

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE L.P., ET AL.	:	
	:	Nos. 110834 and 110835
A Minor Child	:	
	:	
[Appeal by Father]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: January 26, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-20-908426 and AD-20-908427

Appearances:

Bartos & Company, LPA, and David S. Bartos, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Zachary J. LaFleur, Assistant Prosecuting Attorney, *for appellee.*

MARY J. BOYLE, J.:

{¶ 1} In this consolidated appeal, appellant-Father (“Father”), appeals from the juvenile court order awarding permanent custody of his children, L.P. (d.o.b. 01/15/10) and Y.R. (d.o.b. 01/16/14), to the Cuyahoga County Division of Children and Family Services (“CCDCFS”). Father challenges his adjudication, and

argues that CCDCFS failed to present sufficient evidence to establish a basis upon which permanent custody could be granted and that trial counsel was ineffective. For the reasons set forth below, we affirm.

I. Facts and Procedural History

{¶ 2} This matter began in March 2019 when the children were removed from the home pursuant to an ex parte order and a subsequent complaint that was filed by CCDCFS alleging that the children were abused and dependent. CCDCFS requested a disposition of permanent custody. This complaint could not be resolved within the statutory time frame and the matter was refiled three separate times before the October 2020 complaint was filed in the instant case.

{¶ 3} In the October 2020 complaint, CCDCFS alleges that the children have been in the uninterrupted custody of CCDCFS since March 19, 2019, and that Father physically abused the children, used marijuana, and had ongoing investigations in Michigan after one of his other children passed away while in his care. The complaint further alleges the Mother was a homicide victim in November 2016 and the children were removed from Father's care by the state of Michigan in December 2016 due to his being a suspect in Mother's homicide.¹ The children were placed in maternal grandmother's care at that time. The complaint also alleges that in June 2017 Father was convicted of obstructing official business in Mother's homicide case in the Cleveland Municipal Court. The children were returned to

¹ At some point prior to Mother's homicide in November 2016, the family moved to Ohio. (Apr. 14, 2021, tr. 80.)

Father in February 2018 by the Cuyahoga County Domestic Relations Court.² The complaint further alleges that Father failed to address the mental and emotional needs of the children to address the grief of the death of their Mother.

{¶ 4} The court held an adjudicatory hearing on January 4, 2021. After the conclusion of this hearing, the court issued a judgment entry on January 12, 2021, adjudicating the children abused, neglected, and dependent and found “that the allegations of the complaint have been proven by clear and convincing evidence.” (Judgment Entry, Jan. 12, 2021.) On April 15, 2021, a disposition hearing was held on CCDCFS’s request for permanent custody, at which the trial court heard testimony and received evidence.³ On August 19, 2021 the court issued a corrected judgment in the case of each child. The court issued an extensive judgment entry in which it terminated Father’s parental rights and found by clear and convincing evidence that it is in the best interests of the children to be placed in the permanent custody of CCDCFS. The court further found that the children have been in agency custody for two years; cannot be placed with either of their parents within a reasonable period of time or should not be placed with either parent; the children do not meet the requirements for a planned permanent living arrangement; and no relative or other interested person has been identified in a motion for legal custody.

² Father and Mother ended their marriage by dissolution in March 2016 in the Cuyahoga County Domestic Relations Court. (Apr. 15, 2021, tr. 226.)

³ At the start of the disposition hearing, both CCDCFS and Father requested that the court incorporate all the evidence admitted during the adjudication hearing.

The court adopted the permanency plan, which consists of adoption by the maternal grandmother.

{¶ 5} Father now appeals, raising the following three assignments of error for review:

Assignment of Error One: The trial court committed reversible and prejudicial error in finding that the adjudication of abuse met the clear and convincing evidence standard where the manifest weight and sufficiency of the evidence, based upon inadmissible privileged evidence and/or hearsay, in total did not support a factual finding of abuse sufficient to support a complaint for permanent custody.

Assignment of Error Two: The trial court erred in finding the CCDCFS made reasonable efforts to reunify the children with their father thus its “best interest analysis” was fatally flawed in determining that the disposition of permanent custody was warranted in this case.

Assignment of Error Three: Father’s attorney was ineffective.

II. Law and Analysis

A. Adjudicatory Hearing

{¶ 6} In the first assignment of error, Father challenges the juvenile court’s adjudicatory rulings, arguing that the court relied on unauthenticated documents and hearsay evidence, and improperly permitted abuse and neglect history from Michigan. The court’s January 2021 adjudicatory ruling, however, constitutes a final appealable order from which no appeal was taken. This court has previously stated:

“An adjudication by a juvenile court that a child is ‘neglected’ or ‘dependent’ * * * followed by a disposition awarding temporary custody to a public children services agency * * * constitutes a ‘final order’ within the meaning of R.C. 2505.02 and is appealable to the court of appeals * * *.” *In re Murray*, 52 Ohio St.3d 155, 556 N.E.2d 1169 (1990), syllabus. Furthermore, “an appeal of an adjudication order of

abuse, dependency, or neglect of a child and the award of temporary custody to a children services agency pursuant to R.C. 2151.353(A)(2) must be filed within 30 days of the judgment entry pursuant to App.R. 4(A).” *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, 900 N.E.2d 607, ¶ 18. Although the parent still retains the right to appeal any award of permanent custody to a children services agency, that appeal is limited to issues that arose after the adjudication order. *Id.*

In re S.C., 8th Dist. Cuyahoga No. 102611, 2015-Ohio-4766, ¶ 14; *see also In re A.N.F.*, 10th Dist. Franklin No. 17AP-905, 2018-Ohio-3689, ¶ 26.

In re B.P., 8th Dist. Cuyahoga Nos. 107732 and 107735, 2019-Ohio-2919, ¶ 9. *See In re K.K.*, Slip Opinion No. 2022-Ohio-3888, ¶ 58, (“[A]n appeal of an adjudication order of abuse, dependency, or neglect of a child and the award of temporary custody to a children services agency pursuant to R.C. 2151.353(A)(2) must be filed within 30 days of the judgment entry pursuant to App.R. 4(A).” *In re H.F.* [at ¶ 18].”).

{¶ 7} Therefore, the first assignment of error is overruled.

B. Permanent Custody

{¶ 8} In the second assignment of error, Father argues that the juvenile court erred by finding that CCDCFS made reasonable efforts to reunify the children and determining that an award of permanent custody to CCDCFS was in the best interest of the children when he completed all aspects of his case plan.

{¶ 9} When reviewing a juvenile court’s judgment in child custody cases, the Ohio Supreme Court has stated that the “court’s decision in a custody proceeding is subject to reversal only upon a showing of abuse of discretion.” *In re A.J.*, 148 Ohio St.3d 218, 2016-Ohio-8196, 69 N.E.3d 733, ¶ 27, citing *Davis v. Flickinger*, 77 Ohio St.3d 415, 417, 674 N.E.2d 1159 (1997).

{¶ 10} We recognize that the “[t]ermination of parental rights is an alternative of last resort but is sanctioned when necessary for the welfare of a child.” *In re M.S.* at ¶ 7, citing *In re Wise*, 96 Ohio App.3d 619, 624, 645 N.E.2d 812 (9th Dist.1994). Before a court may terminate parental rights and award permanent custody of a child to the proper agency, it must determine by clear and convincing evidence that (1) one of the factors enumerated in R.C. 2151.414(B)(1)(a)-(e) applies, and (2) an award of permanent custody is in the child’s best interest. R.C. 2151.414(B).⁴

{¶ 11} “‘Clear and convincing evidence’ is evidence that ‘will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.’” *In re C.B.*, 8th Dist. Cuyahoga No. 92775, 2011-Ohio-5491, ¶ 28, quoting *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954). “Where clear and convincing proof is required at trial, a reviewing court will examine the record to determine whether the trier of fact had sufficient evidence before it to satisfy the requisite degree of proof.” *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 24, citing *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990).

{¶ 12} “An appellate court will not reverse a juvenile court’s termination of parental rights and award of permanent custody to an agency if the judgment is supported by clear and convincing evidence.” *In re J.M-R.*, 8th Dist. Cuyahoga No.

⁴ “Only one of the factors must be present to satisfy the first prong of the two-part analysis for granting permanent custody to an agency.” *In re D.H.*, 8th Dist. Cuyahoga No. 110505, 2021-Ohio-3821, ¶ 27, citing *In re L.W.*, 8th Dist. Cuyahoga No. 104881, 2017-Ohio-657.

98902, 2013-Ohio-1560, ¶ 28, quoting *In re Jacobs*, 11th Dist. Geauga No. 99-G-2231, 2000 Ohio App. LEXIS 3859, 11 (Aug. 25, 2000), citing *In re Taylor*, 11th Dist. Ashtabula No. 97-A-0046, 1999 Ohio App. LEXIS 2620 (June 11, 1999). See *In re AR.S.*, 2021-Ohio-1958, 174 N.E.3d 28 (8th Dist.)

a. R.C. 2151.414(B)(1)(a)-(e) Factors

{¶ 13} We begin our analysis by noting that we will consider the best interest factors even though Father’s argument does not reference a single statutory factor. Rather, Father contends that he “completed the aspects of his case plan and [benefited], however the agency failed to refer the case for reunification therapy.”

{¶ 14} Here, the juvenile court found that the children “cannot be placed with one of the child’s parents within a reasonable time or should not be placed with the either parent” as set forth in R.C. 2151.414(B)(1)(a). In cases where R.C. 2151.414(B)(1)(a) applies, courts look to the factors set forth in R.C. 2151.414(E) to determine whether a child cannot be placed with a parent within a reasonable time or should not be placed with a parent.

{¶ 15} In the judgment entry granting permanent custody, the juvenile court considered that the children have been removed from the home for two years and no longer qualify for temporary custody and Father “has committed abuse against the child[ren] or caused or allowed the child to suffer neglect and the Court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child[ren]’s placement with the child’s parent a threat to the child[ren]’s safety.” (R.C. 2151.414(E)(15)).

{¶ 16} Only one of the enumerated factors under R.C. 2151.414(E) is required to exist for the court to make the finding that “the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.” *In re L.W.*, 8th Dist. Cuyahoga No. 107708, 2019-Ohio-1343, ¶ 29, quoting *In re Glenn*, 139 Ohio App.3d 105, 113, 742 N.E.2d 1210 (8th Dist.2000), and citing *In re R.M.*, 8th Dist. Cuyahoga Nos. 98065 and 98066, 2012-Ohio-4290, ¶ 14 (the existence of only one factor will support the court’s finding that the child cannot be reunified with the parent within a reasonable time).

{¶ 17} The court’s R.C. 2151.414(E)(15) finding is supported by the evidence in the record. Tonyetta Miller, the Dean of Culture at Citizens Academy, which is the school where L.P. and Y.R. were enrolled, testified that when L.P. showed her a bruise on March 18, 2019, L.P. stated that Father punched her in the thigh. L.P. also disclosed that Father bit Y.R.’s fingers because of Y.R.’s bedwetting. L.P. wrote a book, “My Sad Life” in which she claims that Father is scary and he hurts her. She further claims that he punches and chokes her and Y.R.

{¶ 18} Testimony also revealed that Father had been the subject of previous complaints of abuse and neglect in Michigan. In 2013, Father and Mother (who is now deceased) admitted that L.P. and her older sibling, N.P., were exposed to an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of the parents. Father and Mother admitted to engaging in domestic violence in the presence of the minor children. L.P. and N.P. were removed from their parents’ care, but reunified with Mother a month later at disposition.

Father, however, was only given the authority to have supervised visitation with the children. Three years later, Father made another admission relative to abuse and neglect regarding L.P., N.P., and Y.R. Father admitted to the allegation that he used physical discipline on N.P. that left bruise marks on the child. Father was ordered to have a psychological examination and a parenting assessment. All the children remained with Mother, but Father was only given visitation subject to the discretion of the Michigan Child Protective Service workers.

{¶ 19} The juvenile court conducted an in camera interview with both children. The interviews were done separately with the court and the guardian ad litem (“GAL”) present. The information the court received from those interviews corroborated many of the claims the children had previously made regarding Father’s treatment and their fear of him.

{¶ 20} Father did complete a psychological assessment, several parenting courses, and attended some individual counseling services. He did not follow up with more expansive assessment recommended by the counseling agency. Dr. Douglas Waltman, Ph.D., who conducted an assessment in the court’s diagnostic clinic opined that “there’s a high likelihood that he will mistreat children under his care.” (Apr. 15, 2021, tr. 107.) Dr. Waltman based his opinion on the fact that “there’s a documented history of [Father] abusing his children on multiple occasions.” (Apr. 15, 2021, tr. 106). And “on the fact that he is unwilling to accept responsibility for any mistakes or any misconduct that he ever does, and also he is a person who has a high need to dominate other people, and that if any persons,

children under his care, oppose his will, he's going to do what he needs to do in order to get compliance." (Apr. 15, 2021, tr. 106.)

{¶ 21} Collectively, this evidence supports the juvenile court's finding that Father failed to remedy the conditions that caused the children to be placed outside the home. Father's actions demonstrated that Father committed abuse against the children. Having found that the trial court properly concluded that at least one of the R.C. 2151.414(B)(1) conditions apply, we must next determine whether the trial court appropriately found by clear and convincing evidence that granting permanent custody to the agency is in the children's best interest.

b. The Children's Best Interest

{¶ 22} In determining the best interest of a child, the juvenile 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 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.

R.C. 2151.414(D)(1).

{¶ 23} Although a trial court is required to consider each relevant factor under R.C. 2151.414(D)(1) in deciding to award permanent custody, “[t]here is not one element that is given greater weight than the others pursuant to the statute.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. This court has stated that only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re L.W.*, 2019-Ohio-1343, at ¶ 39, citing *In re Moore*, 8th Dist. Cuyahoga No. 76942, 2000 Ohio App. LEXIS 3958 (Aug. 31, 2000).

{¶ 24} Here, the juvenile court found that a grant of permanent custody is in the best interest of the children. The court further found, with respect to both children, that

[u]pon considering the interaction and interrelationship of the child with the child’s parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period; 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 the report of the Guardian ad Litem; the Court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the child and the child cannot be placed with one of the child’s parents within a reasonable time and should not be placed with either parent.

{¶ 25} As stated above, the evidence demonstrated that the children were removed from the home in March 2019 and had been in continuous placement at the time of the trial in April 2021. Due to the number of refiles on the initial

complaint, the children remained in the continuous care and custody of CCDCFS, and were placed with their maternal grandmother after the initial removal. (Apr.15, 2021, tr. 160-162.)

{¶ 26} Moreover, the GAL recommended that the court find permanent custody to be in the children’s best interests. The GAL stated that from his perspective, “[F]ather has not done what’s needed to be done on his case plan to establish a relationship with the children, and most importantly, the children are so traumatized by the things that have happened that they don’t want to go back to their father. They want to stay with their maternal grandmother.” (Apr. 15, 2021, tr. 341.) The GAL concluded that “the best interest of the children would be that permanent custody be granted and they stay with their grandmother.” (Apr. 15, 2021, tr. 341-342.)

{¶ 27} Based on the foregoing, we find there is clear and convincing evidence in the record to support the juvenile court’s determination that permanent custody to CCDCFS is in the children’s best interests. Accordingly, we find that the court did not abuse its discretion in determining that permanent custody of the children be awarded to CCDCFS.

c. Reunification Efforts

{¶ 28} With regard to Father’s reunification argument, Father contends that there was insufficient evidence to find that CCDCFS made reasonable reunification efforts. Father claims that there was “little difficulty communicating with” him after August 2019. The record, however, establishes that the communication between

Father and CCDCFS was inconsistent despite CCDCFS's continued efforts to contact Father. In September 2019, the caseworker sent Father a letter that included the caseworker's information and availability. The caseworker also included the case plan objectives and indicated that CCDCFS still needed a release of information to make the appropriate referrals for him to engage in the necessary services. Taking Father's work schedule into consideration, the caseworker included information for Moore Counseling because this particular facility offered all the services that Father needed in one location. Father did not respond to the letter and the caseworker continued to make multiple phone calls to obtain Father's availability. (Apr. 15, 2021, tr. 141-144.)

{¶ 29} In October 2019, the caseworker called Father and told him that she would make herself available until 9.00 p.m. to meet for the drug test. The caseworker called Father in November 2019 but did not recall any communication with him in December 2019. By the end of 2019, Father had not made any progress on his case plan. Father did not speak with the caseworker in January 2020. The caseworker contacted Father in February 2020, which was followed by a lapse in communication due to COVID. The caseworker did not speak to Father again until she called him in June 2020. This pattern continued through January 2021. (Apr. 15, 2021, tr. 144-156.) Based on the foregoing, there is sufficient evidence in the record to find that CCDCFS made reasonable efforts to reunite Father with the children.

{¶ 30} Accordingly, the second assignment of error is overruled.

C. Ineffective Assistance of Counsel

{¶ 31} In the third assignment of error, Father argues his counsel was ineffective for failing to object to the admission of certain exhibits at the disposition hearing that the court admitted at the adjudicatory hearing. More specifically, Father objects to the admission of books written by the children detailing their trauma and abuse allegations against Father.

{¶ 32} To establish ineffective assistance of counsel, Father must demonstrate that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defendant so as to deprive him of a fair trial. *State v. Trimble*, 122 Ohio St.3d 297, 2009-Ohio-2961, 911 N.E.2d 242, ¶ 98, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The failure to prove either prong of this two-part test makes it unnecessary for a court to consider the other prong. *State v. Madrigal*, 87 Ohio St.3d 378, 389, 721 N.E.2d 52 (2000), citing *Strickland* at 697.

{¶ 33} Here, Father has failed to demonstrate prejudice. He alleges that the court could not have found that the children were abused without the books. Father's claim is unsupported. The court had ample additional evidence in support of its decision through the testimony of the other witnesses and the GAL's recommendation. Furthermore, trial counsel cross-examined all of CCDCFS's witnesses and presented a complete case of her own. Therefore, we decline to find ineffective assistance of counsel.

{¶ 34} The third assignment of error is overruled.

III. Conclusion

{¶ 35} Father's appeal is limited to issues that arose after the adjudication order. The juvenile court's findings and its judgments granting permanent custody of the children to CCDCFs are supported by clear and convincing evidence in the record. Furthermore, Father cannot demonstrate that counsel was ineffective.

{¶ 36} Accordingly, judgment is affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

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

MARY J. BOYLE, JUDGE

LISA B. FORBES, P.J., and
EILEEN T. GALLAGHER, J., CONCUR