

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE I.B.	:	
	:	No. 112407
Minor Child	:	
	:	
[Appeal by Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 13, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-19906698

Appearances:

Sylvester Summers, Jr., Co., LPA, and Sylvester Summers, Jr., *for appellant.*

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

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Appellant-Mother (“Mother”) appeals from the juvenile court’s decision awarding permanent custody of her minor child, I.B., to the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “the agency”) after

a hearing on the agency's motion to modify temporary custody to permanent custody. After a careful review of the record, we affirm the juvenile court's decision.

{¶ 2} In her single assignment of error, Mother contends that the juvenile court's judgment was not supported by clear and convincing evidence demonstrating there were adequate grounds to grant permanent custody and that the decision was therefore against the manifest weight of the evidence.

I. R.C. 2151.414 Factors

{¶ 3} Pursuant to R.C. 2151.414, a juvenile court may grant permanent custody of a child to an agency if, after a hearing, the court determines by clear and convincing evidence that one of the factors enumerated in R.C. 2151.414(B)(1)(a) through (e) applies, and that an award of permanent custody is in the child's best interest. This court will not reverse a juvenile court's award of permanent custody as being against the manifest weight of the evidence when the record contains competent, credible evidence by which the court could have found that the essential statutory elements for an award of permanent custody have been established by clear and convincing evidence. *In re B.P.*, 8th Dist. Cuyahoga Nos. 107721 and 107735, 2019-Ohio-2919, ¶ 22. Clear and convincing evidence is evidence that produces in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. *In re T.B.*, 8th Dist. Cuyahoga No. 99931, 2014-Ohio-2051, ¶ 28.

{¶ 4} Upon considering the R.C. 2151.414(B) factors, the juvenile court found that I.B. had been in agency custody for 12 or more months of a consecutive

22-month period (R.C. 2151.414(B)(1)(d)), and that he cannot be placed with one of his parents within a reasonable time or should not be placed with either parent (R.C. 2151.414(B)(1)(a)).

{¶ 5} These findings are supported by the record. With respect to the “12-of-22” finding, the record reflects that the complaint was filed in May 2019, when I.B. was removed from Mother’s care and placed in the emergency temporary custody of the agency. Under R.C. 2151.414(B), a child is considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated an abused, neglected, or dependent child pursuant to R.C. 2151.28, or the date that is 60 days after the removal of the child from the home. The record reflects that I.B. was adjudicated dependent on September 6, 2019, and that he has remained in agency custody since his removal in May 2019. Accordingly, the juvenile court’s finding that I.B. had been in agency custody for 12 or more months of a consecutive 22-month period is supported by competent and credible evidence.

{¶ 6} Regarding the juvenile court’s other finding, in order to find that a dependent child cannot be placed with one of his parents within a reasonable time or should not be placed with either parent, the juvenile court is required to find that one or more of the factors set forth in R.C. 2151.414(E) is applicable. The juvenile court found that R.C. 2151.414(B)(E)(1) applied in this case; specifically, that following I.B.’s placement outside the home and notwithstanding reasonable case planning and diligent efforts by the agency to assist his parents to remedy the problems that initially caused I.B. to be placed outside the home, the parents had

continuously and repeatedly failed to substantially remedy the conditions that caused him to be placed outside the home.

{¶ 7} The record supports this finding. Mother's CCDCFS caseworker testified at trial that CCDCFS developed and implemented a case plan to promote the permanency plan of I.B.'s reunification with Mother. The case plan initially included services to address Mother's issues with her physical health, substance abuse, and housing needs, and was later amended by court order to also include mental health services for Mother.

{¶ 8} The caseworker testified that after she was assigned to the case in March 2022, she referred Mother to New Visions, and although Mother began intensive outpatient and mental health services there in July 2022, she was inconsistent in submitting to drug screens and engaging in her treatment services and was unsuccessfully discharged from New Visions in September 2022. The caseworker testified further that Mother was hospitalized in October 2022, at which time hospital staff indicated they had concerns about Mother's substance abuse because of her admission that she "smoked crack." They referred Mother to Alliant Treatment Center for inpatient treatment but Mother left the center within a week.

{¶ 9} After leaving Alliant, Mother began services with Moore Counseling in November 2022, but she was unsuccessfully discharged from that program only two weeks later. Mother then refused the caseworker's attempts to assist her, claiming that she "was going to do everything on her own." Approximately two weeks later, Mother contacted the caseworker and asked for assistance. In response,

the caseworker referred Mother back to New Visions, and from there Mother was referred to three other agencies for treatment services. Nevertheless, at the time of trial in January 2023, Mother had not successfully completed a drug treatment program. She tested positive for cocaine in a hair screen done in May 2022, and again in October 2022, although she tested negative in several urine screens she submitted after October 2022. The caseworker testified that it was impossible to gain a documented history of Mother's sobriety, however, because Mother would start services, stop, start again, and then stop. The caseworker testified that she tried to meet with Mother in December 2022, but Mother refused to meet with her, even though she claimed at that time to have been "clean for two and a half months." The caseworker also testified that because of Mother's unwillingness to work with her, the agency was unable to verify as of trial that Mother was engaged in mental health treatment.

{¶ 10} The caseworker testified that the agency referred Mother to Community Collaborative for housing assistance and that Alliant Treatment Center was also willing to assist Mother with finding housing but she left the treatment program there within a week. Mother's caseworker said she suggested that Mother apply for low-income housing and that she go to a shelter because the caseworker was aware that the shelters have additional housing resources that Mother could have utilized. In November 2022, Mother told the caseworker that she was living with a relative, but the caseworker was unable to investigate that living situation because Mother was unwilling to work with her. According to the caseworker,

Mother has “a very long history of evictions” and had not had stable housing since March 2022, when the caseworker was assigned to the case.

{¶ 11} In addition to Mother’s failure to obtain adequate housing, address her mental health needs, and demonstrate sobriety, the juvenile court found that I.B.’s father had abandoned him (R.C. 2151.414(E)(10)), a finding supported by the record. The caseworker testified that Father refused to cooperate with the agency to establish paternity, had not engaged in any CCDCFS services, was not interested in visiting I.B., and had not had any contact with I.B. for at least 90 days at the time of trial.

{¶ 12} Finally, in considering other relevant factors pursuant to R.C. 2151.414(E)(16), the juvenile court found that I.B. has special educational needs and that supervision, parental support, and consistency are paramount to his well-being, a finding also supported by the record. Mother’s caseworker testified that I.B. has a learning disability that requires an individualized program, and that he receives individual counseling. Additionally, in offering his recommendation for permanent custody, I.B.’s guardian ad litem told the juvenile court that his investigation indicated there was no home to which I.B. could return and that he needed finality and a home that was safe and secure.

{¶ 13} In light of the evidence demonstrating Mother’s failure to complete her case plan objectives, the alleged father’s abandonment of I.B., and I.B.’s special needs, the trial court’s finding that I.B. cannot be placed with either parent within a

reasonable time or should not be placed with either parent is supported by clear and convincing evidence and thus, not against the manifest weight of the evidence.

II. Best Interest Determination

{¶ 14} Having determined pursuant to R.C. 2151.414(B)(1)(a) that I.B. could not be placed with either parent within a reasonable period or should not be placed with them, as well as finding under R.C. 2151.414(B)(1)(d) that I.B. had been in agency custody for 12 of 22 months of a consecutive period, the trial court was then required to make a “best interest” determination pursuant to R.C. 2151.414(D). We review a trial court’s “best interest” determination for an abuse of discretion. *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47.

{¶ 15} R.C. 2151.414(D)(1) requires that in determining the best interest of the child, the court must consider all relevant factors, including but not limited to those listed in R.C. 2151.414(D)(1). Although a trial court is required to consider each of the R.C. 2151.414(D)(1) factors in making its permanent custody determination, “there 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 the enumerated factors needs to be resolved in favor of the award of permanent custody. *In re T.B.*, 8th Dist. Cuyahoga No. 110130, 2021-Ohio-2448, ¶ 25, citing *In re Moore*, 8th Dist. Cuyahoga No. 76942, 2000 Ohio App. LEXIS 3958, 12 (Aug. 31, 2000).

{¶ 16} Alternatively, and applicable to this case, R.C. 2151.414(D)(2) sets forth a list of four factors which, if each is satisfied, *requires* a finding that

permanent custody is in the child's best interest. Under R.C. 2151.414(D)(2), "permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency" if all of the following apply:

- (a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.
- (b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.
- (c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.
- (d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

{¶ 17} The trial court included within its journal entry awarding permanent custody explicit findings for each of the R.C. 2151.414(D)(2) factors. Regarding the first factor, the trial court found that "one or more of the factors in division (E) of section R.C. 2151.414 of the Revised Code exist and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent." As discussed above, the record contains competent, credible evidence supporting this finding.

{¶ 18} With respect to the second factor – whether the child has been in an agency's custody for two years or longer and no longer qualifies for temporary custody – the trial court found that I.B. was in continuous agency custody since his

removal in May 2019, and that he no longer qualifies for temporary custody because the complaint was filed in May 2019 and under R.C. 2151.415(D)(4), a court may not order temporary custody to continue beyond the earlier of two years after the date on which the complaint was filed or the child was first placed in shelter care.

{¶ 19} The third factor of R.C. 2151.414(D)(2) is satisfied if a child does not meet the requirements for a planned permanent living arrangement under R.C. 2151.353(A)(5), which provides that the court may order a planned permanent living arrangement for a child of I.B.’s age (11 years old) if the child is unable to function in a family-like setting due to physical, mental, or psychological problems and thus, must remain in residential or institutional care for the foreseeable future. There was no evidence to suggest that I.B. could not function in a family-like setting; in fact, his guardian ad litem advised the court that he was “thriving” in his foster care placement. Thus, as the trial court found, I.B. did not meet the requirements for a planned permanent living arrangement pursuant to R.C. 2151.353(A)(5).

{¶ 20} Finally, the fourth factor of R.C. 2151.414(D)(2) is satisfied if no relative or interested person filed or was identified prior to the hearing in a motion for legal custody of the child. The record reflects, as the juvenile court found, that no motion for legal custody of I.B. was filed in the juvenile court prior to trial by any individual. Additionally, the caseworker testified that no relatives who were able to accept legal custody of I.B. had been identified.

{¶ 21} Because the trial court properly found that all the factors in R.C. 2151.414(D)(2) apply in this case, permanent custody was necessarily in I.B.’s best

interest and the juvenile court was required to grant permanent custody to the agency. See *In re P.J.*, 8th Dist. Cuyahoga No. 110121, 2021-Ohio-1821, ¶ 26 (“Because all the factors under R.C. 2151.414(D)(2) apply, permanent custody was necessarily in the best interest of the child, and the juvenile court was required to grant permanent custody to CCDCFS.”). Because the juvenile court found pursuant to R.C. 2151.414(D)(2) that it was in I.B.’s best interest to be placed in the permanent custody of CCDCFS, we need not consider whether the trial court properly applied the R.C. 2151.414(D)(1) factors regarding best interest. *In re A.S.*, 8th Dist. Cuyahoga Nos. 110422 and 110472, 2021-Ohio-3829, ¶ 42 (appellate court does not need to determine if trial court properly applied the R.C. 2151.414(D)(1) factors if it found that permanent custody to the agency was in the child’s best interest under R.C. 2151.414(D)(2)). Accordingly, because the trial court’s findings regarding the factors in R.C. 2151.414(D)(2) are supported by clear and convincing evidence, the juvenile court did not abuse its discretion in finding that permanent custody was in I.B.’s best interest, and the award of permanent custody was not against the manifest weight of the evidence.

{¶ 22} Mother’s assertion that there are “just too many unknowns” in this case to award permanent custody to the agency is refuted by the record. When asked by Mother’s counsel during cross-examination whether “it was fair to say * * * there are a lot of unknowns” about Mother’s compliance with her case plan, the caseworker responded, “I would like to say that, however, no. Mom, she hasn’t been consistent with anything since I started the case.” Our review of the record

demonstrates that Mother was indeed not consistent with complying with her case plan and did not follow through with the services she was offered.

{¶ 23} Mother's assertion that she should be granted more time to remedy the conditions that led to I.B.'s removal is likewise without merit. Under R.C. 2151.415(D)(4), a court may not order an existing temporary custody order to continue beyond two years of the date the complaint was filed. Because the complaint was filed on May 30, 2019, the allowable time for temporary custody had elapsed as of the January 2023 hearing, and the trial court thus had no discretion to grant a six-month extension of temporary custody to allow Mother to comply with her case plan requirements and demonstrate she could adequately care for I.B.

{¶ 24} Because the record contains clear and convincing evidence from which the juvenile court properly found that the essential statutory elements for an award of permanent custody were established, we affirm the juvenile court's judgment awarding permanent custody of I.B. to the agency. The assignment of error is overruled.

{¶ 25} Judgment 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.

KATHLEEN ANN KEOUGH, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., and
SEAN C. GALLAGHER, J., CONCUR

