

[Cite as *In re: Ra. R.*, 2018-Ohio-3188.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106852

IN RE: Ra. R., ET AL.
Minor Children

[Appeal By L.G., Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 16901478 and AD 16901480

BEFORE: Jones, J., Stewart, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: August 9, 2018

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LARRY A. JONES, SR., J.:

{¶1} Appellant L.G. (“Mother”) appeals the trial court’s decision to grant permanent custody of two of Mother’s children, Ra. R. and Ro. R., to the Cuyahoga County Department of Children and Family Services (“CCDCFS” or “Agency”). We affirm.

I. Procedural History and Facts

{¶2} On February 2, 2016, CCDCFS filed a complaint alleging three of Mother’s children, Ra. R. (DOB: 1/1/2007), Ro. R. (DOB: 10/21/2008), and S.G. (DOB: 12/24/2010) to be neglected and dependent children. The Agency alleged that Mother had been hospitalized after expressing suicidal thoughts and was not engaged in treatment to address her mental health diagnoses of bipolar disorder, schizophrenia, and depression. In addition, the Agency alleged that Mother was homeless and was failing to meet the basic and educational needs of the children. The Agency also filed a motion for emergency predispositional temporary custody, and the children were committed to the emergency custody of CCDCFS.

{¶3} In April 2016, the children were adjudicated neglected and dependent and committed to the temporary custody of CCDCFS. In November 2016, the Agency sought a first extension of temporary custody. Mother agreed to the extension.

{¶4} Mother gave birth to her fifth child, J.G., on March 2, 2017. The Agency sought permanent custody of J.G.¹ Mother agreed to permanent custody as to J.G. only.

{¶5} In July 2017, CCDCFS filed a motion to modify temporary custody of the children to permanent custody. The Agency later removed S.G. from the motion for permanent custody

¹ Mother also does not have custody of her oldest child, who is also not at issue in this appeal.

and asked for S.G. to be committed to the legal custody of her father; therefore, this appeal concerns only sons, Ra. R. and Ro. R.²

{¶6} The trial court held a hearing on the agency's motion for permanent custody for Ra. R. and Ro. R. The following pertinent evidence was presented at the hearing.

{¶7} In February 2016, Mother was hospitalized after expressing suicidal thoughts. Lisa Prokopius ("Prokopius"), the ongoing social worker for the family, testified that the permanency goal on the family's case plan was reunification. She identified the case plan services for Mother as mental health, parenting, domestic violence, and being able to meet the children's basic needs. Prokopius testified that she referred Mother to multiple services and tried several different options in an attempt to figure out what would work best for Mother. Mother was referred to two visitation coaches, a parenting program, mental health assessment, counseling and medication services, a domestic violence program, housing, and basic needs services.

{¶8} Prokopius testified that Mother made progress in some areas, such as domestic violence. Mother had completed her domestic violence classes and appeared to gain some insight from the classes. Mother also obtained and consistently maintained housing. But, according to Prokopius, Mother made little or no progress in other areas; Prokopius testified that Mother was overwhelmed during visits and was unable to manage her children's behaviors. Prokopius testified that Mother was unable to focus on more than one child at a time and often resorted to yelling at them. Prokopius further testified that during visitations, the children would throw things at each other and call people names. Prokopius noted that the boys' aggressive behaviors dramatically decreased when Mother was incarcerated and did not have

² The father of Ra. R. and Ro. R. did not participate in case plan services and did not oppose permanent custody. Therefore, he is not a party to this appeal.

visits with them. Prokopius offered that she had concerns whether Mother would be able to parent Ra. R. and Ro. R. due to the boys' "severe behavior issues." Prokopius also testified that Mother was inconsistent in her mental health appointments and in taking her mental health medication.

{¶9} Prokopius testified that Mother was unable to visit with the children for five months while Mother was incarcerated during the pendency of a criminal case. According to Prokopius, Ro.R. has an individualized education plan ("IEP") at school to address his behaviors. Ro.R. had also been recently diagnosed with autism and the Agency had him enrolled in an autism program through a local hospital.

{¶10} Cynthia Holzman ("Holzman"), supervisor of the Supported Visit Program at Ohio Guidestone, testified that she was a visitation coach and was present for four of the ten sessions Mother attended; the sessions ended early when Mother went to jail. Holzman explained that the goal of the parenting sessions was to "engage [a] parent into active parenting * * * to bond with [their] child * * * to demonstrate that you can engage with them appropriately, set limits for them appropriately, manage behaviors appropriately." Holzman also described Mother's specific goals: to focus on the children during visits rather than being distracted by other things; understanding that the children need comfort and parental engagement; ensuring the safety of the children; learning how to redirect and eliminate problematic behaviors; and understanding child development.

{¶11} Holzman testified that Mother was not a "very good learner." Holzman explained that she and Mother's other parenting coach structured the sessions in ways designed to help Mother succeed, such as setting up times where fewer of her children would be present. But, according to Holzman, Mother was unable to grasp the concepts presented to her. Holzman

described Mother's inability to redirect negative behaviors, such as the children pushing and throwing things at each other. According to Holzman, the parenting coach would model how to redirect the behaviors, but Mother was unable to apply what she had been taught so she could change the kids' behavior. Holzman also expressed concern that Mother did not exhibit an appropriate parent-to-child relationship; rather Mother appeared to "look up" to Ra. R., who exhibited mature behavior during visits, as though he were the parent.

{¶12} Holzman opined that Mother lacked the cognitive skills to benefit from Guidestone's program: "[Mother's] cognitive functioning appeared to be an insurmountable obstacle and she simply could not learn the skills necessary to parent her children safely and protect them from harm."

{¶13} Dr. Ellen Weinhouse ("Dr. Weinhouse") completed a psychological evaluation on Mother and testified that Mother functioned within the "mild range of intellectual disability," that the doctor described as functioning below what would be considered the normal or borderline normal range. According to Dr. Weinhouse, Mother needed additional guidance to understand how to make good judgments and how to apply general principles to specific situations. Dr. Weinhouse diagnosed Mother with depression and post-traumatic stress disorder ("PTSD"). The PTSD, according to Dr. Weinhouse, stemmed from Mother being repeatedly sexually abused as a child by a relative and the maternal grandmother's refusal to believe Mother. As a result of the PTSD, Dr. Weinhouse recommended that Mother would benefit from working with a therapist who could help her work through the past abuse without further traumatizing Mother. Dr. Weinhouse testified that she recommended this because Mother claimed therapy caused her emotional pain and was resistant to therapy.

{¶14} Allison Susin (“Susin”), who provided mental health services to Ra. R. and Ro. R. through Applewood Foster Care, testified she completed mental health assessments on the children and implemented the recommendations of the assessments. She testified that the boys have issues with depression and aggression; Susin had weekly therapy sessions with the boys to address those issues and to help them adjust to being in foster care. Susin testified that Ro. R. struggled with appropriate behavior in social situations; however, with therapy, he was having less severe tantrums and was no longer putting himself in dangerous situations. Ra. R. made some progress in adjusting, but still exhibited aggressive behaviors and signs of depression.

{¶15} Susin testified that she attended visits between Mother and the two boys so that she could observe problematic behaviors and address them during therapy sessions. Susin described how the boys’ negative and aggressive behaviors escalated after visits with Mother. Susin attributed these behaviors to a number of things. According to Susin, the children would fight for Mother’s attention, usually unsuccessfully, so they would decompensate. When Mother would pay attention to the boys, Mother would make negative comments about their case worker and tell her children that they would be coming home soon, which would “throw the kids off.” Susin explained that by “throw off,” she meant that she would observe an escalation in the boys’ negative behaviors. However, during the time that Mother was incarcerated and the children did not visit her, she observed a marked decrease in the boys’ problematic behaviors.

{¶16} Troy Hough, the children’s guardian ad litem (“GAL”), recommended that permanent custody was in the best interest of the children. He described the boys’ behavior as “very difficult to manage.” On one occasion he terminated a visit with the children because they were being so physically aggressive with each other. He also stated that he did not think that Mother was “equipped” to handle her children’s behaviors.

{¶17} Following the hearing, the trial court granted the motion for permanent custody,

finding as to each child:

The child has been in the temporary custody of the Cuyahoga County Department of Children and Family Services * * * twelve or more months of consecutive twenty-two month period. The child has been in temporary custody since May 12, 2016.

The Court finds:

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.

Mother has chronic mental illness, chronic emotional illness or mental retardation 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 (1) year after the Court holds the hearing in this matter.

Mother has neglected the child between the date of the original complaint was filed and the date of the filing of this motion by failure to regularly visit, communicate, or support the child due to her in incarceration.

The Court finds that the child's continued residence in or return to the home of [Mother] will be contrary to the child's best interest.

The Court further finds that reasonable efforts were made to prevent the removal of the child from his home, or return the child to the home, and to finalize the permanency plan, to wit: reunification. Relevant services provided to the family were and the reasons those services were not successful: Mother – domestic violence counseling, mental health evaluation, parenting classes and stable housing. * * * Mother and father have been non-compliant with services offered.

II. Law and Analysis

{¶18} Mother filed a timely notice of appeal, and raises the following assignments of error for our review:

I. The award of permanent custody to the Agency was improper because the Agency's motion to modify temporary custody to permanent custody was in violation of R.C. 2151.413(D)(3)(b), which provides that a public children services agency shall not seek an award of permanent custody if the agency has not provided the services required by the case plan to the parents of the child or the child to ensure the safe return of the child to the child's home.

II. The award of permanent custody is against the manifest weight of the evidence.

A. Standard of Review

{¶19} A trial court's decision to award permanent custody must be supported by clear and convincing evidence. *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 46. Clear and convincing evidence is evidence "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. When reviewing a trial court's decision to grant permanent custody, we will not substitute our judgment for that of the trial court when its determinations are supported by competent and credible evidence. *In re W.W. at id.*

{¶20} As it applies to this case, R.C. 2151.414(B)(1) provides that

the court may grant permanent custody of a child to a movant if the court determines * * * by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

* * *

(d) 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 * * * .

{¶21} In the first assignment of error, Mother contends that the trial court erred in granting permanent custody to CCDCFS because the agency failed to offer her case plan services as required by R.C. 2151.419.

{¶22} R.C. 2151.413(A) provides that a public children services agency such as CCDCFS may file a motion for permanent custody of a child who had been committed to the temporary custody of the agency. R.C. 2151.413(D) requires such an agency to file a motion for permanent custody of any child who has been in custody for twelve or more months of a consecutive twenty-two month period, unless an exception applies. One such exception is set forth in R.C. 2151.414(D)(3)(b), which states that an agency shall not move for permanent custody “[i]f reasonable efforts to return the child to the child’s home are required under [R.C. 2151.419], [and] the agency has not provided the services required by the case plan to the parents of the child or the child to ensure the safe return of the child to the child’s home.”

{¶23} The Supreme Court of Ohio has held that the reasonable-efforts requirement set forth in R.C. 2151.419 does not apply to motions for permanent custody or hearings on such motions. *In re Tr. T.*, 8th Dist. Cuyahoga No. 106107, 2018-Ohio-2126, ¶ 30, citing *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 41. The state must, unless certain statutory exceptions apply, still “make reasonable efforts to reunify the family during the child-custody proceedings prior to the termination of parental rights.” *In re C.F.* at ¶ 43. “If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time.” *Id.*

{¶24} Here, the trial court made a reasonable-efforts finding at the November 2016 hearing on the agency's motion for a first extension of temporary custody. Although not necessary, in its decision granting permanent custody to CCDCFS, the trial court again concluded CCDCFS had made reasonable efforts, specifically finding that the agency had provided services including domestic violence counseling, mental health evaluation, parenting classes, and stable housing, but that Mother had been noncompliant with services.

{¶25} Although Mother complains that the agency failed to provide her with an appropriate referral to a counselor, failed to follow-up on Dr. Weinhouse's recommendations for Mother, and failed to diagnose Ro. R. with autism in a timely manner, the record contains ample evidence to support the trial court's determination that CCDCFS made reasonable efforts in this case.

{¶26} Mother's case worker, Prokopius, referred Mother for counseling to the Centers for Families and Children. Prokopius also discussed the results of Dr. Weinhouse's assessment with Mother and referred Mother to a different visitation coach based on the doctor's assessment.

{¶27} Ro.R.'s Applewood therapist testified that Ro. R. received a mental health assessment as soon as he was placed in foster care and the diagnosis of autism was determined after "a more recent assessment."

{¶28} Thus, we find that the trial court did not err in finding that the Agency made reasonable efforts to reunify the family.

{¶29} In light of the above, the first assignment of error is overruled.

{¶30} In the second assignment of error, Mother challenges the trial court’s determination that an award of permanent custody to CCDCFS is in the children’s best interest. She argues the trial court’s judgment is against the manifest weight of the evidence.

{¶31} In reviewing a challenge to the weight of the evidence, we weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 16, citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12.

{¶32} R.C. 2151.414(D)(1) provides that:

in determining the best interest of a child * * * the court shall consider all relevant factors, including, but not limited to, the following:

- (a) The interaction and interrelationship of the child with * * * any * * * person who may significantly affect the child;
- (b) The wishes of the child * * * with due regard for the maturity of the child;
- (c) The custodial history of the child * * *;
- (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 * * *.

{¶33} The trial court considered these factors, noting that Ro. R. and Ra. R. require “special attention or understanding of their needs”; Mother’s mental or emotional illness made the return of the children to her against their best interest; Mother’s incarceration impacted her ability to regularly visit, communicate, or support the children; and the GAL’s report and recommendation.

{¶34} Based on these and other factors, the trial court determined that it was in the children's best interest to remain in their current placement with an award of permanent custody to CCDCFS.

{¶35} After reviewing the entire record, we hold that the trial court's best-interests determination was not against the weight of the evidence and its judgment was supported by competent, credible evidence. Mother's second assignment of error is therefore overruled, and the trial court's judgment is affirmed.

It is ordered that appellees recover from appellant 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 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

MELODY J. STEWART, P.J., and
ANITA LASTER MAYS, J., CONCUR