

[Cite as *In re A.B.*, 2018-Ohio-4895.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106883

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**IN RE: A.B., ET AL.**  
**Minor Children**

[Appeal by N.B., Mother]

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**JUDGMENT:**  
AFFIRMED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD 15915879 and AD 15915880

**BEFORE:** McCormack, P.J., Boyle, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** December 6, 2018

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TIM McCORMACK, P.J.:

{¶1} Appellant N.B. (“Mother”) appeals the juvenile court’s award of permanent custody of her children, A.B. (d.o.b. December 30, 2006) and T.B. (d.o.b. April 13, 2012), to the Cuyahoga County Department of Children and Family Services (“DCFS”). For the reasons that follow, we affirm the juvenile court’s determination.

**Procedural and Substantive History**

{¶2} On November 12, 2015, DCFS filed a complaint alleging A.B., T.B., and H.B. to be neglected and requesting a disposition of temporary custody to the agency.<sup>1</sup> At the time the complaint was filed, M.B., the children’s maternal grandmother (“Grandmother”), had legal custody of H.B. and A.B. Grandmother received legal custody of the children in 2009 as a result of Mother’s ongoing substance abuse issues. Although Grandmother never had legal custody of T.B., the child had been in her care since his birth in 2012. In the complaint, the agency cited Grandmother’s transience and lack of stable housing, as well as her failure to ensure that the children attended school on a regular basis, as primary reasons for its request of

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<sup>1</sup>H.B., an older sibling of T.B. and A.B., is not a subject of this appeal. Prior to the agency’s request to modify temporary custody to permanent custody, H.B. had been returned to the legal custody of her father, M.W., who is not the biological father of A.B. or T.B.

temporary custody. The complaint also referred to Mother's substance abuse problem, criminal history, and intermittent homelessness.

{¶3} The children were placed in predispositional temporary custody of the agency on December 28, 2015. The children were adjudicated neglected following a dispositional hearing in March 2016. The juvenile court granted temporary custody to the agency on April 11, 2016.

{¶4} Initially, the agency's goal in this case was reunification. In accordance with that goal, the case plan objectives for Mother were primarily concerned with her substance abuse. The case plan objectives for Grandmother included securing adequate housing for the children in order to meet their basic needs and addressing issues of educational neglect. On July 5, 2016, the GAL submitted a report, noting that the agency social worker had indicated that both Mother and Grandmother had failed drug screens. Subsequently, maternal grandfather J.B. ("Grandfather") also failed a drug screen. This led to an amended case plan requiring both maternal grandparents to engage in services relative to their use of illegal substances.

{¶5} On October 24, 2016, the agency filed a motion to modify temporary custody to permanent custody, arguing that A.B. and T.B. cannot be placed with either of their parents within a reasonable time or should not be placed with their parents, and that an award of permanent custody to the agency was in their best interest.

{¶6} On July 28, 2017, J.B., father of A.B. and T.B. ("Father"), filed a motion for legal custody of the children to himself. On October 27, 2017, Grandmother filed a motion for legal custody of A.B. and T.B. to herself.

{¶7} On October 27, 2017, a hearing was held on the agency's motion for permanent custody. At this hearing, Father orally withdrew his motion for legal custody. The court heard from counsel for Grandmother, Mother, Father, and both children. According to T.B.'s counsel,

T.B. wished to be with his maternal grandparents. According to A.B.'s counsel, while A.B. expressed that she loves her family, she understood the implications of an award of permanent custody to the agency and was comfortable in her foster care placement. The social worker and the children's guardian ad litem testified, and both were extensively cross-examined as part of the custody hearing.

{¶8} The social worker testified that permanent custody would be in the children's best interest because they need permanency. They had been in the agency's custody for nearly two years. She went on to review Mother's lack of compliance with her case plan objectives, both at the time of the initial proceedings in which legal custody was granted to Grandmother, and at the time of these proceedings. Mother had been diagnosed with bipolar disorder, depression, and anxiety. She had not engaged in treatment for these diagnoses until approximately two and a-half months before the permanent custody hearing was conducted in this case. In early August 2017, Mother began treatment for an opioid addiction. As part of this program, she began mental health treatment as well. Grandmother began treatment for substance abuse in June 2017. According to testimony, Grandfather had not begun treatment at the time of the hearing. Grandmother and Grandfather had secured housing in the form of a two-bedroom home. Mother was living with them at the time of the hearing.

{¶9} The GAL testified and recommended that the agency's motion for permanent custody be granted. The GAL acknowledged the strong familial bond the children shared with their mother and maternal grandparents. Ultimately, though, the GAL emphasized that permanent custody would best satisfy the children's need for stability. Because of Grandmother's and Grandfather's health issues, together with the partial but incomplete

treatment for substance abuse on the part of Mother and Grandfather, the GAL testified that permanent custody was in the children's best interest.

{¶10} On February 9, 2018, the juvenile court granted the agency's motion for permanent custody and denied all other motions. Mother appealed the juvenile court's decision, presenting one assignment of error for our review.

### **Law and Analysis**

{¶11} In her sole assignment of error, Mother argues that the trial court's decision to award permanent custody to the agency was against the manifest weight of the evidence as it was not supported by clear and convincing evidence.

{¶12} When adjudicating a motion for permanent custody, juvenile courts apply a two-prong test pursuant to R.C. 2151.414(B)(1). First, the court must find one of the following: (a) 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; (b) the child is abandoned; (c) the child is orphaned, and there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period. R.C. 2151.414. Second, the court must determine that it is in the best interest of the child to grant permanent custody to the agency. These findings must be supported by clear and convincing evidence. The Ohio Supreme Court defines clear and convincing evidence as "that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *In re K.H.*, 119 Ohio St.3d

538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 42, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶13} Mother first argues that the trial court erred when it found that the children had been in agency care for 12 or more months of a consecutive 22-month period. The agency concedes that there were no factual grounds for the court to make this finding. Although upon review we agree that this finding was not supported in the record, this does not substantially undermine the validity of the lower court's judgment. It is not necessary that a court make that particular finding in order to award permanent custody to the agency; finding that one of the other conditions in R.C. 2151.414(B)(1) applies, as it did here, meets the purpose of the provision.

{¶14} Here, the trial court found that “the [children] cannot be placed with either of [their] parents within a reasonable time or should not be placed with [their] parents” pursuant to R.C. 2151.414(B)(1)(a). In deciding whether a child cannot or should not be placed with their parent, trial courts are to consider all relevant evidence and are guided by the factors outlined in R.C. 2151.414(E). If a court determines by clear and convincing evidence that one of more of these factors is applicable, “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.” R.C. 2151.414(E).

{¶15} The trial court in this case found that several of the statutory factors existed. First, pursuant to R.C. 2151.414(E)(1), the court found that Mother had failed repeatedly and continuously to substantially remedy the conditions causing the substantially neglected children to be placed outside of their home. The record in this case is clear that until two and a-half months before the hearing in this case, Mother did not engage in treatment for her substance

abuse or mental health diagnoses. In this case, A.B. and T.B. had been in agency custody for over a year by the time Mother sought treatment. Previously, her continuous and repeated inability and/or failure to address these issues resulted in A.B. being removed from her custody dating all the way back to 2009.

{¶16} Second, the trial court found, pursuant to the statute, that the chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or chemical dependency of the parent was so severe that it rendered her unable to provide an adequate permanent home for the children at the present time and, as anticipated, within one year, pursuant to R.C. 2151.414(E)(2). Mother argues that at the time of the hearing, she had secured a stable home for herself and had sought substance abuse and mental health treatment as required by her case plan, thereby excelling in her case plan compliance. We do not dispute the recent efforts on Mother's part, nor do we ignore the full history of Mother's role. Given the duration and severity of Mother's substance abuse and mental health issues, we are guided by and understanding that compliance with her case plan in these respects is not the same as being able to provide an adequate permanent home for her children. A safe, loving, dependable, and productive home life is essential to their thriving. At the time of the hearing, Mother was living with her parents in a home that, according to testimony, would be insufficient to accommodate the needs of Mother, her parents, and the children. Further, Grandfather had not yet engaged in substance abuse treatment pursuant to his own case plan requirements. While Mother had a job, there is no indication on the record that her income would have been sufficient to support herself and her children. Even accepting Mother's assertion that at the time of the hearing, she was in compliance with her case plan, that is insufficient in light of this extensive case history to establish that her children could have been placed with her within a reasonable time following

the hearing. For the foregoing reasons, we find that both of these findings were supported by clear and convincing evidence.

{¶17} The juvenile court also found, pursuant to R.C. 2151.414(E)(9), that the parent has placed the child at substantial risk of harm two or more times due to drug and alcohol abuse. In that the record is not fully developed on this finding, and in light of the two statutory conditions discussed above that were supported by clear and convincing evidence, we move on to a discussion of the children's best interest.

{¶18} In determining whether permanent custody is in the children's best interest, juvenile courts must consider all relevant factors, including those in R.C. 2151.414(D). Here, the record shows that the trial court considered the appropriate factors. The record contains evidence that the court considered the familial bond, the children's own wishes, and the custodial history of the children. Specifically, evidence was presented showing that the children had been in agency custody for over a year at the time of the hearing as a result of Mother's severe and untreated substance abuse and mental health issues. Further, the evidence showed that A.B. had been in Grandmother's legal custody since 2009, and T.B. had been in Grandmother's physical custody since birth, both as a result of the aforementioned problems. Finally, testimony in the record shows that the children needed stability. Despite Mother's compliance with her case plan and the significant steps she had taken to remedy her substance abuse and mental health problems, the record makes clear that Mother was not in a place to provide the children with this stability at the time of the hearing. For all of these reasons, we find that the court's determination that permanent custody was in the children's best interest was supported by clear and convincing evidence.

{¶19} Because the juvenile court made the required statutory findings and these findings were supported by clear and convincing evidence, we affirm the court's decision to grant the agency's motion for permanent custody.

{¶20} The trial court's judgment granting permanent custody to the agency is affirmed.

It is ordered that appellee recover of 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 juvenile 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.

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TIM McCORMACK, PRESIDING JUDGE

MARY J. BOYLE, J., and  
ANITA LASTER MAYS, J., CONCUR