

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE A.A. :
A Minor Child : No. 112423
[Appeal by M.C., 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-21-911206

Appearances:

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

Leslie E. Wargo, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} Appellant-mother (“Mother”), M.C., appeals from the January 25, 2023 judgment of the Cuyahoga County Court of Common Pleas, Juvenile Division, terminating her parental rights and granting permanent custody of her minor child, A.A. (d.o.b. 10/22/2008), to appellee, the Cuyahoga County Division of Children and Family Services (“the Agency”). On appeal, Mother asserts the juvenile court

erred in granting permanent custody of the minor child to the Agency. For the reasons that follow, we affirm the judgment of the trial court.

Facts and Procedural History

{¶ 2} A.A. was in the Agency's custody for over two years between June 2019 and November 2021 because of physical abuse and neglect. The trial court denied the Agency's complaint for permanent custody and granted Mother legal custody in November 2021. A.A.'s presumed father is deceased.

{¶ 3} On December 14, 2021, the Agency filed a complaint for permanent custody and predispositional temporary custody, alleging that A.A. was neglected and dependent after a domestic violence incident between Mother, A.A., and A.A.'s brother. The complaint and amended complaint averred, in part, the following particulars: 1) The child has mental health and behavioral issues which Mother needs to appropriately address. 2) Less than a month after the child was reunified with Mother, the child experienced homicidal and suicidal ideations that required law enforcement intervention and medical treatment. 3) Mother needs to learn appropriate judgment and parenting skills to provide a safe home for the child free from potential sexual or other abuse. 4) Mother needs to provide for the educational needs of the child. 5) The child had not attended school during the period of reunification in November 2021. 6) There is significant conflict between A.A. and Mother. 7) Mother and child need to appropriately resolve conflicts. 8) Mother needs to appropriately address her substance abuse issue. 9) Alleged father is deceased.

{¶ 4} The trial court held an emergency hearing on December 15, 2021, and found that continued residence or return to Mother was not in A.A.’s best interest. The Agency was granted emergency custody of A.A. The juvenile court appointed a guardian ad litem (“GAL”) for the minor child and appointed counsel for Mother.

{¶ 5} On September 13, 2022, the trial court held an adjudicatory hearing and Mother stipulated to an amended complaint. A.A. was adjudicated neglected and dependent, and the case was continued for disposition. The trial court ordered the Agency to file a case plan within 30 days. The case plan goal was reunification and included services to address Mother’s substance abuse, domestic violence, parenting, family counseling, and A.A.’s mental health issues. Among other efforts, Mother was referred to Moore Counseling for a parenting program to learn appropriate judgment and parenting skills to deal with A.A.’s behaviors. The Agency also made referrals for substance abuse treatment and recommended in-patient treatment. Worker testified that Mother did not understand A.A.’s mental health diagnoses and had not been able to obtain mental health treatment when A.A. was in her custody. A.A. had not attended school and refused to take prescribed medications.

{¶ 6} On January 25, 2023, the trial court held a dispositional hearing. The following parties testified at the disposition hearing: the CCDCFS social worker (“worker”), Mother, and the guardian ad litem (“GAL”) for A.A.¹

¹ A.A. was in a treatment facility in Florida at the time of the dispositional hearing.

{¶ 7} The trial court made the following findings in its judgment entry:

A.A. has been in the temporary custody of the Cuyahoga County Division of Children and Family Service for 12 or more months of a consecutive 22-month period. The child has been in numerous foster homes, residential, and secured facilities since 2019. She has been removed from Mother's care since December 2021 and in agency custody for all but approximately 17 days since 2019. These numerous placements and removals have been necessary due to the child's physical aggression towards Mother, foster parents, other foster children, residents, and staff at the facilities and placements. The child's behavior poses a serious risk of harm to Mother and other family members should the child be permitted to return home. Following the placement of A.A. outside of her home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused A.A. to be placed outside the home, Mother and alleged father, prior to his death, have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. Mother has a chemical dependency that is so severe that it makes her unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year from the time the court holds the hearing. Mother tested positive for cocaine and failed to participate in treatment recommendations. Alleged father is deceased. The trial court found that there were no suitable relatives willing and able to provide substitute care for A.A.

{¶ 8} The court found that A.A.'s continued residence in or return to the home of Mother would be contrary to her best interest. The court further found that the Cuyahoga County Division of Children and Family Services had made reasonable efforts to prevent the removal of the child, to eliminate the continued removal of the child from her home, or to make it possible for the child to return home. The Agency made referrals for Mother to engage in parenting, substance abuse, domestic violence, and family counseling. The trial court determined that Mother did not complete several services and tested positive for cocaine on three occasions.

{¶ 9} The trial court subsequently terminated Mother's parental rights and granted the Agency permanent custody of A.A.

{¶ 10} Mother filed a timely appeal and raises a single assignment of error.

Assignment of Error

The trial court erred when it awarded permanent custody to the Agency as the judgment is against the manifest weight of the evidence and is not supported by clear and convincing evidence.

Standard of Review

{¶ 11} A juvenile court's decision to grant permanent custody will not be reversed as being against the manifest weight of the evidence when the record contains some competent, credible evidence from which the court could have found that the essential elements for permanent custody had been established by clear and convincing evidence. *In re B.P.*, 8th Dist. Cuyahoga No. 112332, 2023-Ohio-1377, ¶ 29.

{¶ 12} 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 proven. *In re B.P.* at ¶ 30, quoting *In re T.B.*, 8th Dist. Cuyahoga No. 99931, 2014-Ohio-2051, ¶ 28, quoting *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

Law and Analysis

{¶ 13} A parent has a fundamental right in the care, custody and management of his or her children, *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982), and the right to raise one's own child is a basic civil right. *In re Hayes*, 79 Ohio St.3d 46, 679 N.E.2d 680 (1997). However, this right is not absolute. It is always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed. *In re N.T.*, 8th Dist. Cuyahoga Nos. 111924, 111925, 2023-Ohio-1291, ¶ 30, quoting *In re L.D.*, 2017-Ohio-1037, 86 N.E.3d 1012, ¶ 29 (8th Dist.), quoting *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979).

{¶ 14} Because the termination of parental rights is “the family law equivalent of the death penalty in a criminal case,” it is “an alternative of last resort.” *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14, and *In re Gill*, 8th Dist. Cuyahoga No. 79640, 2002-Ohio-3242, ¶ 21. However, termination is sanctioned when the welfare of a child requires it. *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 7, citing *In re Wise*, 96 Ohio App.3d

619, 624, 645 N.E.2d 812 (9th Dist.1994). All children have the right, if possible, to parenting from either natural or adoptive parents that provides support, care, discipline, protection and motivation. *In re N.T.* at ¶ 31, quoting *In re J.B.* at ¶ 66, quoting *In re Hitchcock*, 120 Ohio App.3d 88, 102, 696 N.E.2d 1090 (8th Dist.1996).

{¶ 15} The termination of parental rights is governed by R.C. 2151.414, which sets forth a two-part test the court must apply when deciding whether to award permanent custody to a public services agency. With respect to the first prong,

a court must find by clear and convincing evidence one of the following five factors:

(a) [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. [In making this determination, the juvenile court must consider the factors set forth in R.C. 2151.414(E)].

(b) The child is abandoned;

(c) The child is orphaned and no relatives are able to take permanent custody of the child;

(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[;] or

(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 Ohio or another state.

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

In re E.C., 2020-Ohio-3807, 156 N.E.3d 375, ¶ 38 (8th Dist.).

{¶ 16} Only one of these factors must be satisfied to find that a child cannot or should not be placed with a parent. *In re Ca.T.*, 8th Dist. Cuyahoga No. 108969,

2020-Ohio-579, ¶ 27, citing *In re V.C.*, 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991, at ¶ 42. Here, the juvenile court found that two factors under the first prong were met.

{¶ 17} First, pursuant to R.C. 2151.414(B)(1)(a), the court determined that A.A. could not be placed with either of her parents within a reasonable time or should not be placed with her parents.

{¶ 18} Pursuant to R.C. 2151.414(E), the juvenile court found that following the placement of A.A. outside of her home and notwithstanding reasonable case planning and diligent efforts by the Agency to assist Mother in remedying the problems that initially caused A.A.'s removal from the home, Mother had not adequately addressed the issues that caused A.A.'s removal from the home.

In [considering] whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

In re Schaefer, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 40. The trial court specifically found that 1) Mother tested positive for cocaine in December 2021, at the time of A.A.'s emergency removal. She also tested positive for cocaine in August and November of 2022. 2) Mother did not engage in substance abuse treatment. 3) Mother did not utilize the referrals made in the case plan to develop parenting skills needed to handle A.A.'s serious behavioral issues. 4) Mother did not participate in domestic violence classes. 5) Mother did not obtain mental health

treatment for A.A. or ensure A.A. attended school when she was in Mother's care. 6) A.A.'s father is deceased, and there were no suitable alternative family placements. 7) Mother did not complete the case plan services. As a result, she had not addressed the conditions causing A.A.'s initial removal.

{¶ 19} The second applicable factor is R.C. 2151.414(B)(1)(d). The court found that A.A. had been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period. Our review of the record reveals that the juvenile court's findings under the first prong are supported by competent and credible evidence that A.A. has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period and despite diligent case planning and diligent efforts by the agency to assist the parent to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. R.C. 2151.414(B)(1)(d). Accordingly, we find that the juvenile court properly concluded that A.A. could not or should not be returned to Mother's custody within a reasonable time.

{¶ 20} Our review of the record reveals that the juvenile court's findings under the first prong are supported by competent and credible evidence. Finding no error with the juvenile court's findings under the first prong, we consider the court's findings under the second prong.

Best Interest of the Child

{¶ 21} The second prong requires the juvenile court to find by clear and convincing evidence that granting permanent custody to the agency is in the best interest of the child. We review a trial court’s best interest determination under R.C. 2151.414(D) for an abuse-of-discretion. *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47. A trial court’s failure to base its decision in consideration of the best interest of the child constitutes an abuse-of-discretion. *In re R.S.*, 8th Dist. Cuyahoga No. 111353, 2022-Ohio-4387, ¶ 45, quoting *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, at ¶ 60. “The term ‘abuse-of-discretion’ connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 22} R.C. 2151.414(D)(1) sets forth best-interest factors that the court must consider when making the best-interest determination under R.C. 2151.414(D)(1), including:

- (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 * * *;
- (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 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.

{¶ 23} In determining permanent custody of A.A., the record demonstrates that the juvenile court concluded by clear and convincing evidence that granting permanent custody to the Agency was in A.A.'s best interest. First, the court considered the interaction and interrelationship of A.A. with her parents, siblings, relatives, and foster parents. The GAL testified that A.A. had a strong bond with Mother. Despite their bond, there was high conflict and a history of domestic violence. The social worker testified that she was particularly concerned that a serious domestic violence incident, requiring law enforcement and medical intervention occurred just days after A.A. was reunified with Mother. The court also considered A.A.'s need for residential treatment due to her violent reactions toward Mother, siblings, foster parents, peers, and staff in group homes and residential placements.

{¶ 24} Next, the court considered A.A.'s wishes. The GAL testified that A.A. suffered from cognitive disabilities and functioned, developmentally, at a much younger age than a 14-year old. A.A. expressed love for her mother but went back and forth between wanting to return to her mother's care and wanting to be in the permanent custody of the Agency. The GAL also testified that A.A. may not have understood what "permanent custody" actually meant.

{¶ 25} The court considered A.A.'s custodial history and determined that A.A. had been in the temporary custody of a public children services agency or

private child placing agency under one or more separate orders of disposition for 12 or more months of a consecutive 22-month period.

{¶ 26} The court considered A.A.'s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody. The social worker testified that Mother had not obtained mental health treatment for A.A. during the period of reunification and that she did not understand A.A.'s mental health conditions or needs. A.A. disrupted numerous placements during the majority of her time in agency custody and only made progress during a period of residential treatment at Belmont Pines. The court considered A.A.'s intensive treatment needs in a secure residential treatment facility in Florida and Mother's unwillingness to acknowledge A.A.'s mental health needs.

{¶ 27} The court properly considered the testimony and written report of the GAL. The GAL testified that she changed her recommendation from the Agency maintaining temporary custody to granting the Agency permanent custody because Mother had made no progress on case plan services relating to drug treatment and domestic violence.

{¶ 28} After a careful review of the record, we find that the trial court properly determined by clear and convincing evidence that a grant of permanent custody was in the best interests of A.A. 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. Mother's sole assignment of error is overruled.

{¶ 29} 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.

EMANUELLA D. GROVES, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR