dist. Licking No. 2022 CA 00026, 2022-Ohio-4496, 2022 WL 17665076, ¶ 44 quoting *Fifth Third Bank, National Association v. Hillman*, 5th Dist. Delaware No. 22-CAE-06-0050, 2022-Ohio-4338, 2022 WL 17413722, ¶ 22 quoting *Thomas v. Harmon*, 4th Dist. Lawrence No. 08CA17, 2009-Ohio-3299, ¶ 14, quoting *State v. Carman*, 8th Dist. Cuyahoga No. 90512, 2008-Ohio-4368, ¶ 31.

{¶38} Father'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.