[Cite as *In re C.C.*, 2010-Ohio-779.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 94011 and 94012

IN RE: C.C. and Ci.C.

Minor Children

[APPEAL BY MOTHER, L.C.]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 08936260 and AD 08936265

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

RELEASED: March 4, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, L.C.[1] appeals the decision of the Cuyahoga County Court of Common Pleas, Juvenile Division, granting permanent custody of her two minor children, C.C. and Ci.C. ("the minor children"), to the Cuyahoga County Department of Children and Family Services ("CCDCFS" or "the Agency"). L.C. raises three assignments error for our review. She argues that CCDCFS failed to show by clear and convincing evidence that: permanent custody was in the children's best interests, L.C. had not remedied the conditions that caused the children's removal from the home, and CCDCFS failed to satisfy its burden to prove that it made reasonable efforts to reunify L.C. and her children. Finding no error in the proceedings below, we affirm.

Factual and Procedural History

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

{¶ 2} According to the record, L.C. married B.C., a convicted sex offender,[2] in 2001. L.C. had custody of B.M., her daughter from a prior relationship when she married B.C. L.C. was aware of B.C.'s history; however, she minimized his past behavior and indicated that B.C. had since given his life to Jesus. (Tr. 20-21.) L.C. and B.C. adopted a son, C.C., soon after they were married. L.C. and B.C. did not disclose B.C.'s prior conviction, and the adoption agency did not discover it.

{¶ 3} At some point in the marriage, L.C. had an extramarital relationship and moved out of the family home for a time, leaving her daughter and adopted son behind with B.C. L.C. eventually returned to the family home, but not before becoming pregnant by her paramour. B.C. ultimately signed the birth certificate after Ci.C. was born.

{¶ 4} In 2008, L.C. was hospitalized on two separate occasions for depressive episodes. She admitted to a violent relationship with B.C. and described him as a controlling, abusive person. Despite this, L.C. was unable to leave the relationship and support herself independently.

{¶ 5} On August 1, 2008, CCDCFS removed the minor children from L.C. and B.C.'s home, placed them in emergency custody, and filed a complaint for neglect and temporary custody, after the minor children's

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[2]B.C. was convicted in 1990 by a military court of justice for sodomizing his two young boys, who were ages six and four at the time. B.C. served 30 months in a military prison for these acts, and was dishonorably discharged.

teenaged sister, B.M.,[3] alleged that B.C. was touching her in a way that made her uncomfortable. A subsequent investigation conducted by CCDCFS determined that B.C. was "grooming" B.M. for future sexual abuse.

{¶ 6} On September 8, 2008, after CCDCFS amended its complaint for abuse, neglect, dependency, and temporary custody of the minor children, L.C. and B.C. admitted to the allegations contained in the amended complaint.

{¶ 7} On October 24, 2008, the Agency filed a 20-page case plan with goals for L.C. to meet in order to be reunified with her children. On October 28, 2008, the juvenile court ordered that the minor children be placed in the temporary custody of the Agency.

{¶ 8} On December 2, 2008, the juvenile court approved the magistrate's decisions and placed the minor children in temporary custody.

{¶ 9} On June 10, 2009, CCDCFS filed a motion to modify temporary custody to permanent custody, alleging that L.C. failed to complete the case plan given to her by CCDCFS, and failed to remedy the conditions that caused the removal of the children from the home. Specifically, the Agency alleged that L.C. refused to believe that her children were at risk of being abused by B.C., and she would be unable to protect herself and her minor

[3]B.M. was later committed to the legal custody of an interested individual.

children from harm in the event the children were reunited with L.C. and B.C. in the family home. Since L.C. was unable to be independent from B.C., the Agency argued that reunification was not an option.

{¶ 10} On September 1 and 2, 2009, dispositional hearings were held on the motion to modify temporary custody to permanent custody. After receiving testimony from the expert witnesses and the social worker assigned to the case, the juvenile court terminated L.C.'s and B.C.'s parental rights, and granted permanent custody to CCDCFS.

{¶ 11} The order granting the Agency's motion was entered on September 9, 2009. On September 28, 2009, L.C. filed separate notices of appeal for C.C. and Ci.C., which this court sua sponte consolidated for hearing and disposition on October 8, 2009.

{¶ 12} On November 4, 2009, L.C. filed her brief, asserting three assignments of error.

{¶ 13} On December 21, 2009, CCDCFS filed its answer brief, asserting that the trial court's decision was supported by sufficient competent, credible evidence.

Standard of Review

{¶ 14} "The standard of proof to be used by the trial court when conducting permanent custody proceedings is clear and convincing evidence. R.C. 2151.414(B)(1). '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. It does not mean clear and unequivocal.'" *In re Y.H.*, Cuyahoga App. No. 87746, 2007-Ohio-3077, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, 477, 120 N.E.2d 118.

{¶ 15} "It is well established that when some competent, credible evidence exists to support the judgment rendered by the trial court, an appellate court may not overturn that decision unless it is against the manifest weight of the evidence." Id., citing *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

{¶ 16} We also note that "[t]he discretion a trial court enjoys in custody matters should be accorded the utmost respect given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned." *In re Y.H.*, citing *In re Satterwhite*, Cuyahoga App. No. 77071, 2001-Ohio-4137. "The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding (i.e.,

observing their demeanor, gestures, and voice inflections, and using these observations in weighing the credibility of the proffered testimony) cannot be conveyed to a reviewing court by a printed record." Id., citing *Trickey v. Trickey* (1952), 158 Ohio St. 9, 13, 106 N.E.2d 772.

{¶ 17} "This court will not overturn a permanent custody order unless the trial court has acted in a manner that is arbitrary, unreasonable or capricious." *Satterwhite*, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶ 18} Parents have a "fundamental liberty interest" in the care, custody, and management of their child and an "essential" and "basic civil right" to raise their children. *In re Murray* (1990), 52 Ohio St.3d 155, 157, 225 N.E.2d 1169. However, a parent's right is not absolute. "As it has been perceptively noted elsewhere, 'it is plain that the natural rights of a parent are not absolute, but are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.'" *In re Cunningham* (1979), 59 Ohio St.2d 100, 106, 391 N.E.2d 1024, citing *In re R.J.C.* (Fla.App.1974), 300 So.2d 54, 58. Consequently, the State may terminate parental rights when the child's best interest demands it. *In re Y.H.*, supra.

{¶ 19} Finally, we note that "[i]f the record shows some competent, credible evidence supporting the trial court's grant of permanent custody to

the county, we must affirm that court's decision, regardless of the weight we might have chosen to put on the evidence." *In re P.R.*, Cuyahoga App. No. 79609, 2002-Ohio-2029, at ¶15.

Assignments of Error

{¶ 20} L.C.'s first assignment of error states:

> **"I. The Cuyahoga County Department of Children and Family Services failed to show by clear and convincing evidence that permanent custody is in the minor children's best interests."**

{¶ 21} L.C. argues that one of the experts in the case, Dr. Kathryn Kozlowski ("Dr. Kozlowski"), testified that she believed L.C. was "absolutely" committed to her minor children, an opinion that demonstrates reunification was in the minor children's best interests. L.C. also argues that her social worker, Latisha Riggins ("Riggins"), testified that L.C. stayed in the family home out of concern for her children, to avoid "taking them to the homeless shelter" in the event they were reunified. We disagree.

{¶ 22} The record shows that Dr. Kozlowski's unequivocal opinion was that reunification would not serve the children's best interests, in part because of L.C.'s inability to separate from B.C. and protect herself, let alone her children, from the abusive relationship. All experts in the case agreed that, based upon their assessments of B.C., he was at high risk to sexually

reoffend. Despite this, Dr. Kozlowski determined that L.C. had only a limited understanding of the impact of B.C.'s presence on her children. Further, Dr. Kozlowski testified that, even though L.C. attended the classes required under the case plan, L.C. had failed to become more self-sufficient. Dr. Kozlowski was concerned that because L.C. was suffering from abuse herself, she had a skewed idea of what constituted appropriate behavior toward children and was therefore ill-equipped to protect her children from abuse.

{¶ 23} Riggins buttressed Dr. Kozlowski's assessment with her own conclusion that L.C. did not benefit from the programs and classes under the case plan because she continued to make poor choices. Riggins specifically mentioned the fact that L.C. minimized B.C.'s abusive behavior by defending him, by blaming her children for his behavior, and by continuing to reside with him. Despite learning about empowerment and self-esteem, Riggins testified that L.C. was unable to keep B.C. out of the home or to leave the home herself. While the record reflects that B.C. had at one point moved out, it was later revealed that he was actually living in his truck in the driveway of the family home, and that L.C. regularly brought him into the home at his request. Riggins further testified that L.C. refused to move out of the family home and into a shelter or transitional housing unless the

Agency could "guarantee" her reunification with her children.

{¶ 24} The evidence in the record reflects that at the time of the September 1, 2009 dispositional hearing, L.C. and B.C. had entered into a lease agreement and were living together, and that L.C. made no efforts whatsoever to remove herself from the home. Despite her violent relationship with B.C., and her acknowledgment that B.C. was exhibiting grooming behavior toward her older daughter, she "thought nothing" of his status as a sex offender as it related to the safety of her children. In short, L.C. refused to acknowledge that her children were at risk of being harmed by B.C., and she even blamed her older child, B.M., for the onset of some of the difficulties in their relationship, particularly the investigation that led to the children being removed from the home.

{¶ 25} Another social worker assigned to the case, Robin Palmer ("Palmer"), testified at length on this point. Palmer recommended that the minor children be removed from the home because of the possibility that the children could not be protected by L.C. from B.C.'s abuse. Palmer based those concerns upon an interview with L.C., in which she found that L.C. and B.C. deceived the adoption agency by hiding B.C.'s sex offense history, and that L.C. did not hold B.C. accountable for his actions or his abuse. In fact, L.C. blamed her older child, B.M., for B.C.'s behavior. Specifically, Palmer testified:

> **"I thought there was some inability to protect the children, I was concerned about judgment. I was concerned about any further inappropriate or illegal sexual behavior going on. I also know * * * from working in this field that sexual abuse isn't always a blitz attack. It's something that's worked up to. So even though we don't want to accept the fact that there's a possibility that he didn't touch the private parts of [B.M.], there are a lot of these that we consider grooming behaviors that are going on and working up to it, and that was very concerning to me. * * * The younger children can't identify those behaviors or protect themselves if there's nobody in that home to kind of filter through some of this stuff, protect them, moderate that, then I think they're at risk. And that's why I recommended removal from the home." (Tr. 101-102.)**

{¶ 26} In order for permanent custody to be granted in favor of the State, R.C. 2151.414 requires the existence of a situation, shown by clear and convincing evidence, where the child "cannot be placed with either parent within a reasonable period of time or should not be placed with the parents." R.C. 2151.414(B)(2). Under R.C. 2151.414(B)(1)(a)-(d), the trial court is required to consider the custodial history of the child in making its "best interests" determination. In so doing, the court must ascertain whether the child is "not abandoned, orphaned, or has not 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 must further ascertain that "the child cannot be placed with either of the child's parents within a reasonable time, or should not be placed

with the child's parents." Id.

{¶ 27} In this case, the trial court's inquiry was aided by the 16 factors set forth in R.C. 2151.414(E).[4] Under this statutory section, the trial court is required to enter a finding that the child cannot or should not be placed with either parent if it finds by clear and convincing evidence that any of the 16 factors exist. *In re D.J.*, Cuyahoga App. No. 88646, 2007-Ohio-1974, at ¶64.

{¶ 28} Relevant to this section, the trial court made findings consistent with the statute that sections (E)(1), (E)(4), (E)(11) and (E)(14) were present.[5]

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[4]The statutory factors found at R.C. 2151.414(E) act as independent factors in determining an award of permanent custody separate and apart from those found at R.C. 2151.414(B)(1)(a)-(d)

[5]These statutory sections indicate in pertinent part: (E)(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. * * * (E)(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[.] * * * (E)(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 or 2151.415 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, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child. * * * (E)(14) The

See Journal Entries of September 9, 2009. Any one of these factors act as sufficient grounds for the trial court to determine that the children could not be placed with either parent within a reasonable time. The court need only find that one factor applies to support its holding. See *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816. After making the specific determination that the appropriate statutory factors were present under subsections (E)(1), (E)(4), (E)(11) and (E)(14), the trial court summarized its findings by stating:

> **"Upon considering the interaction and interrelationship of the child with the child's parents, siblings, relatives, and foster parents; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency * * * for twelve or more months of a consecutive twenty-two month period; * * * 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; and, the report of the Guardian Ad Litem, the court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the [children]." Id.**

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parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect." R.C. 2151.414(E), et seq.

{¶ 29} We believe the Agency proved by clear and convincing evidence that L.C. was unable to protect herself or her children from the abuse in the home, and was unable to prevent that abuse from happening in part because L.C. failed to recognize that it was taking place at all. Placing the minor children back in L.C.'s care was not in the best interests of the minor children because of the history of abuse, the dysfunctional nature of the relationship, and L.C.'s failure to recognize and take action to remedy the situation. Competent, credible evidence exists in this record to support the trial court's determination that the children should not have been returned to L.C., and the granting of permanent custody to the county was appropriate. *In re P.R.*, supra. We cannot say the trial court abused its discretion in granting the Agency's motion for permanent custody.

{¶ 30} L.C.'s second assignment of error states:

> **"II. The Cuyahoga County Department of Children and Family Services failed to show by clear and convincing evidence that appellant had not remedied the conditions which caused the removal of the children from the home."**

{¶ 31} L.C. argues that she completed all the requirements of her case plan as set forth by representatives of CCDCFS after the court granted it temporary custody, and as such, permanent custody in favor of CCDCFS is not the best interests of her children. We disagree.

{¶ 32} Some of L.C.'s case plan requirements included completing parenting and domestic violence and anger management classes, meeting the basic needs of her children, attaining emotional stability, and finding housing apart from B.C. However, the evidence presented to the juvenile court found that L.C. failed to meet the requirements of her case plan because she refused to remove herself from the home and find suitable housing and employment apart from B.C., despite the repeated attempts by CCDCFS to find her temporary and/or permanent housing and employment.

{¶ 33} L.C. argues that all her efforts, and particularly her decision to remain in the home with B.C. instead of moving out and finding employment, were devoted to reunification with her children and remedying the conditions that caused the minor children to be removed from the family home. L.C. argues that her failure to find housing emanated from her concern that she keep her family together. She argues that the Agency could not guarantee her reunification with the children if she moved into a shelter or other temporary housing as the Agency recommended in its case plan. L.C. makes no argument for her failure to find suitable employment.

{¶ 34} L.C. therefore admits that she has failed to remedy all the conditions that required removal of the minor children from the home, and has failed to find suitable employment and housing apart from B.C. so as to make reunification possible with her children. Based upon L.C.'s failure to remedy these conditions, we cannot say the juvenile court erred in granting permanent custody in favor of the Agency.

{¶ 35} L.C. contradicts both the Agency's argument and the goals of her case plan by arguing that B.C. was at low risk to sexually reoffend. L.C. argues that the Agency was incorrect in asserting that L.C. failed to protect her children from B.C. This argument evidences a failure to recognize the existence of the problems within the home that led to the removal of her children, let alone remedy them.

{¶ 36} Sufficient competent, credible evidence exists for the juvenile court to conclude that L.C. failed to remedy the conditions causing removal, by failing to find suitable housing and employment.

{¶ 37} L.C.'s second assignment of error is overruled.

{¶ 38} L.C.'s third assignment of error states:

> **"III. The Cuyahoga County Department of Children and Family Services failed to satisfy its burden to prove that it made reasonable efforts to reunify appellant and her children."**

{¶ 39} L.C. argues essentially that CCDCFS did not make a good faith effort for reunification. In support of this, she argues merely that "the testimony of the social worker demonstrates that the worker was not making an effort [to] promote reunification." We disagree. CCDCFS made reasonable efforts to reunify L.C. and her children, offering her alternative housing, employment options, and services to protect herself and her children from the abusive relationship they were in. The evidence in the record indicates that L.C. refused these services, or did not benefit from those she utilized. There was no evidence presented at the dispositional hearing that indicated the Agency failed to make necessary services available to the family. L.C. cites no specific failures by the Agency to provide services to the family.

{¶ 40} This court has repeatedly found this argument to be without merit. Where, as here, a motion for permanent custody is brought pursuant to R.C. 2151.413, the trial court has no duty to engage in a "reasonable efforts" analysis. See *In re Z.T.*, Cuyahoga App. No. 88009, 2007-Ohio-827; *In re Z.Y.*, Cuyahoga App. No. 86293, 2006-Ohio-300; *In re La.B.*, Cuyahoga App. No. 81981, 2003-Ohio-6852; *In re K. & K.H.*, Cuyahoga App. No. 83410, 2004-Ohio-4629. Here, although such an analysis was not required, we find that nonetheless the agency did make reasonable reunification efforts as shown above.

{¶ 41} L.C.'s third assignment of error is overruled.

Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and

MELODY J. STEWART, J., CONCUR