

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE J.S.

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No. 108406

A Minor Child

[Appeal by J.S.]

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: October 31, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-16906632

Appearances:

Susan K. Jankite, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Colleen R. Cassidy Ulrich, Assistant
Prosecuting Attorney, *for appellee.*

SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant J.S., a minor, has appealed the judgment of the Juvenile Division of the Cuyahoga County Court of Common Pleas that terminated the parental rights of the parents of J.S. and granted permanent custody of J.S. to the

Cuyahoga County Division of Children and Family Services (“CCDCFS”).¹ Upon review, we affirm the judgment of the trial court.

{¶ 2} J.S. (d.o.b. 12/06/07) is the child of the mother and the father referred to herein. On April 25, 2016, CCDCFS filed a complaint alleging that J.S. was a neglected and dependent child. On September 23, 2016, J.S. was adjudicated dependent and she was committed to the temporary custody of CCDCFS. On March 1, 2018, CCDCFS filed a motion to modify temporary custody to permanent custody.

{¶ 3} During the course of proceedings, mother filed a motion seeking legal custody of the child to herself and a motion seeking an award of legal custody to the maternal grandmother. Also, a conflict was identified between the wishes of J.S. and the guardian ad litem’s recommendation of permanent custody to CCDCFS. An attorney was appointed to represent the wishes of J.S., and the attorney for J.S. filed a motion for legal custody to mother or to the maternal grandmother.

{¶ 4} A trial was held on January 14, 2019. The record reflects that father was not actively involved in the case and was not engaged in any services. Testimony was presented showing there was a history of domestic violence issues between father and mother and there were substance abuse issues concerning mother.

{¶ 5} Although mother engaged in case-plan services, there remained substantial concerns that she had not benefitted from the services in which she

¹ This court has previously recognized that a minor child has standing to appeal from an award of temporary or permanent custody to a children services agency. *In re A.S.*, 8th Dist. Cuyahoga No. 105651, 2018-Ohio-1085, ¶ 14.

engaged. In connection with the counseling services engaged in by mother, the social worker of record was unable to verify if mother was compliant with taking her medication. Despite completing services at the Domestic Violence Center, there were additional incidents of domestic violence between mother and father, for which mother did not seek a protection order to protect herself until a later time. Although mother engaged in substance-abuse services, she did not engage in recommended residential treatment, she tested positive for marijuana several times through the life of the case, and she was charged with driving under the influence on October 28, 2018.

{¶ 6} The maternal grandmother had a number of other children in her care, and she also had children removed from her care in the past. Additionally, there were a number of concerns for placement with the maternal grandmother, including the conditions of the home, safety issues, her ability to provide proper supervision, and her ability to meet the special needs of J.S.

{¶ 7} At the time of trial, J.S. was residing with a paternal relative who was able to meet all of J.S.'s special needs and was willing to adopt J.S. The trial court held an in camera interview with J.S., and her wishes were expressed to the court. The guardian ad litem recommended that it was in the best interest of J.S. that she be committed to the permanent custody of CCDCFS.

{¶ 8} On March 1, 2019, the trial court entered a decision that denied the various motions for legal custody, terminated the parental rights and

responsibilities of mother and father, and committed J.S. to the permanent custody of CCDCFS.

{¶ 9} J.S., through her appointed counsel, has appealed the decision of the trial court.² She raises one assignment of error for our review that challenges the grant of permanent custody to CCDCFS and claims the trial court failed to fully consider the best-interest factors set forth in R.C. 2151.414(D).

{¶ 10} R.C. 2151.414(B) provides that permanent custody of a child may be awarded to a children services agency if the court finds, by clear and convincing evidence, that (1) it is in the best interest of the child to grant permanent custody of the child to the agency, and (2) that any of the conditions listed in R.C. 2151.414(B)(1)(a)-(e) apply.

{¶ 11} Here, the trial court determined the condition under R.C. 2151.414(B)(1)(d) applied when it determined that “[t]he child has been in the temporary custody of a public children services agency or private child placing agency for twelve (12) or more months of a consecutive twenty-two (22) month period.” It is not contested that this condition was satisfied. Instead, the challenge is to the trial court’s best-interest determination.

{¶ 12} In determining the best interest of a child, R.C. 2151.414(D)(1) directs the trial court to consider “all relevant factors,” including, but not limited to the following: (1) the interaction and interrelationship of the child with the child’s

² Mother also appealed the trial court’s decision, and the companion case is separately before this court, *In re R.H.*, 8th Dist. Cuyahoga No. 108358.

parents, siblings, relatives, foster parents, and out-of-home providers, and any other person who may significantly affect the child; (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; (3) the custodial history of the child; (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; and (5) whether any of the factors set forth in R.C. 2151.414(E)(7) to (11) apply. R.C. 2151.414(D)(1)(a)-(e). A juvenile court does not abuse its discretion if its decision regarding the child's best interest is supported by competent, credible evidence. *In re R.T.*, 2016-Ohio-8490, 79 N.E.3d 138, ¶ 57 (8th Dist.).

{¶ 13} Here, the trial court's opinion demonstrates that it considered all relevant factors and found by clear and convincing evidence that an order of permanent custody is in the best interest of the child. Appellant argues that the trial court failed to fully consider the positive interactions and interrelationships J.S. has with both her mother and her maternal grandmother. The record reflects that testimony was presented to the trial court regarding these relationships. Further, the trial court conducted an in camera interview with J.S. in which her wishes were expressed. It was J.S.'s desire to live with her mother and, if that could not occur, then with her maternal grandmother and, as a final alternative, with her great-grandmother. There is no doubt that J.S. has a loving relationship and is bonded with both. However, there was other testimony and evidence presented to support the trial court's decision to grant permanent custody to CCDCFS in this case. In

conducting a best-interest analysis under R.C. 2151.414(D), “[t]he court must consider all of the elements in R.C. 2151.414(D) as well as other relevant factors. There is not one element that is given greater weight than the others pursuant to the statute.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56.

{¶ 14} Every parental-rights termination case involves the difficult balance between maintaining a biological parent-child relationship and protecting the best interest of a child. Although family unity and blood relationship are vital factors to carefully and fully consider, the paramount consideration is the best interest of the child. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 163. We also must appreciate that a child’s best interests require permanency and a safe and secure environment, and that to protect the child’s interest, neither the existence of a biological relationship or a good relationship is controlling in and of itself. *Id.*

{¶ 15} Appellant also argues that both her mother and maternal grandmother were willing to take legal custody, and therefore she claims that the trial court did not fully consider whether there could be a legally secure placement without granting permanent custody to CCDCFS.³ In considering a permanent custody motion, the trial court has discretion to award legal custody to either parent

³ We note that although children have a right to be cared for by their parents and may challenge the termination of their parents’ parental rights, a child lacks standing to appeal the denial of an award of custody to another relative who did not appeal. *In re K.C.*, 2017-Ohio-8383, 99 N.E.3d 1061, ¶ 15-16 (1st Dist.). We consider the argument herein insofar as it pertains to the award of permanent custody and termination of mother’s parental rights.

or to any other person who files a motion requesting legal custody pursuant to R.C. 2151.353(A)(3). However, “the statute does not make the availability of a placement that would not require a termination of parental rights an all-controlling factor.” *In re Schaefer* at ¶ 64. Rather, the statute “requires a weighing of all the relevant factors” and requires “the court to find the best option for the [child].” *Id.*

{¶ 16} Our review reflects that the trial court properly considered all of the relevant statutory factors in determining the best interest of J.S. pursuant to R.C. 2151.414. We find the trial court’s determination that permanent custody is in the child’s best interest is supported by competent, credible evidence in the record. Appellant’s sole assignment of error is overruled.

{¶ 17} 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

MICHELLE J. SHEEHAN, J., and
RAYMOND C. HEADEN, J., CONCUR