

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the matter of: J.C.

Court of Appeals No. L-09-1079

Trial Court No. JC 08184732

DECISION AND JUDGMENT

Decided: October 21, 2009

* * * * *

Tim A. Dugan, for appellant.

Dianne L. Keeler, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This case is an appeal by appellant, mother, of a March 2, 2009 judgment of the Juvenile Division of the Lucas County Court of Common Pleas. The judgment terminated all parental rights of mother to J.C., her son, and awarded permanent custody of the child to Lucas County Children Services ("LCCS"). J.Z. is J.C.'s father. In

proceedings in the trial court, J.Z. agreed to the termination of parental rights and to the award of permanent custody of J.C. to LCCS.

{¶ 2} J.C. was born in 2000. LCCS filed a complaint on July 21, 2006, that resulted in the removal of J.C. from mother's custody in 2006, on a temporary basis with a goal of reunification. Custody was awarded to his father and to his stepmother, B.Z., under a judgment filed in April 2007. Since that time, J.C. has been in and out of the legal custody of his father and stepmother and temporary custody of LCCS.

{¶ 3} The record reflects that J.C. exhibited severe behavioral difficulties and has been hospitalized repeatedly for treatment. In a second complaint, filed on November 28, 2007, LCCS sought for the trial court to award temporary custody of J.C. back to LCCS due to J.C.'s behavior. The trial court issued a judgment awarding temporary custody back to LCCS on February 21, 2008. In the order, the trial court adopted the recommendations and findings of fact of the court magistrate on the issue.¹ Those findings of fact included a description of J.C.'s behavior that made the change in custody necessary:

{¶ 4} "4. Since May 2007, * * * [J.C.] * * * has been physically aggressive, attacking * * * [B.Z.] * * * and * * * [J.Z. and B.Z.'s] * * * two year old daughter. Two witnesses report that * * * [J.C.] * * * pushed the two year old daughter down a flight of stairs resulting in a broken nose. [J.C.] * * * has also threatened to kill * * * [B.Z.] * * *

¹The magistrate's decision and findings of fact were filed on December 28, 2007.

[J.C.] is also physically aggressive towards himself, and at times resulting in self-injury. Last week * * * [B.Z.] * * * found matches and a fork shaped into a shank-like device under * * * [J.C.'s] mattress."

{¶ 5} Other reported behavior included J.C. sexually acting out. LCCS sought a return of temporary custody to it, because J.C.'s father and stepmother could not handle J.C.'s behavior. The trial court found in its judgment that J.C. had "been in and out of Rescue Crisis and Kobacker Center five times since May" due to his behavior.

{¶ 6} The trial court ordered on May 5, 2008, that temporary custody of J.C. be returned from LCCS to J.C.'s father and stepmother effective April 21, 2008. Behavioral problems persisted, however, including an incident where J.C. set fire to his father's home. On May 23, 2008, mother moved to Germany and has resided there since. After additional treatment outside the home, J.C.'s father and stepmother declined to accept a return of J.C. to their custody in July 2008.

{¶ 7} This litigation followed. On July 22, 2008, LCCS filed the complaint in this case asserting that J.C. is a dependant and neglected child and requesting a termination of all parental rights and award of permanent custody of J.C. to LCCS.

{¶ 8} Appellant assigns two errors on appeal:

{¶ 9} "Assignment of Errors

{¶ 10} "1) The Trial Court's finding that terminating (sic) C.C.S.'s [mother's] parental rights was against the manifest weight of the evidence.

{¶ 11} "2) The Trial Court's finding that J.C. could not be returned to C.C.S. within a reasonable time was against the manifest weight of the evidence."

{¶ 12} R.C. 2151.353 provides for disposition of a child that is "adjudicated to be an abused, neglected, or dependent child." R.C. 2151.353(A) lists orders of disposition that may be employed by a court in such circumstances. However, a court cannot grant permanent custody of a child to a public services agency without first determining under R.C. 2151.414(E) that "the child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent." R.C. 2151.414(E). Such a determination must be by clear and convincing evidence. *Id.*

{¶ 13} In making that determination, R.C. 2151.414(E)(16) instructs that a court is to consider all relevant evidence. The statute also provides that where one or more of the conditions listed in R.C. 2151.414(E)(1)-(16) exists, the court must find that the child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent.

{¶ 14} Secondly, upon such a finding of parental unsuitability, the court must also determine under R.C. 2151.414(D) that termination of parental rights and the grant of permanent custody to the children services agency is in the child's best interests. R.C. 2151.414(D). The determination of the child's best interests must also be based upon clear and convincing evidence. R.C. 2151.414 (B)(1) and (2).

{¶ 15} "Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases." *Cross v. Ledford* (1954), 161 Ohio St. 469, 477.

{¶ 16} In its judgment, the trial court found, by clear and convincing evidence, that J.C. is a dependent and neglected child. It also found, under R.C. 2151.414(E) and R.C. 2151.414(D), that J.C. "cannot or should not be placed with a parent within a reasonable period of time and that an award of permanent custody to L.C.C.S. is in the best interest of the child." The court identified conditions set forth in R.C. 2151.414 (E)(1), (4) and (16) as to the mother and in R.C. 2151.414(E)(4) and (16) as to the father as supporting its determination on the issue of parental suitability.

{¶ 17} In her two assignments of error, appellant claims that the trial court's judgment determining by clear and convincing evidence first, that J.C. could not be returned to her custody within a reasonable time and, secondly, that an award of permanent custody of the child to LCCS was in the child's best interests are against the manifest weight of the evidence at trial. As such a judgment must be supported by clear and convincing evidence, the standard of review on appeal on these issues is whether the record contains competent, credible evidence by which the trial court could have formed a firm belief that the essential statutory elements for a termination of parental rights have

been established. *In re Alexis K.*, 160 Ohio App.3d 32, 2005-Ohio-1380, ¶ 26; *In the Matter of M.M. and H.M.*, 6th Dist. No. WD-09-014, 2009-Ohio-3400, ¶ 37; see *Cross v. Ledford* at paragraph three of the syllabus.

{¶ 18} We deal with Assignment of Error No. 2 first. Under the assignment of error, appellant argues that the trial court's findings under R.C. 2151.414(E) that J.C. cannot be placed with her within a reasonable time was against the manifest weight of the evidence. The trial court relied on R.C. 2151.414(E)(1), (4), and (16) in making its determination on the issue. These statutory factors provide:

{¶ 19} * * *

{¶ 20} "(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents 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. In determining 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.

{¶ 21} * * *

{¶ 22} "(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child.

{¶ 23} * * *

{¶ 24} "(16) Any other factor the court considers relevant."

{¶ 25} Relevant to R.C. 2151.414(E)(1), the trial court found that J.C. was removed from appellant's care in mid 2006, and that afterwards appellant "was offered case plan services to address substance abuse, mental health issues, housing and poor parenting, but she has failed to complete case plan services to regain custody * * *." Appellee argues that the record supports a finding that appellant had a history of drug abuse and refused to submit to drug screening before she moved to Germany. The LCCS caseworker testified that she would have referred appellant for an assessment to see if appellant needed drug treatment, if appellant had not moved. Appellant has not sought substance abuse treatment in Germany. Appellant responds that because she cannot speak German she has not enrolled in substance abuse treatment in Germany.

{¶ 26} The caseworker also testified that part of appellant's case plan was a diagnostic assessment for possible mental health services. She testified that appellant received the assessment but did not complete the counseling with Unison Behavioral Health Group that was recommended by the assessment. Appellant does not dispute that

her treatment plan with Unison would have continued had she not moved to Germany. Appellant testified that she desires to secure such services in Germany but that such treatment requires, first, that she secure instruction in the German language. The trial court found that appellant had not engaged in any therapy in Germany.

{¶ 27} The trial court found that appellant has "historically been unable to support herself" and is unemployed. The court also found that appellant "has a history of unstable housing that goes back at least to 2006 * * *." Appellant argues that her housing situation has stabilized through public assistance in Germany and that she also has the help of her husband's family who lives nearby. The trial court considered that presently "her basic needs are being met by the generosity of others rather than as a result of her own financial independence."

{¶ 28} The trial court made detailed findings of fact relevant to R.C. 2151.414(E)(4): "While this child was in custody of * * * [J.Z. and B.Z., mother] moved to Germany and has had no face to face contact with her son for several months. Even when his mental health issues worsened and his father and stepmother could no longer meet his needs, she did not return even for a visit. She has communicated at times by electronic means and has sent gifts once. Despite L.C.C.S. intervention and court hearings over a six-month period from July 22, 2008 to January 20, 2009, and more than one continuance to give her time to arrange transportation to Toledo, * * * [mother]* * *

has not returned to Toledo to demonstrate sufficient interest and ability to assume a parental role for her son."

{¶ 29} The trial court described the special needs of J.C. in its judgment and a lack of understanding by appellant of his needs: "This child has significant behavior problems that include fire setting and assaults on others, has had psychiatric hospitalization more than once and receives medication to stabilize his mental health. [Mother]* * * does not demonstrate an understanding of these issues, either by her behavior or her words. She does not know the names of his doctors and has not participated in efforts to control his mental health issues."

{¶ 30} After a review of the entire record, we conclude that there is competent, credible evidence in the record to produce in the mind of the trier of facts a firm belief in the findings of fact of the trial court and, particularly, in its conclusion that J.C. cannot or should not be returned to the custody of L.C.C.S. within a reasonable period of time. We conclude that appellant's Assignment of Error No. 2 is not well-taken.

{¶ 31} Under the remaining assignment of error, appellant has argued that the trial court's finding under R.C. 2151.414(D) that a permanent award of custody of J.C. to LCCS is in the best interests of the child is against the manifest weight of the evidence. We disagree.

{¶ 32} While J.C. wishes to return to his mother, the record supports the trial court's conclusion that he also "wants stability and permanency." The child's guardian ad

litem supported a permanent award of custody to LCCS at trial, based upon her conclusion that it is in the best interests of the child.

{¶ 33} The trial court also found that J.C. "is doing well in the home in Toledo where he has been placed; that home is committed to him and has expressed interest in adoption. His basic and special needs are being met by the home and service providers in this community." This finding of fact is also supported in the record.

{¶ 34} We conclude, particularly in view of the nature of J.C.'s special needs, that there is competent, credible evidence in the record to support a firm conviction by the trier of fact that an award of permanent custody of J.C. to LCCS is in J.C.'s best interests. Appellant's Assignment of Error No. 1 is not well-taken.

{¶ 35} On consideration whereof, this court finds that substantial justice was done the party complaining. The judgment of the Juvenile Division of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay costs of this appeal.

JUDGMENT AFFIRMED.

In the matter of: J.C.
L-09-1079

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
