[Cite as *In re A.D.*, 2009-Ohio-3087.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 92415 and 92418

IN RE: A.D., ET AL.
A Minor Child

Appealed by:

A.D., (Father)

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Juvenile Court Division of
Cuyahoga County Court of Common Pleas
Case Nos. AD-07900352 and AD-07900353

BEFORE: Blackmon, J., Kilbane, P.J., and McMonagle, J.

RELEASED: June 25, 2009

JOURNALIZED:

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PATRICIA ANN BLACKMON, J.:

{¶ 1} In this consolidated appeal, Appellant Father[1] appeals from a juvenile court order that granted permanent custody of his son, A.D. I, and his daughter, A.D. II, to the Cuyahoga County Department of Children and Family Services ("CCDCFS" or the "Agency").[2] The father assigns the following errors for our review:

> "I. The juvenile court erred to the prejudice of Appellant-father when it issued its October 7, 2008 Entry finding that Appellant-father's son could not be returned to him within a reasonable time period as said decision was against the manifest weight of the evidence. (Docket Entry No. 136-140)
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> "II. The juvenile court erred to the prejudice of Appellant-father when it issued its October 7, 2008 Entry finding that permanent custody of Appellant-father's son should be granted to Cuyahoga County Children and Family Services as said decision was not within the child's best interests. (Docket Entry No. 136-140).
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> "III. The juvenile court erred to the prejudice of Appellant-father when it issued its October 14, 2008 Entry finding that a PPLA of Appellant-father's daughter should be granted as said decision was not supported by the record. (Docket Entry No. 136-140).

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court's decision. The apposite facts follow.

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[1]The parties are referred to by their initials in accordance with this court's policy regarding non-disclosure of identities in juvenile cases.

[2]Mother's parental rights were also terminated; she has not appealed and is not a party to this appeal.

{¶ 3} On March 23, 2007, CCDCFS removed A.D. I (DOB: 04/01/98), A.D. II (DOB: 08/23/91), and A.D. III (DOB: 04/14/93)[3] from their parents' home and filed a complaint against them for child abuse, neglect, and dependency. For purposes of this appeal, we are concerned only with the complaint against the father; the mother did not appeal.

{¶ 4} The complaint alleged that the father has a substance abuse problem involving alcohol and marijuana, which prevents him from providing adequate care for the children. The father has admitted to having an alcohol problem, but has refused treatment. The complaint alleged that the father committed acts of physical and emotional abuse against the children.

{¶ 5} The complaint further alleged that both parents engaged in acts of domestic violence, which placed the children at risk of physical and emotional harm. Both parents refused services to address these concerns. Furthermore, the complaint alleged that on March 15, 2007, the father kicked the mother in the face and struck her in the head with his fist; however, when police responded to the scene, the mother refused to press charges.

{¶ 6} Finally, the complaint alleged that A.D. II suffers from depression and has suicidal ideation. She has been prescribed medication, but mother and father have failed to ensure that A.D. II takes her medication. When the complaint was

[3]In the instant appeal, the father does not contest the order of permanent custody as to A.D. III.

filed, A.D. II was in Laurelwood Psychiatric Hospital undergoing treatment for her condition.

{¶ 7} After a hearing on June 4, 2007, the trial court adjudged the children to be dependent and awarded temporary custody to CCDCFS. Thereafter, a case plan for both parents was implemented, which included referrals for drug and alcohol assessment and treatment, parenting education, anger management and domestic violence counseling. The case plan also required both parents to undergo psychological assessment and mental health counseling.

{¶ 8} On October 4, 2007, CCDCFS filed motions to modify temporary custody to a planned permanent living arrangement ("PPLA") for A.D. II and A.D. III, and from temporary custody to legal custody to maternal grandmother, as to A.D. I. On April 15, 2008, CCDCFS withdrew its motions as to A.D. I and A.D. III and filed motions to modify temporary custody to permanent custody.

{¶ 9} On October 2 and 3, 2008, the trial court conducted a hearing on the motions. Alexia Gardi, A.D. I's therapist, testified that she is a program manager and individual therapist for Mental Health Services for Children Who Witnessed Violence. Gardi testified that in May 2007, A.D. I was referred for treatment because he had witnessed domestic violence. Gardi indicated that A.D. I was also seeing a psychiatrist and was taking medication.

{¶ 10} Gardi stated that in the beginning A.D. I expressed feelings of fear, hopelessness, and a sense of being out of control, which led her to conclude that he was suffering from post-traumatic stress disorder. Gardi stated that initially it was

difficult for A.D. I to speak about his experiences, but over time, he was able to gain an understanding of how his parents' drug and alcohol abuse affected him. Gardi stated that gradually A.D. I began to discuss his memories of domestic violence and alcohol abuse in his parents' home.

{¶ 11} Gardi met with A.D. I once a week for over a year. A.D. I's maternal grandmother accompanied him and participated in his treatment. Gardi stated that she would first meet with the grandmother, then with A.D. I, and finally with both. A.D. I was adjusting well to living with the grandmother.

{¶ 12} Gardi testified that A.D. I became very stressed whenever the weekly visits with his parents approached. Gardi stated that A.D. I expressed concerns about his parents' behavior. She stated that A.D. I was very upset that his mother was intoxicated when she attended his most recent birthday celebration.

{¶ 13} Gardi testified that shortly after A.D. I reported that his mother was intoxicated at his party, A.D. I asked her to write a letter to his social worker requesting that the visits with his parents be initiated by him and that he not be required to go every week. Gardi stated that she recommended to CCDCFS that they honor A.D. I's request.

{¶ 14} The day prior to the hearing, she asked A.D. I about his custody wishes, and he indicated that he was content to stay with his grandmother. Gardi also stated that A.D. I indicated that it was possible that he might give his parents "a chance" if they would stop fighting and drinking, but expressed doubts that they had stopped.

{¶ 15} Finally, Gardi recommended that A.D. I continue in therapy, continue seeing the psychiatrist, continue with his medication, and continue living in a structured and stable environment.

{¶ 16} At the hearing, CCDCFS social worker Brian Sharwark testified that when he was assigned to the case in January 2007, he discovered there were four prior cases dating back to 1996. Sharwark stated the prior cases, like the present case, all involved substance abuse, domestic violence, and emotional neglect of the children. Sharwark stated that the evidence in the prior cases established that the parents routinely denied that the conditions existed and consistently rejected the agency's efforts to assist the family.

{¶ 17} On November 18 and 21, 2006, CCDCFS unsuccessfully attempted to investigate allegations of domestic violence and alcohol abuse in the home. Subsequently, on March 15, 2007, A.D. II reported to the police that her father had kicked and punched her mother in the head and that her parents had been intoxicated for weeks. When the police arrived, the mother refused to cooperate. After Sharwark arrived, and asked to speak with A.D. II about the allegations, the mother refused, but A.D. II blurted out what she had reported to the police. The mother subsequently agreed with A.D. II's report to the police and the children were ultimately removed from the home.

{¶ 18} After the children were removed from the home and a case plan created, the father's progress was minimal. In particular, Sharwark noted the following in regard to the father's progress: (1) he did not follow through with three

separate referrals for substance abuse assessment at Catholic Charities, Recovery Resources, and UNBAR, instead claiming that his work schedule would not permit him to participate; (2) he refused to participate in domestic violence counseling; and (3) he never expressed misgivings about his conduct and refused to acknowledge the severity of the children's emotional struggles.

{¶ 19} Sharwark also testified that the father failed to benefit from anger management classes. A.D. II's therapist at Beech Brook barred the father from visiting his daughter because he routinely became angry, abrasive, and uncooperative. In addition, when asked to participate in classes regarding A.D. II's treatment, the father refused.

{¶ 20} In addition, the father displayed minimal interest in the weekly two-hour visitation with the children. When the father visited the children, he would typically leave after approximately twenty minutes, and not once did the father stay the entire time. During the visits, the father was generally inattentive, antagonistic toward the children, confrontational with the visitation staff, and was observed touching A.D. II in an inappropriate manner.

{¶ 21} Further, Sharwark testified that since A.D. I has been placed with his maternal grandmother, she provides all his needs, including transporting him back and forth to therapy, participating in his treatment, and assuring that he takes his medication. Sharwark stated that A.D. I and his grandmother have a very good relationship, and the grandmother hopes to adopt him.

{¶ 22} Finally, Sharwark testified that A.D. II, who was fifteen years old when she was removed from the home, has been diagnosed with manic depression and alcohol dependency. A.D. II was currently in residential treatment at Beech Brook at the time of the hearing. The treatment facility wanted the parents involved in A.D. II's treatment, but the father had not become involved with his daughter's treatment.

{¶ 23} At the hearing, Diane Cranfield testified that she was a case manager at Beech Brook Two-Ways Home, where the children were referred after removal from their parents' home. Cranfield said that both parents were uninterested in the case plan, and the father outrightly disagreed with the plan. Cranfield stated that the father later decided to attend the anger management program, but it took him 14 weeks to complete the nine-week program.

{¶ 24} Cranfield also testified that the father denied needing substance abuse treatment, yet the recommendation from his assessment was that he needed intensive outpatient treatment. Cranfield stated that in January 2008, when she asked the father if he was willing to stop using alcohol, he indicated that he might stop for a while until the case was over.

{¶ 25} In addition, Cranfield stated that several referrals were made for the father to obtain treatment, but he offered excuses for his inability to enter treatment. The father claimed his work schedule would not permit him to enter treatment. Cranfield gave the father a list of providers that would accommodate his work schedule, but he had yet to avail himself of the opportunity. At one point, the father indicated that he had to be home for his dog.

{¶ 26} Further, in addition to the father's denial of his substance abuse challenges, he also denied any responsibility for the conditions that caused the children to be removed from the home. The father blamed the social workers, CCDCFS, family members, and the children for the conditions that triggered the children's removal.

{¶ 27} Finally, Cranfield stated that the father did not offer any support in A.D. II's attempt to stay sober. The father also did not consider A.D. II's mental health issues to be severe, despite his knowledge that A.D. II had engaged in self-mutilation.

{¶ 28} At the hearing, the father, age 45, testified that he is employed as a kitchen mechanic with the Ritz Carlton hotel in Cleveland, Ohio. The father stated that he has worked there for eight years, makes approximately $40,000 per year and works staggered shifts.

{¶ 29} The father testified that he had no alcohol or domestic violence-related convictions and had not engaged in any incidents of violence with his wife since the case began. The father stated that he did not believe that he had a problem with alcohol and that he only drank socially. He stated that he tried marijuana in his late teens and in his early twenties.

{¶ 30} The father testified that he believed that shortly after the children were removed from the house, both he and his wife were in denial about the children's condition, but since then, he had come to accept that the children needed help. He

stated that he wanted A.D. I and A.D. II to come home, but acknowledged that it might not be possible at this point.

{¶ 31} Following the hearing, the trial court concluded that A.D. I and A.D. II could not or should not be placed with either parent within a reasonable time and that permanent custody was in A.D. I's best interest and a disposition of PPLA was in A.D. II's best interest.

Best Interest of the Child

{¶ 32} The father's three assigned error are interrelated and will be considered together. The father argues that the trial court's finding that his children could not be returned to him within a reasonable period of time was against the manifest weight of the evidence and awarding permanent custody to CCDCFS was not in the children's best interest. We disagree.

{¶ 33} Our review of a custody determination by the juvenile court begins with the recognition that the court's exercise of discretion should be accorded "the utmost respect," taking into account that "the knowledge gained through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record."[4] "A court exercising Juvenile Court jurisdiction is invested with very broad discretion, and, unless that power is abused, a reviewing

[4]*In re S. G.*, Cuyahoga App. No. 92392, 2009-Ohio-2, citing *In re Campbell* (Oct. 12, 2000), Cuyahoga App. Nos. 77552 and 77603; see, also, *In re Awkal* (1994), 95 Ohio App.3d 309, 316.

court is not warranted in disturbing its judgment."[5] To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable.[6]

{¶ 34} A claim that a factual finding is against the manifest weight of the evidence requires us to examine the evidence and determine whether the trier of fact clearly lost its way. We undertake this duty with the presumption that the court's factual findings were correct.[7] Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.[8]

{¶ 35} Relevant to this case, the court terminated parental rights after finding by clear and convincing evidence that neither A.D. I nor A.D. II could be placed with their parents within a reasonable time. In the instant case, there was ample evidence before the trial court that the children could not be placed with their parents within a reasonable period of time or should not be placed with their parents. R.C. 2151.414(E) provides in relevant part:

> "(E) In determining at a hearing *** whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence.

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[5]Id., citing *In re Pieper Children* (1993), 85 Ohio App.3d 318, 330.

[6]*Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

[7]See *In re M.W.*, Cuyahoga App. No. 83390, 2005-Ohio-1302, citing *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 79-80.

[8]Id., citing *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

> If the court determines, by clear and convincing evidence, *** that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:
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> "(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;
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> "(2) Chronic mental illness, chronic emotional illness, *** or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing ***;
>
> "***
>
> "(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;
>
> "***
>
> "(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 [2151.35.3] or 2151.415 [2151.41.5] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections."

{¶ 36} After exhaustive testimony presented over two days, the trial court found that reasonable efforts were made by CCDCFS to prevent the removal and the

continued removal of the children from the home and to finalize a permanency plan. The trial court noted that the services included: domestic violence and anger management services, substance abuse assessment and treatment, mental health evaluation and treatment, and mental health services for the children. The trial court noted that the services were not completed.

{¶ 37} The testimony established that the father consistently maintained that he did not have a substance abuse problem, repeatedly failed to avail himself of the services that were being provided, and minimized the nature and condition of his children's mental health challenges.

{¶ 38} Although the children's mother is not appealing the trial court's adjudication, relevant testimony indicated that the mother refused to complete the case plan developed to effect reunification. The record indicates that the mother had severe mental challenges, as well as a chemical dependency on alcohol, yet was unwilling to address the problem. In addition, the record indicates that, like the father, the mother minimized the nature and condition of her children's mental health challenges.

{¶ 39} The trial court further noted that the aforementioned chemical dependencies of the parents are so severe that it makes them unable to provide an adequate permanent home for the children at the present time and, as anticipated, within one year. The record supports the trial court's determinations. In light of the foregoing, there was sufficient evidence that the children could not be placed with either parent within a reasonable period of time.

{¶ 40} Next, when considering whether there is clear and convincing evidence that a child's best interest requires the court to grant permanent custody to a children's services agency, the court must consider the non-exhaustive factors set forth in R.C. 2151.414(D):

> "(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;
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> "(2) 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;
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> "(3) 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;
> "(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;
>
> "(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."[9]

{¶ 41} Although the court must consider all of the R.C. 2151.414(D) factors, only one of them needs to be resolved in favor of the award of permanent custody in order for the court to terminate parental rights.[10] "Clear and convincing" evidence is evidence sufficient to cause the trier of fact to develop a firm belief or conviction as

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[9]*In re A.N.*, Cuyahoga App. Nos. 92433 and 92451, 2009-Ohio-1873.

[10]See *In re Z.T.*, Cuyahoga App. No. 88009, 2007-Ohio-827; *In re T.M.*, Cuyahoga App. No. 83933, 2004-Ohio-5222.

to the facts sought to be established.[11] An appellate court will not reverse a trial court's decision on parental rights and custody unless it finds that the decision is unsupported by "sufficient evidence to meet the clear and convincing standard of proof."[12]

{¶ 42} Here, the record indicates that the trial court considered testimony pertinent to R.C. 2151.414(D). The testimony established that the children witnessed and were affected by their parents' alcohol abuse and attendant domestic violence. The parents' behavior resulted in A.D. I suffering from post-traumatic stress disorder. The testimony established that both daughters had suicidal ideations and A.D. II engaged in self-mutilation.

{¶ 43} The record indicates that the testimony presented established that A.D. I is in a stable living environment with his grandmother, who is very attentive to his needs. The record established that A.D. I's grandmother wishes to adopt him, and A.D. I indicated that he would be content to continue living with his grandmother.

{¶ 44} Further, although the father is not appealing the trial court's decision awarding permanent custody of A.D. III, the testimony established that A.D. III indicated that she would hang herself if she had to go back to her parents. The testimony established that A.D. III was thriving after she started living with her aunt.

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[11]*Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

[12]*In re Dylan C.* (1997), 121 Ohio App.3d 115, 121.

{¶ 45} Finally, as it relates to A.D. II, the record indicates that because of her severe mental and psychological problems and needs, she had to be placed in institutional care. The record indicates that neither parent appreciated the severity of their daughter's mental and psychological challenges. The record also indicates that the father had to be ultimately barred from A.D. II's treatment facility, because of his unsupportive, abrasive, and confrontational attitude.

{¶ 46} The above facts constitute clear and convincing evidence that a grant of permanent custody to the agency was in the children's best interest. We acknowledge that the termination of parental rights is "the family law equivalent of the death penalty."[13] Yet, even in view of this, we cannot say that, based upon the record above, the trial court's decision was against the manifest weight of the evidence. Accordingly, we overrule the father's three assigned errors.

Judgment affirmed.

It is ordered that appellee recover of appellant its 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 25 of the Rules of Appellate Procedure.

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[13] *In re Hayes* (1997), 79 Ohio St.3d 46, 48; *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368.

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and
CHRISTINE T. McMONAGLE, J., CONCUR