

[Cite as *In re Z.I.*, 2017-Ohio-7407.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105233

IN RE: Z.I., ET AL.

Minor Children

[Appeal by Mother, T.I.]

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 13908327, AD 13908328, and AD13910215

BEFORE: Stewart, J., Kilbane, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: August 31, 2017

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MELODY J. STEWART, J.:

{¶1} This is an appeal from an order terminating the parental rights of appellant-mother T.I. and granting permanent custody of three children, twins IS.G. and IZ.G. (five years old), and their brother Z.I. (three years old), to appellee Cuyahoga County Division of Children and Family Services (“agency”). The sole assignment of error is that there is insufficient evidence to support the court’s finding that granting the motion for permanent custody would be in the best interests of the children.

{¶2} Two steps are required to terminate parental rights and award permanent custody of a child to the agency. First, the court must determine if any of the factors set forth in R.C. 2151.414(B)(1)(a)-(d) apply. Second, the court must then determine whether a grant of permanent custody is in the best interest of the child. *See* R.C. 2151.414(B)(1). There is no dispute that the children were in the temporary custody of one or more public children service agencies or private child placing agencies for 12 or more months of a consecutive 22-month period, satisfying R.C. 2151.414(B)(1)(d). The sole issue, then, is whether there was sufficient evidence to support the court’s conclusion that granting the agency’s motion for permanent custody was in the best interest of the children.

{¶3} The factors the court must apply in its consideration of a child’s best interests are stated in R.C. 2151.414(D)(1):

(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, 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(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.

{¶4} The agency's primary reason for seeking permanent custody was what the agency deemed as the mother's inability to provide adequate housing for the three children. The court issued the following findings of fact:

The social worker testified that housing was the primary concern and still is the primary concern. The mother is living with godmother. The social worker visited a two bedroom apartment where the mother is reportedly living. The social worker was not allowed to see the second bedroom because that is where the godmother sleeps. The lease for the apartment is in the godmother's name. The mother does not have employment. The mother rejected any referrals to shelters. Multiple referrals were made over the course of the case to help the mother find housing for all her children. The paternal grandmother offered to have the mother and the kids come there. This offer was not accepted by the mother. The social worker testified that she has had constant conversations with the mother about this issue. It remains unaddressed over the years of this case. CCDCFS could never institute overnight visits due to the housing issues. There are no relatives available.

{¶5} The court thus found that under R.C. 2151.414(E)(1), the children could not be placed with the mother within a reasonable period of time because, notwithstanding case planning and diligent efforts by the agency, the mother had failed continuously and repeatedly to substantially remedy the condition that caused the children to be placed outside the home.

{¶6} The court's finding that the mother failed to remedy the condition that caused the children to be taken from the home was clearly erroneous — the mother was not responsible for the children being removed from the home. The court specifically found that “[t]he children were removed when the father broke one of the infant twin’s legs and committed domestic violence against the mother and children.” The father subsequently pleaded guilty to counts of endangering children and domestic violence. He is presently serving a six-year prison sentence and is not a threat to the mother or the children. If the children were removed because of the father’s conduct, there was nothing for the mother to remedy. The court erred by finding that the mother had any connection to the reason why the children were removed.

{¶7} With respect to the court’s conclusion that granting the agency’s motion for permanent custody would be in the best interests of the children, the mother acknowledges the court’s findings with respect to the need to provide adequate housing for the children, but argues that the court abused its discretion by finding that adequate housing outweighed the progress she had made in completing other aspects of the case plan.

{¶8} The social worker testified that apart from housing, the mother completed every other aspect of the case plan, including mental health counseling. She testified that “mom is doing really well in regards to the mental health case” and is fully compliant with her medication. In fact, the mental health professionals told the social worker that “they don’t have any concerns about [the mother’s] mental health.” The social worker praised the mother’s “strong bond” with the children. The mother was characterized as “very appropriate with the children,” and that she “guides them back to safety issues if there’s any presented.” In all, the social worker told the court that the mother was “a good mom.” The guardian ad litem for the children likewise testified that “it is clear that the kids’ mother, it’s clear that she does well with them when she has them[.]”

{¶9} The agency’s sole concern in this case was that the mother appeared to lack sufficient motivation to provide what it deemed to be “adequate” sleeping arrangements for the children. The agency’s social worker testified that the children slept on mattresses placed on the floor despite there being a referral to the furniture bank for bed frames. She described the house as “messy” and said that there was no room for any beds.

{¶10} It is unclear how the social worker came to the conclusion that there was no room in the mother’s house for additional beds — she testified that she had not been permitted into the second bedroom, so she could not have formed an opinion on its size. The guardian ad litem for the children did see the second bedroom and he testified that the bedrooms themselves were not large, but were adequate. And it bears noting that the

social worker also testified that the mother could accommodate the children by putting up bunk beds. From this testimony, the size of the rooms should not have been an issue.

{¶11} Having the children sleep on mattresses placed on the floor was not a valid basis for finding that the mother failed to provide adequate housing. The word “adequate” does not mean “ideal”; it means “satisfactory” or “acceptable.” The agency’s goal should have been to ensure that the children had a safe, comfortable space in which to sleep. There was no evidence that the mother’s sleeping arrangements caused, or might have caused, the children to suffer any ill-effects. The social worker was so adamant that the children sleep in “proper” beds that she suggested that the mother and children move into a shelter rather than stay in the house and sleep on the floor. A shelter would be a viable option if the mother lacked any housing at all or if the housing she had was too deficient (dilapidated, without utilities, etc.). But as we noted, there was no evidence that the children would suffer any harm with the present sleeping arrangements.

{¶12} The social worker also expressed concern about the inability to observe mother’s long-term care for the children because no overnight visits were instituted. Again, the children were removed due to father’s domestic violence, so arguably mother would have the children living in the very same housing situation the agency deems inadequate if not for the domestic violence incident. But that fact notwithstanding, we are puzzled by the agency’s refusal to allow overnight visits for such an extended period of time. Doing so prevented the social worker from being able to assess how mother

would handle having the children with her. The fact that there were not enough beds in the home does not seem to be so crucial as to prevent the children from having any extended stays with their mother so that the social worker could observe and assess mother's ability to care for her children.

{¶13} We acknowledge the agency's frustration with the mother's seeming inability to motivate herself to obtain beds for the children. But this is not a case where the mother neglected the children — the undisputed evidence showed the mother's strong bond with them. And her commitment to completing all other aspects of the case plan indicated that she could be properly motivated. The mother needs a guiding hand; that the agency might have to make extra efforts to assist her in getting bunk beds put up in her home is not a valid reason to terminate her parental rights. Based on the record before us, we conclude that the court abused its discretion by finding that it would be in the best interests of the children to be placed in the agency's permanent custody at this time.

{¶14} Judgment reversed and remanded.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to 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.

MELODY J. STEWART, JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR