

[Cite as *In re A.C.*, 2009-Ohio-6242.]

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

IN THE MATTER OF: :

A.C., et al. : CASE NO. CA2009-07-098

: OPINION

: 11/30/2009

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APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case No. 07-D00489

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YOUNG, J.

{¶1} Appellant, M.M., appeals a decision of the Juvenile Division of the Warren County Court of Common Pleas granting permanent custody of her two

children, A.C. and D.C., to the Warren County Children Services Agency.

{¶2} Appellant is the biological mother of four children, including A.C. and D.C., the two children involved in this appeal. WCCSA has a history with appellant dating back to 2000 based on various reports of neglect and abuse of appellant's children. These complaints involved referrals due to a dirty home and physical neglect of the children. The agency provided services and worked with appellant to remedy these conditions. In 2007 the agency received a complaint that A.C. was found wandering around her apartment complex unattended and on investigation, appellant did not know where the child was.

{¶3} In 2007, the agency also received a complaint involving sexual abuse of A.C. by her older brother. The sexual abuse was substantiated and the older brother was removed from the home. Services were provided by the agency, including counseling for both A.C. and her brother. When A.C.'s older brother returned home, the agency prepared a safety plan that included a requirement that appellant complete the P.A.C.T. program, which works with parents of children who have been in an environment of sex abuse to help them understand and prevent future abuse. Appellant was also required to place door alarms on the children's bedroom doors.

{¶4} A.C. and D.C. were removed from appellant's home on September 20, 2007 when a caseworker visited and discovered the door alarms were not in place. Appellant had also not completed the P.A.C.T. program as required under the plan. The children were adjudicated dependent on November 7, 2007 and temporary custody was granted to the agency. The children were placed with paternal cousins and have remained in that home since the removal. The children's older brother was also removed from the home and placed with his maternal grandmother.

{¶15} A case plan was prepared in an attempt to reunify appellant with the children. The case plan required appellant to obtain permanent housing and employment. It also required appellant to undergo individual counseling for her mental health needs and to cooperate with A.C.'s therapist to in order to address A.C.'s mental health needs and how appellant would help her daughter if she were returned home. The case plan also required appellant to complete the P.A.C.T. program, the Homemaker program, and to attend parenting classes.

{¶16} Appellant failed to complete the requirements of the case plan and on February 20, 2009, the agency filed for permanent custody of both A.C. and D.C. on the basis that appellant had continually and repeatedly failed to remedy the conditions that led to the children's removal. A hearing was held in April 2009. At the hearing, evidence was presented regarding the incidents that led to the children's removal, along with other considerations that were discovered after the removal, along with the level of progress made by the children while in foster care.

{¶17} Through testimony, facts were presented to show that appellant's home was filthy and that the children's basic needs were not always met. Evidence was presented that among other things, trash was strewn about the apartment, urine-soaked sheets and couch cushions remained unchanged and the home was infested with bugs and insects. Evidence was also presented to show that appellant spent large amounts of time on the computer and there was a lack of necessary mental, physical and emotional stimulation with the children.

{¶18} Testimony was presented to show that the children suffered from behavioral and other problems. A.C. was considerably behind the norm academically and socially. She was unable to recognize letters, could not count or write her name

and had to attend two summer school sessions just to get to the point where she could start first grade, and was still admitted conditionally. A.C.'s first grade teacher testified that when she initially came into the classroom, A.C. was totally detached socially and was academically way behind her peers, but is "absolutely thriving now" and has academically improved to grade level, except in math.

{¶9} The foster mother testified that A.C. was shy on removal and would not make eye contact and did not interact well with other children. A.C. would curl into a fetal position when stressed. She was destructive, tearing up toys, clothes, scratching the refrigerator and writing on walls. She also tried to hoard food. She would shove food into her mouth and would hide food in her bedroom. She also was behind in normal developmental milestones, and had to be taught manners and how to use utensils to eat. The foster mother testified that the family used behavior charts and reward systems, and talked a lot in an effort to change the children's behavior and to teach manners.

{¶10} The foster mother testified that D.C. was detached and did not like to be touched when he first was placed in the home. He would not hold hands at any time, including when crossing the street, and became hysterical at bath time because he was terrified of the water. She indicated that he needs routine and structure and changes cause him to wet the bed. D.C. also had a problem with muscle contraction in his eye because he was not regularly exposed to sunlight at an early age.

{¶11} D.C.'s pre-school teacher testified that when he was first enrolled by the foster parents, he was easily angered and aggressive. He was unable to be outside for long since the sunlight bothered his eyes. She testified that D.C. is now learning and his demeanor in class has improved as he is not as easily angered and is able to

talk if something is bothering him instead of escalating to rage quickly.

{¶12} After her removal, A.C. was diagnosed with Reactive Attachment Disorder (R.A.D.). A.C.'s psychotherapist, Deborah Joy, testified this condition occurs when there is abuse and/or neglect early in childhood which leads to a mistrust of caregivers and an inability to form healthy attachments as a child is growing up. A.C. is seeing Joy weekly for therapy. Joy testified that the first step in counseling is to establish a sense of safety which requires "ridiculous consistency." She explained that children with R.A.D. generally test boundaries as they are working on developing a sense of safety. She stated she has seen A.C. progress during the time she has been in therapy. Now, during sessions, A.C.'s attempts to manipulate are shorter, her sulking time is lessened, and she has begun to have reciprocal interaction back and forth more quickly. Joy testified that A.C. informed her that she wants to stay with her foster parents, which, according to Joy, indicates the beginning of attachment and A.C.'s desire for permanence.

{¶13} After his removal, D.C. was diagnosed with Adjustment Disorder. Joy has also been treating D.C. and sees him every other week for therapy. She explained that this disorder occurs when a child has difficulty adjusting to what is happening in his life. Joy testified that D.C.'s therapy is similar to A.C.'s, but on a less intense level.

{¶14} Joy stated that the children are in need of permanence. They have been stable and consistent in the past two years at the foster home, but are aware the situation is not permanent, and they wonder where they will go and what is going to happen. Joy further testified that given the children's problems, appellant needs to establish a pattern of following up with treatment and responsibility for meeting her

own needs before reunification with the children can even be contemplated. Joy stated that she does not believe appellant has made sufficient progress to give stability or security to the children, nor does she have the emotional resources to give the children the kind of foundation and security they need in order to grow and develop appropriately.

{¶15} At the hearing, several witnesses testified that the children both exhibited negative behavior surrounding visitations with appellant. The foster mother stated that D.C. would wet the bed and become physically ill at the time of visitations. After one visit, he had a bowel movement and smeared it all on the walls, floor and himself. D.C.'s teacher testified that his demeanor in class changed when visits were occurring with appellant and he did not respond well at transition times between different activities. At times before visits, he was sick with a fever and his foster parents had to be called. D.C would be clingy after visits and the teacher had to spend additional time reassuring him before bringing him back into classroom activities.

{¶16} A.C.'s teacher also testified that she observed behavioral problems with A.C. around visitation times. The foster mother testified that visitations stressed A.C. and she would become more aggressive and lie and would self-inflict nosebleeds. She stated that around visitations, A.C.'s behavior regressed and it was like starting all over with learning proper behavior.

{¶17} Joy found that visits with appellant were traumatizing the children and drafted letters to the agency and court recommending suspension of visits. Visitation with appellant was suspended due to these behaviors. Witnesses testified that the children's behavior improved after the suspension of visits.

{¶18} Jenny Seals, the agency caseworker, testified regarding the agency's involvement with the family and the conditions that led to the removal of the children. She further discussed the developmental and behavior problems exhibited by the children and stated that the children are doing "phenomenally well" in their current placement with the foster parents.

{¶19} Seals also discussed appellant's progress on the case plan. She stated that although appellant said she was willing to work on the case plan, she has not demonstrated any commitment to its completion and has made little progress. Seals stated that appellant was initially compliant to a certain extent with the Homemakers program, but later was supposed to make appointments and did not follow through, and the requirement was not completed.

{¶20} Appellant was required to complete parenting classes, and initially completed the paperwork, but not the sessions. Appellant claimed transportation was an issue and was provided transit tickets on one occasion, but also told the agency she was getting child support and other services and would provide her own transportation or get her mother to bring her. Seals also stated that when appellant moved to Dayton, she discussed possible transportation issues with appellant, and how a move would be a hindrance to appellant's completion of services, which was appellant's responsibility. Appellant eventually completed the parenting classes in April 2009, after the agency filed for permanent custody of the children.

{¶21} Seals testified that appellant has not completed the P.A.C.T. program. Appointments were scheduled three times and were either cancelled or appellant did not come to the appointments. Eventually, the program stated that it was unwilling to provide services to appellant because she was not showing up for the scheduled

appointments.

{¶22} The case plan required appellant to obtain permanent housing. Seals discussed appellant's housing history, which included an apartment in Middletown from which appellant was evicted. Appellant next informed the agency that she was going to move to Guatemala with a man she met online. Instead, she went to stay with an aunt and cousin in Chillicothe for a few months. Next, appellant moved back to Middletown for approximately three months before she was again evicted. She then moved to her mother's house in Dayton for approximately a month, and then went from friend to friend, staying in several places, including with a man she met at a bus stop. Shortly before the hearing, she asked the agency to write a letter to the metropolitan housing authority, stating that she was homeless so that she could obtain housing.

{¶23} The case plan also required appellant to obtain and maintain regular employment. Seals testified that appellant reported various jobs to the agency, including work as a phone sex operator. However, the agency was only able to confirm one job, with Wal-Mart, where appellant was employed for roughly three to four months. However, appellant was currently unemployed.

{¶24} After considering the evidence presented at the hearing, the trial court issued a decision on June 18, 2009, granting permanent custody of A.C. and D.C. to the agency. Appellant now appeals the trial court's decision to grant permanent custody, raising a single assignment of error for our review.

{¶25} "THE TRIAL COURT ERRED WHEN IT GRANTED PERMANENT CUSTODY OF TH[E] CHILDREN TO THE WARREN COUNTY CHILDREN SERVICES BOARD."

{¶26} Before a natural parent's constitutionally protected liberty interest in the care and custody of her child may be terminated, the state is required to 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. An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient 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, 520.

{¶27} R.C. 2151.414 (B) requires the juvenile court to apply a two-part test when terminating parental rights and awarding permanent custody to a children services agency. Specifically, the court must find that: (1) the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D); 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 at least 12 months of a consecutive 22-month period. R.C. 2151.414 (B)(1)(a), (b), (c) and (d); *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, ¶31-36; *In re Ebenschweiger*, Butler App. No. CA2003-04-080, 2003-Ohio-5990, ¶9.

{¶28} Based on a review of the applicable statutory factors, the juvenile court found that it was in the best interest of the children to grant the motion for permanent custody. The trial court further found that the children had been in the temporary

custody of WCCSA for more than 12 months of a consecutive 22-month period as of the date WCCSA filed the permanent custody motion.

{¶129} Within her single assignment of error, appellant presents three arguments for our review. Appellant first argues that "the trial court did not effectively consider many of the statutory factors in determining the children's best interests." In considering the best interest of a child in a permanent custody hearing, R.C. 2151.414(D)(1) provides "the court shall consider all relevant factors, including, but not limited to the following:

{¶130} "(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;

{¶131} "(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;

{¶132} "(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 ending on or after March 18, 1999;

{¶133} "(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;

{¶134} "(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶135} With respect to R.C. 2151.414 (D)(1)(a), the children's interrelationships with the persons involved, the juvenile court found that the children have been in

foster care for a year and a half. The court further found that the children are adversely affected by visits with appellant and the children do not want to visit appellant and do not want to live with her. The court found the children are doing well with and are bonded to the foster parents. The court determined that the children look to the foster parents as their primary caregivers and for their nurturance. Appellant argues the evidence does not support this conclusion and that the negative reactions could be due to other things.

{¶36} However, after reviewing the record, we find that the record supports the trial court's conclusions. Several witnesses testified that the children's behavior changed in the time period surrounding visitations with appellant. Witnesses stated that both children exhibited negative behavior in the time period before and after visits and that they had very little trouble separating from appellant when visits ended. In addition, other witnesses testified that the children indicated verbally at times that they did not want to visit with appellant. Finally, the children's therapist determined that visitation was negatively affecting the children and recommended the suspension of visits due to this behavior.

{¶37} With respect to R.C. 2151.414(D)(1)(b), the children's wishes, the juvenile court indicated that the children's words and actions indicated that they did not want to be reunified with their mother. The court also found that the guardian ad litem was in favor of granting permanent custody to the agency. Appellant again argues that the connection was not made between the children's behavior and a desire not to visit with appellant. However, as discussed above, the evidence supports the trial court's conclusions.

{¶38} With respect to R.C. 2151.414(D)(1)(c), custodial history, the juvenile

court found that the children had been with the foster parents for a year and half. Appellant argues that the court ignored the fact that the children were with her "their entire lives except for the past 18 months." However, the court correctly considered this factor, as the fact that the children have been in foster care for the last 18 months is relevant to the issue of their best interest.

{¶39} With respect to R.C. 2151.414(D)(1)(d), the need for a legally secure placement, the juvenile court found that the children are in need of a legally secure placement as permanency is important to these children so that they can build relationships on which they can rely as they become older. The court found this factor particularly true for A.C. due to her R.A.D. diagnosis. Appellant argues that testimony or other proof must be submitted before the court makes this finding.

{¶40} However, the record is replete with evidence that the children are in need of a legally secure placement. Much of the testimony focused on the behavioral and developmental problems of the children and their need for security, both physically and emotionally. The evidence further shows that the children have made progress in this area while in foster care, but that they are aware that the situation is not yet permanent.

{¶41} Appellant further argues that the court erred when it found none of the factors in R.C. 2151.414(E)(7)-(11) applied. She contends that the factors apply, but in her favor, not the agency's. These subsections all address negative behavior by parents that must be considered, such as certain convictions, withholding food or medical treatment, drug and alcohol abuse, abandonment of the child, and termination of a parent's rights with regard to other children.

{¶42} We find no error in the trial court's consideration of these factors. The

statute is written affirmatively ("the parent has * * *") and nothing suggests that the court must explicitly state that a parent does not meet each of these factors and therefore, these factors weigh in the parent's favor. Instead, the court simply, and correctly, stated that these factors do not apply.

{¶43} With regard to "any other relevant factors" the court found that the fact that appellant does not have custody of any of her other children suggests she lacks an ability to parent. Appellant argues that this "incredulous statement" is in error as there could be any number of reasons the children are not living with their mother. However, we find no error in the court's consideration of the fact that appellant does not have any of her children in her custody. The court did not err in determining that this factor suggests an inability to parent, as appellant has not proven her ability to parent with any of her other children.

{¶44} Appellant's second argument on appeal concerns the trial court's consideration of the statutory factors used in determining whether the children could be placed with one of the parents in a reasonable amount of time. R.C. 2151.414(E) provides a list of factors a court must consider in determining whether a child can or should be placed with either parent in a reasonable amount of time. Appellant argues this issue was not considered.

{¶45} However, despite appellant's argument to the contrary, the court was not required to consider this subsection. As stated above, in granting permanent custody, a court must apply a two-part test. The first part requires a finding that permanent custody is in the child's best interest. The second part requires a finding that any of the following four conditions apply: 1) the child cannot be placed with either parent within a reasonable time or should not be placed with either parent; 2)

the child is abandoned; 3) the child is orphaned; 4) or the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period. See R.C. 2151.414 (B)(1)(a), (b), (c) and (d).

{¶46} The trial court made a finding that the children had been in the custody of the agency for 12 months of a consecutive 22-month period, and was therefore not required to consider whether the children could be placed with either parent within a reasonable time. *In re C.W.*, 104 Ohio St.3d 163, 166-167, 2004-Ohio-6411, ¶21; *In re N.R.*, Butler App. No. CA2007-12-314, 2009-Ohio-1993.

{¶47} Appellant's third and final argument on appeal addresses the manifest weight of the evidence, which she contends does not support the trial court's findings. She argues that her only real issue was a lack of reliable transportation. However, there was sufficient evidence to support the trial court's decision. Appellant was given numerous opportunities to complete the case plan objectives, yet made little progress. The evidence shows that there was a concern regarding stability and permanence for the children and the negative effect that the lack of these factors created emotionally and behaviorally. The evidence supports a determination that appellant is not in a position to give stability and permanence to the children at the present time, nor is there any indication she would be able to provide stability at any foreseeable point in the near future.

{¶48} Accordingly, appellant's assignment of error is overruled.

{¶49} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.

