

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE I.Z.	:	
A Minor Child	:	No. 112621
[Appeal by Mother]	:	
	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 31, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD21901638

Appearances:

Christina Joliat, *for appellant.*

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

MICHAEL JOHN RYAN, J.:

{¶ 1} Appellant-mother, “Mother,” appeals the trial court’s judgment granting permanent custody of child I.Z., born in 2007, to the Cuyahoga County

Division of Children and Family Services (“CCDCFS” or “agency”). For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} On March 1, 2021, CCDCFS filed a complaint alleging that the child was dependent and requesting temporary custody. At the time, the child was in the legal custody of his maternal grandfather, having previously been removed from Mother’s care in 2019. The agency alleged the child was having serious emotional and behavioral issues that grandfather was unable to address.

{¶ 3} On August 3, 2022, the agency moved for permanent custody. A pretrial was held on September 22, 2022, and Mother made her first appearance in the case; up until that time she had not appeared at any hearings or CCDCFS meetings. Mother appeared for an October 26, 2022 pretrial after the trial court granted her motion to be transported from jail. Mother failed to appear for a November 21, 2022 hearing. The trial court continued the case for trial for February 17, 2023.

{¶ 4} On February 17, 2023, Mother appeared for trial. Shortly before trial, counsel for Mother requested a continuance to secure the testimony of one of Mother’s service providers. The trial court denied counsel’s motion and proceeded with trial.

{¶ 5} The CCDCFS caseworker assigned to the family, Creeshia Murray, testified that she had been assigned to the case for over a year. In that time, Murray had not had the opportunity to see Mother and the child interact. There was no visitation in place because, until recently, Mother’s whereabouts were unknown, and

Murray still did not know Mother's address. Murray testified that the child's father had established paternity but was not involved in his child's life, had not engaged with the agency, and his whereabouts were unknown.¹

{¶ 6} In March 2021, the agency removed the child from his grandfather's care because the grandfather could no longer care for him. The agency developed a case plan for grandfather with a goal of reunification; mother was not on the case plan because her whereabouts were unknown, and she was not involved in her child's life. Grandfather began services but told the agency he was unable to complete services because of his work schedule; grandfather also indicated he no longer wanted the child placed in his home.

{¶ 7} After Mother appeared at the September 22, 2022 hearing, the agency attempted to engage Mother in services and added her to the case plan. Murray made drug screens, a drug assessment and requirement to follow treatment recommendations, and supervised visitation part of the case plan. Murray sent Mother a release so the agency could secure her treatment records from her provider, Portage Area Recovery House, but Mother did not respond. According to Recovery House, Mother did not complete its treatment program. The agency was never able to verify Mother's sobriety.

{¶ 8} The child has been diagnosed with attention deficit hyperactivity disorder and post-traumatic stress disorder and was engaged in counseling. He has

¹ The child's father is not a party to this appeal; accordingly, our discussion does not address the allegations or findings relating to the father.

severe behavioral problems, ran away from his legal custodian, was truant from school, and refused to take his prescribed medication. Since 2019, Mother's contact with the child was inconsistent; she would often go months without contacting him. The GAL acknowledged that the child wished to live with his Mother but recommended that a grant of permanent custody to the agency is in the child's best interest.

{¶ 9} The trial court noted on the record that it had conducted an in camera interview with the child, with the child's attorney and the GAL present.

{¶ 10} The trial court found that the child's continued residence in or return to the home of his legal custodian would be contrary to his best interest, granted the agency's motion, and placed the child in the permanent custody of CCDCFS.

{¶ 11} Mother filed a timely notice of appeal and raises the following assignments of error, which we discuss out of order:

I. The trial court's order granting permanent custody to the agency was not based upon sufficient clear and convincing evidence, was against the manifest weight of the evidence and it erred in finding permanent custody to be in the best interest of the child.

II. The trial court's denial of mother's request for a continuance was material and in error.

No Abuse of Discretion in Denying Motion to Continue

{¶ 12} Shortly prior to trial, Mother requested a continuance so that she could secure the appearance of one of her service providers. The trial court denied the request. In her second assignment of error, Mother argues that the trial court abused its discretion in denying the continuance because the provider was

unavailable to testify on the trial date, counsel needed to secure Mother's treatment records, and counsel wanted to try to "secure any additional witnesses."

{¶ 13} App.R. 12(A)(2) states that "the court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)." App.R. 16(A)(7) provides that "[t]he appellant shall include in its brief * * * [a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies."

{¶ 14} Here, Mother provides no citation to legal authority, statutes, or parts of the record to support this assigned error. Thus, it is within our discretion to decline to address it. Even if we were to consider the assignment of error, the trial court did not abuse its discretion in denying the continuance.

{¶ 15} It is within the broad discretion of the trial court whether to grant or deny a motion for a continuance. *State v. Froman*, 162 Ohio St.3d 435, 2020-Ohio-4523, 165 N.E.3d 1198, ¶ 91, citing *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981), syllabus. This broad discretion is also afforded to the trial court in a permanent custody hearing. *In re A.W.*, 8th Dist. Cuyahoga No. 109239, 2020-Ohio-3373, ¶ 25.

{¶ 16} Juv.R. 23 provides that “[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties.” Loc.R. 35(C) of the Cuyahoga County Court of Common Pleas, Juvenile Division, provides:

No case will be continued on the day of trial or hearing except for good cause shown, which cause was not known to the party or counsel prior to the date of trial or hearing, and provided that the party and/or counsel have used diligence to be ready for trial and have notified or made diligent efforts to notify the opposing party or counsel as soon as he/she became aware of the necessity to request a postponement. This rule may not be waived by consent of counsel.

{¶ 17} Mother failed to engage with her own counsel until two weeks prior to trial. CCDCFS had been attempting to engage Mother in services for nearly two years at the time of trial, to no avail. After Mother made her initial appearance in the case in September 2022, the agency attempted to engage Mother and have her sign a release for her records with her service provider, but Mother failed to do so. Additionally, contrary to Mother’s argument on appeal that she wanted to call additional witnesses beyond the service provider, no other potential witnesses were ever identified. Finally, the record demonstrates that the other interested parties — Mother's counsel, the agency caseworker, the GAL, the child’s attorney, and agency counsel — were present and ready to proceed with trial.

{¶ 18} On this record, the court did not abuse its discretion in denying Mother’s motion for a continuance. The second assignment of error is overruled.

Permanent Custody

{¶ 19} “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 M.J.*, 8th Dist. Cuyahoga No. 100071, 2013-Ohio-5440, ¶ 24.

{¶ 20} Pertinent to this appeal, “[c]ourts apply a two-pronged test when ruling on permanent custody motions.” *In re De.D.*, 8th Dist. Cuyahoga No. 108760, 2020-Ohio-906, ¶ 16. “To grant the motion, courts first must find that any of the factors in R.C. 2151.414(B)(1)(a)-(e) apply. *Id.* “Second, courts must determine that terminating parental rights and granting permanent custody to CCDCFS is in the best interest of the child or children using the factors in R.C. 2151.414(D).” *Id.*

{¶ 21} With respect to the first prong of the permanent-custody analysis, we find competent, credible evidence supports the juvenile court’s finding pursuant to R.C. 2151.414(B)(1)(d) that the child has been in an agency’s temporary custody for 12 or more months of a consecutive 22-month period. The child was placed in the temporary custody of CCDCFS on June 2, 2021. The agency filed for permanent custody on August 3, 2022; therefore, the child was in the temporary custody of the agency for 14 months at the time of the filing of the permanent custody motion.

{¶ 22} Although Mother claims that the child can be placed with her within a reasonable time with protective supervision, because the time requirements under R.C. 2151.414(B)(1)(d) were satisfied, it was unnecessary for the court to determine whether any additional factor under R.C. 2151.414(B)(1) was applicable

to the circumstances presented in this case.² *In re An.M.*, 8th Dist. Cuyahoga No. 111368, 2022-Ohio-2873, ¶ 33.

{¶ 23} Next, we turn to the best interest of the child. As it applies in this case, the trial court considered the following factors:

(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 * * * for twelve or more months of a consecutive twenty-two-month period, or 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)(a)-(e).

{¶ 24} When determining the best interest of a child pursuant to R.C. 2151.414(D), “[t]he court must consider all of the elements in R.C. 2151.414(D) as well as other relevant factors. There is not one element that is given greater weight than the others pursuant to the statute.” *In re A.C.*, 8th Dist. Cuyahoga No. 111975,

² The trial court also made a finding that the child “cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent” supported by findings as set forth in R.C. 2151.414(E)(1)-(4), (14).

2023-Ohio-938, ¶ 16, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Although the trial court is required to consider each of the factors in making its permanent custody determination, “only one of these enumerated factors needs to be resolved in favor of the award of permanent custody.” *In re S.C.*, 8th Dist. Cuyahoga No. 102350, 2015-Ohio-2410, ¶ 30, citing *In re Moore*, 8th Dist. Cuyahoga No. 76942, 2000 Ohio App. LEXIS 3958 (Aug. 31, 2000), citing *In re Shaeffer Children*, 85 Ohio App.3d 683, 621 N.E.2d 426 (3d Dist.1993). We review a juvenile court’s determination of a child’s best interests under R.C. 2151.414(D) for abuse of discretion. *In re An.M.* at ¶ 34, citing *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47.

{¶ 25} The trial court considered the child’s interactions pursuant to R.C. 2151.414(D)(1)(a). The child’s contact with Mother was sporadic, and she would often go months without contacting him. The agency was unable to establish a visitation schedule for the Mother to see the child because the Mother would not engage with the agency for much of the time the child was in agency custody. Neither the agency social worker nor the GAL were able to see Mother and the child interact.

{¶ 26} The child was initially placed with his grandfather, who was no longer willing or able to care for him, and there were no other relatives to take custody of him. He was in a foster placement and the GAL reported that the child’s foster mother was not opposed to fostering the child’s sibling, who was also in county custody.

{¶ 27} Under R.C. 2151.414(D)(1)(b), the child expressed that he wished to live with his mother; however, the GAL recommended that a grant of permanent custody would be in the child's best interest. The child was appointed an attorney, who was present at trial and advocated for the child.

{¶ 28} As to R.C. 2151.414(D)(1)(c), the trial court found that the child had been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period, had been in agency custody for close to two years, and no longer qualified to be in the agency's temporary custody. This finding is supported by the record. As mentioned, the child had been in temporary custody for 14 months at the time the agency moved for permanent custody.

{¶ 29} Finally, as to R.C. 2151.414(D)(1)(d), the trial court made the specific finding that the child could not or should not be placed with Mother within a reasonable time. Specifically, the court found that Mother had a chemical dependency that was so severe that it makes her unable to provide an adequate permanent home for the child, Mother has neglected the child by failing to regularly support, communicate, or visit the child, and, is unwilling to provide a safe and permanent home for the child.

{¶ 30} In support of these findings, Mother's caseworker testified that the agency was initially unable to add Mother to the case plan because her whereabouts were unknown. Mother did not establish sobriety, the agency did not know where Mother lived to see if she had basic needs and appropriate housing for the child, no visitation was established, and the agency had never seen the Mother interact with

the child. The GAL recommended a grant of permanent custody was in the child's best interest.

{¶ 31} The record reflects that Mother demonstrated a lack of commitment towards the child by failing to consistently communicate or visit with him during the pendency of the proceedings. Mother failed to make even minimal progress on her case plan. She did not sign releases for her providers to show that she had passed a drug test, taken an assessment, or received treatment for her addiction. The agency did not know where Mother lived and could not verify that her home was safe for the child to reside in. Finally, as of the date of the permanent-custody hearing, the child had been in the agency's custody for 21 months and no longer qualified for an extension of temporary custody. R.C. 2151.415(D)(4).

{¶ 32} The juvenile court's decision to grant permanent custody was based upon a review of the appropriate statutory considerations and supported by competent, credible evidence. Accordingly, we do not find the judgment is against the manifest weight of the evidence. *In re A.C.*, 8th Dist. Cuyahoga No. 111975, 2023-Ohio-938, ¶ 27, citing *In re B.P.*, 8th Dist. Cuyahoga Nos. 107732 and 107735, 2019-Ohio-2919. Further, we find that the juvenile court did not abuse its discretion in determining that permanent custody was in the child's best interest. Accordingly, we affirm the judgment of the juvenile court.

{¶ 33} 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 be sent to said court 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.

MICHAEL JOHN RYAN, JUDGE

MARY EILEEN KILBANE, P.J., and
EILEEN T. GALLAGHER, J., CONCUR