

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
FAYETTE COUNTY

IN THE MATTER OF:

E.C., et al.

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CASE NO. CA2009-04-005

O P I N I O N
9/21/2009

APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 07AND0681

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RINGLAND, J.

{¶1} Appellant, Angela G., appeals a decision of the Fayette County Court of Common Pleas, Juvenile Division, granting permanent custody of her children to appellee, Fayette County Department of Job and Family Services, Children Services Department ("the agency").

{¶2} Appellant is the mother of four children of various ages. The agency initially

became involved with appellant and her children beginning in 2000. The primary issue over the course of the agency's involvement has been the parents' ability to meet the basic needs of the children. Prior to 2005, the agency was only involved on a voluntary basis wherein the parents entered into limited agreements with the agency to temporarily relinquish custody of the children until they once again gained the ability to care for them.

{¶3} The children's father has Huntington's disease, a genetic disorder that affects an individual's brain. The degenerative effects of this disorder have left the father incapable of caring for the children. As a result, the father agreed to permanently surrender his parental and custodial rights with respect to the children.

{¶4} A case plan was developed for appellant. Additionally, the agency assisted in providing some services. Even after three extensions of the plan, appellant, along with her boyfriend at the time, Keith E., could not provide basic needs. Consequently, in 2005, the agency filed complaints alleging that the children were dependent due to the inability to provide basic needs. The children were found dependent and placed in the temporary custody of the agency.

{¶5} Appellant continued to work on the case plan, obtained housing, and proved that she could provide for the basic needs of the children. The children were eventually returned to the household. The agency retained protective supervision and during 2006 and 2007 provided significant financial assistance to the family, paying various deposits, rents, and utilities. As an additional condition of the reunification, the agency required that the children not be left alone with their father due to his medical condition. In 2007, Keith E., the primary provider for appellant and the children, sustained a brain injury and became mentally disabled following a medical crisis.

{¶6} Thereafter, appellant became romantically involved with Justin H., who had a criminal record. Justin H. was incarcerated and appellant then became involved with Tim L.,

who also had a previous criminal history.

{¶17} In July 2007, appellant left the children with their father for a few days. When the agency discovered the violation, the children were removed from appellant's care and new complaints were filed. The children were again adjudicated dependent and placed in the temporary custody of the agency. The agency filed an amended plan and continued to work with appellant toward reunification. Appellant was eventually given unsupervised visitation in her home. As a condition of the visitation, appellant was instructed that nobody with a criminal record could be around the children, including Tim L. During Christmas 2007, the children went on an overnight visit to appellant's home. Following the visit, the agency learned that Tim L. also spent the night at the home and was drinking around the children when one of appellant's children alleged that Tim L. inappropriately touched her that night.¹ Consequently, the agency required that all visitation to be conducted at the agency's visitation center.

{¶18} By October 2008, the agency was unconvinced that appellant had sustained progress on her case plan and, as a result, filed for permanent custody of the children. At the hearing, appellant submitted evidence that she made some progress by maintaining a job for several months and obtaining a suitable residence. Nevertheless, the juvenile court granted permanent custody to the agency. Appellant timely appeals, raising one assignment of error:

{¶19} "TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY OF APPELLANT'S CHILDREN TO THE FAYETTE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, CHILDREN SERVICES DEPARTMENT PURSUANT TO R.C.

1. The allegation was never substantiated and Tim L. was never charged for any offense relating to the allegation. However, appellant's daughter continues to maintain that she was touched inappropriately and no longer wishes to be around Tim L.

2151.414."

{¶10} Before a natural parent's constitutionally protected liberty interest in the care and custody of his child may be terminated, the state must prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *Santosky v. Kramer* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. Clear and convincing evidence requires that the proof produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶11} Appellate review of a juvenile court's decision granting permanent custody is limited to whether competent and credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 519-20.

{¶12} R.C. 2151.414(B)(1) requires the juvenile court to apply a two-pronged test when determining whether to terminate parental rights and award permanent custody to a public or private children services agency. Specifically, the juvenile court must find that the following two elements are supported by clear and convincing evidence: (1) the grant of permanent custody to the agency is in the best interest of the child, and (2) any of the following apply: the child cannot be placed with either parent within a reasonable time or should not be placed with either parent; the child is abandoned; the child is orphaned; or the child has been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a), (b), (c), and (d). See, also, *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, ¶31-36.

{¶13} Once a juvenile court determines that a child has been in the custody of the

agency for 12 of 22 consecutive months in accordance with R.C. 2151.414(B)(1)(d) (the "12 of 22' finding"), the court may move on to the best interest analysis. Cf. *In re L.D.*, Clinton App. No. CA2004-03-007, 2004-Ohio-4000, ¶15.

{¶14} The juvenile court found by clear and convincing evidence, and appellant does not dispute, that the children were in the temporary custody of the agency for 12 or more months of a consecutive 22-month period at the time the motion for permanent custody was filed. The court further found by clear and convincing evidence that the children cannot be placed with either parent within a reasonable time. Further, the trial court noted that over the entire eight-year period, there has only been a period of approximately 24 months where the agency was not involved with the children. Accordingly, the sole issue before the court is whether clear and convincing evidence exists to support whether permanent custody is in the best interest of children.

{¶15} R.C. 2151.414(D) provides that in considering the best interest of a child in a permanent custody hearing, the juvenile court must consider all relevant factors, including, but not limited to: (1) 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; (2) the wishes of the child, as expressed directly by the child or through the child's guardian ad litem; (3) the custodial history of the child, including whether the child has been in the temporary custody of a children services agency for 12 or more months of a consecutive 22-month period; (4) 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; and (5) whether any of the factors in R.C. 2151.414(E)(7) to (11) apply in relation to the parents and child. The juvenile 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. *Schaefer* at ¶56.

{¶16} Appellant argues that the juvenile court's decision is improper since she has now accomplished a stable living situation for the children. Appellant urges that she has maintained continued employment for six months prior to the hearing, obtained adequate housing for all four children, and begun working on the mental health aspect of the case plan.

{¶17} The juvenile court observed that "these children have been in the custody of FCDJFS two times. In addition, the caseworker testified to five different individuals Angela had left her children in the care of at different times. These children need a legally secure placement. There is clear and convincing evidence that Angela has been and is still unable to provide it. She is an able bodied adult, however has only worked sporadically over the time period that FCDJFS has been involved. * * * She underestimates the financial obligations involved in raising these children. * * * She has never been able to consistently provide for her children's basic needs. * * * In the past, when she had the children she left them with different people for different lengths of time. * * * She testified she could feed the children on her own, however, the Court is not convinced she could provide anything else. This is based on her testimony regarding her salary and the fact she has always relied on a boyfriend for financial support."

{¶18} The juvenile court continued, "The children have been rendered dependent by Angela. * * * [T]he likelihood of reoccurrence of this dependency makes the children's placement with Angela a continued threat to their safety and well-being. * * * She blatantly violated Children's Services requirement that [Tim] not be around her children at the overnight Christmas visit. After denying any contact with [her former boyfriend], who had a criminal record, she filed an aid and incident [sic] report against him with the police. The incident led to the removal of her children the second time. She also has gambled with her children's safety when she left them with [their father] at that time. [The father] was not even capable of totally caring for himself, and * * * Angela was very aware that this was forbidden,

as she instructed the children not to tell anyone. She is not repentant and has given no promise to change her behavior if the children are returned."

{¶19} Accordingly, the court concluded, "The Court finds that eight years is more than sufficient time in which Angela could have learned from her mistakes, mended her ways, and altered her course of conduct. She has not."

{¶20} After review of the record, we find competent and credible evidence to support the juvenile court's finding that it was in the best interest of the children to grant permanent custody to the agency. The juvenile court considered, and engaged in a lengthy discussion, of all the relevant "best interest" factors. Appellant has a history of erratic and intermittent care for the children. Specifically, the record demonstrates that appellant has been unable to consistently provide for the children's basic needs over an eight-year period. When she could not provide for their care, appellant would leave the children with different people at various times. This repeated inability to care for the children raises long-term concerns that dependency is likely to reoccur.

{¶21} Moreover, after the agency gained temporary custody of the children, appellant defied case plans and displayed questionable judgment when the children were in her care. Specifically, appellant was instructed that she could not leave the children with their biological father due to his genetic disorder nor could individuals with criminal records be around the children, including Tim L. Yet, appellant ignored these orders.

{¶22} Granted, appellant presented evidence at the permanent custody hearing to suggest that she made progress on some aspects of the case plan such as continuing to maintain a job and obtaining a suitable residence. However, as the juvenile court properly noted, it is questionable whether appellant could supply sufficient nourishment and care even with this income.

{¶23} These problems have continued to persist for eight years. Appellant's progress,

which occurred after the agency filed for permanent custody of the children, does not create sufficient conflict in the evidence to conclude that the trial court's decision was not in the best interest of the children given the need for safety and stability in the children's lives.

{¶24} Appellant's sole assignment of error is overruled.

{¶25} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.

[Cite as *In re E.C.*, 2009-Ohio-4938.]