

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE EZ.D., ET AL.

:

No. 110447

Minor Children

:

:

JOURNAL ENTRY AND OPINION

JUDGMENT: DISMISSED

RELEASED AND JOURNALIZED: September 2, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD18903521 and AD18903522

Appearances:

Michael E. Stinn, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Joseph C. Young, Assistant Prosecuting Attorney, *for appellee.*

FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} Appellant P.G. (“appellant”), the former legal custodian of minor children Ez.D. and Eg.D., brings the instant appeal challenging the juvenile court’s judgment granting permanent custody of the two children to the Cuyahoga County Department of Children and Family Services (“CCDCFS” or “agency”). Specifically, appellant contends that the juvenile court’s decision to grant permanent custody to CCDCFS was against the manifest weight of the evidence and not in the best interest

of the children. Appellant further argues that the juvenile court erred by denying the motion to convert the trial into a pretrial and violated the due process rights of J.L., the father of Ez.D., by failing to ensure that he had notice of the hearing. After a thorough review of the record and law, we dismiss the appeal because appellant lacks standing.

I. Factual and Procedural History

{¶ 2} In 2015, the minor children, Ez.D. and Eg.D., were removed from their mother's care, adjudicated dependent, and temporary custody was granted to CCDCFS. Both children were later committed to the legal custody of appellant, who is the paternal grandmother of Ez.D. Appellant was the legal custodian of the children until she returned the children to CCDCFS.

{¶ 3} On March 15, 2018, CCDCFS filed a complaint alleging that the children were neglected and dependent and requesting a disposition of permanent custody to CCDCFS. CCDCFS became involved because the children were no longer with appellant and were without an appropriate caregiver because appellant was no longer able to care for them, and the children's parents were also inappropriate caregivers.

{¶ 4} The juvenile court held a hearing on CCDCFS's motion, after which it ordered the children placed in the predispositional temporary custody of CCDCFS. Appellant appeared at the dispositional hearing and entered stipulations after which the children were placed in the temporary custody of CCDCFS and the permanency plan was identified as "reunification with mother."

{¶ 5} CCDCFS later moved for an extension of the temporary order, noting that it intended “to reunify the children with the mother and father following this request for a six-month extension, if mother and father achieve the remaining objectives of the case plan.” The court granted the extension of temporary custody, noting that “[t]he custody plan for the child[ren] is return to parents.”

{¶ 6} CCDCFS filed a motion for a second extension of temporary custody, which was granted, and later filed a motion to modify temporary custody to permanent custody.

{¶ 7} After a trial date was set, CCDCFS moved to convert the trial date to a pretrial, due to questions as to whether J.L., the father of Ez.D., had received sufficient notice. The court addressed the agency’s motion at the commencement of proceedings, at which time counsel for CCDCFS stated that “if the [c]ourt deems that notice to be reasonable, the [a]gency is ready to proceed today, your [h]onor. Thank you. And we do have service of summons on [J.L.]” It was then noted that J.L. had not been in communication with the agency in relation to Ez.D. since being served with summons in the present action.

{¶ 8} The court observed that the permanent custody motion had been pending for over a year and inquired of the others present as to their positions on the agency’s motion to convert. Counsel for the children’s mother indicated that she was ready to proceed although she had not had recent contact with mother. Appellant had joined in CCDCFS’s motion to convert the trial to a pretrial, asking that the agency have more time to investigate her as an option for custody of the

children. However, at trial, counsel for appellant stated that she was “ready to proceed. My client’s position has always been in support of the mother[.]”

{¶ 9} The court denied the motion to convert, and trial was held. CCDCFs presented social worker Esther Lucas as its sole witness. Neither the children’s mother nor appellant offered any witnesses. The children’s Guardian ad Litem (“GAL”), Pamela Hawkins, presented her recommendation in which she indicated that, based on the facts and circumstances of the case, she believed that it was in the best interests of the children for the court to grant permanent custody to the agency. GAL Hawkins further testified that she had made efforts to contact appellant but that she had not had any interaction with appellant in the two months prior to trial.

{¶ 10} Following trial, the court journalized an entry for each child in which it terminated all parental rights and ordered the children placed in the permanent custody of CCDCFs. Within the orders, the juvenile court made specific findings with regard to the children’s parents to support its determination that the children could not be placed with one of the parents within a reasonable time or should not be placed with either parent.

{¶ 11} With regard to appellant, the juvenile court considered appellant’s request for additional time to engage in services designed for reunification. The court denied appellant’s request, finding that it would not serve the best interests of the children because appellant has not demonstrated a commitment toward the children or a willingness to provide an adequate permanent home for them.

{¶ 12} The court considered all of the relevant criteria in R.C. 2151.414(D)(1) and found that a grant of permanent custody to the agency was in the best interests of the children. The court further included findings related to each of the four statutory conditions listed at R.C. 2151.414(D)(2).

{¶ 13} Appellant moved to stay the order of permanent custody pending appeal, which the court denied. Appellant then filed the instant appeal, raising four assignments of error for our review:

1. The trial court abused its discretion in denying CCDCFS and appellant's motion to convert trial to pretrial. The trial court's order granting permanent custody to [CCDCFS] should be reversed.
2. The trial court denied J.L. due process such that it did not have jurisdiction to award permanent custody of either of the children to CCDCFS. The trial court's order granting permanent custody of the children should be reversed.
3. CCDCFS failed to prove by clear and convincing evidence that permanent custody of the children was in their best interest. Therefore, the trial court's order granting permanent custody of the children to CCDCFS should be reversed.
4. The trial court's award of permanent custody of the children to CCDCFS is against the manifest weight of the evidence. The trial court's order granting permanent custody of the children should be reversed.

II. Law and Analysis

{¶ 14} Prior to considering any of appellant's assignments of error, we must first address the issue raised by CCDCFS as to whether appellant has standing to bring the instant appeal.

{¶ 15} The agency contends that appellant lacks standing because she is not a parent of either child and is merely a former legal custodian. The matter before the juvenile court related to a request for permanent custody that involved termination of parental rights under R.C. 2151.414.

{¶ 16} R.C. 2151.414 sets forth a two-part test for determining whether permanent custody should be granted to an agency. Under this statute, the issue is whether or not “it is in the best interests of the child to permanently terminate *parental* rights and to grant permanent custody to the agency that filed the motion.” (Emphasis added.) Appellant was a former legal custodian of the children and is the paternal grandmother of one of the children; however, because she is not a parent, she lacks standing to challenge such an order. *See In re Th. W.*, 8th Dist. Cuyahoga Nos. 85241 and 85278, 2005-Ohio-2852, ¶ 13-14.

{¶ 17} In order to seek and obtain custody of the children, appellant was required to follow the protocol set forth in R.C. 2151.353(A)(3), which states in pertinent part that “if a child is adjudicated an abused, neglected, or dependent child, the court may * * * award legal custody of the child to either parent or to any other person who, *prior to the dispositional hearing, files a motion requesting legal custody of the child.*” (Emphasis added.) There is no indication in the record that appellant filed such a motion, and since she chose not to appropriately request legal custody, the juvenile court was without any authority to grant her custody. Consequently, she cannot now appeal the termination of parental rights and award

of permanent custody to the agency.¹ See *In re E.C.*, 8th Dist. Cuyahoga No. 103968, 2016-Ohio-4870, ¶ 18 (noting that “appeal lies only on behalf of a party aggrieved by the final order appealed from”), quoting *In re Hiatt*, 86 Ohio App.3d 716, 721, 621 N.E.2d 1222 (4th Dist.1993). Appellant lacks standing to pursue this appeal, and it must be dismissed.

III. Conclusion

{¶ 18} Because appellant is not the biological parent to any of the children and failed to file a motion to request legal custody during the course of the proceedings, she is without standing to challenge the juvenile court’s award of custody to CCDCFS.

{¶ 19} Accordingly, the appeal is dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
MICHELLE J. SHEEHAN, J., CONCUR

¹ We note that the agency’s social worker testified that appellant would “absolutely” be considered for adoption of the children if CCDCFS was granted permanent custody.