

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE J.B.	:	
	:	No. 109039
A Minor Child	:	
	:	
[Appeal by Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 9, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-19902883

Appearances:

Rachel A. Kopec, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Amy L. Carson, Assistant Prosecuting Attorney, *for appellee.*

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Appellant-mother (“mother”) appeals from the juvenile court’s decision that awarded legal custody of her child, J.B., to J.B.’s maternal grandfather (“grandfather”).¹ For the reasons that follow, we affirm.

¹ Father did not appeal this decision. Accordingly, this court will only focus on the facts as they pertain to mother.

{¶ 2} In March 2019, the Cuyahoga County Division of Children and Family Services (“CCDCFS” or the “agency”) refiled a complaint for dependency with a dispositional request of legal custody to J.B.’s maternal grandfather.² CCDCFS also filed a motion for predispositional temporary custody with the maternal grandfather, which the court granted at a subsequent hearing.

{¶ 3} In May 2019, the court held an adjudicatory hearing during which the mother admitted to the allegations of the amended complaint and agreed to an adjudication of dependency. Specifically, mother admitted to the complaint allegation that her mental health diagnoses of bipolar disorder and ADHD interfere with her parenting. She also admitted that she has anger management and impulse control issues, and that she has one other child who was adjudicated abused and neglected and committed to the legal custody of maternal grandfather. Mother further admitted that she has engaged in services and needs to demonstrate that she benefitted from the programs and services.

{¶ 4} On June 4, 2019, a juvenile court magistrate commenced a disposition hearing during which the sole witness was Larry Deitcher, a case worker with CCDCFS, who was assigned to J.B.’s case in 2017 after mother tested positive for marijuana during her pregnancy with J.B.

² In September 2017, J.B. (born in March 2017) was committed to the temporary custody of his maternal grandfather following an adjudication of dependency based on allegations of mother’s mental health and substance abuse diagnoses, inability to provide stable housing, and J.B. testing positive for drugs at birth. That case adjudicating him dependent was dismissed without prejudice because of a service defect.

{¶ 5} Deitcher testified that CCDCFS developed a case plan for mother that was substantially similar to the case plan implemented in J.B.'s sibling's case. The services offered to mother included those to address concerns about mother's mental health, substance abuse, and parenting, and to provide resource management. Additionally, an anger-management component was included in the parenting education aspect of the case plan. Mother completed parenting education, including anger management, and substance abuse treatment.

{¶ 6} To address mother's mental health diagnoses of ADHD, PTSD, personality disorder, and bipolar disorder, mother received services from Murtis Taylor. Deitcher testified that mother's compliance with mental health services had been "on and off" and that there were times that mother was threatened with discharge from the program due to noncompliance with the services and pharmaceutical management. His testimony also revealed that mother, at the time of trial, and for a period of approximately three months prior to trial, was not compliant with her mental health medications.

{¶ 7} Deitcher further testified that despite mother's participation in services, mother did not benefit from services offered. Specifically, Deitcher was able to articulate recent instances where mother used inappropriate language and discipline towards J.B.'s sibling, did not recognize active safety threats in the home, acted distracted at visits, and reacted inappropriately to something as simple as a broken toy. Deitcher testified that mother's inability to benefit from the services offered through her case plan was due mainly to her inconsistent mental health

treatment. When questioned by J.B.'s guardian ad litem ("GAL"), Deitcher testified that even given more time, mother would not benefit from additional services offered. Deitcher further testified that the child had been living with maternal grandfather for a period exceeding two years.

{¶ 8} J.B.'s GAL recommended an order of legal custody to maternal grandfather as being in the child's best interest. The GAL reported that mother's progress on her case plan was getting better because she had completed her classes and her interaction with J.B. was more positive. However, the GAL reported that mother's mental health is her "stumbling block" because it is not curable, and she was not stable enough to benefit from the programs she has completed. According to the GAL, mother's mental health hinders her ability to care for J.B. adequately and appropriately at this time. And while the GAL opined it was not in J.B.'s best interests for reunification with mother, she said it was in his best interest for mother to be in J.B.'s life. The GAL stated it would be in J.B.'s best interest for legal custody to be granted to maternal grandfather because J.B. had been living with his maternal grandfather for over two years, where he has established a bond with him and J.B.'s biological sibling, who is also in the legal custody of maternal grandfather. Additionally, maternal grandfather financially supports J.B., provides a good stable home, and welcomes mother for visits and contact.

{¶ 9} Following the hearing, the magistrate issued an oral decision granting legal custody to J.B.'s maternal grandfather. In a subsequent written decision, the magistrate found that although CCDCFS made reasonable efforts to prevent the

removal of J.B., the child's continued residence in or return to the home of mother would not be in J.B.'s best interests.

{¶ 10} Mother subsequently filed preliminary objections to the magistrate's decision, and following the filing of the transcript from the hearing, mother filed supplemental objections. Her objections focused on her completion of her case plan and the lack of additional services offered to her by CCDCFS.

{¶ 11} In August 2019, the trial court issued its decision overruling mother's objections and supplemental objections, and affirming, approving, and adopting the magistrate's decision. The trial court found certain facts compelling, including that J.B.'s nine-year-old full sibling was also removed from their parents' care and custody for the same reasons as J.B. and was placed with the maternal grandfather in 2016. The court, quoting from the GAL's report noted, "Mother and father * * * have another child that was adjudicated abused and neglected, due in part to physical abuse of the child by Mother and mother's untreated mental health."

{¶ 12} The court further found that J.B. was placed in the predispositional custody of maternal grandfather on

[September] 27 2017, and has remained there ever since. Over the course of the two year period, the same issues that caused removal of the sibling and [J.B.], in particular the mother's mental health and stability, have not been sufficiently remedied such that CCDCFS, the child's GAL, the Magistrate and this Court all share the same safety concerns about reunification, and therefore the Court cannot and does not find reunification to be in the child's best interest. Further, given the two-year history of this case and the further previous extended history for [J.B.'s sibling], there is no reasonable cause to believe that the child will be reunified with one of his parents if the court were to extend temporary custody.

Accordingly, the court found that it was in J.B.'s best interest that legal custody be granted to maternal grandfather where J.B. "has lived since shortly after he was born and where he is well-bonded with his grandfather and [sibling]."

{¶ 13} Mother now appeals, raising as her sole assignment of error that the trial court's decision awarding legal custody of J.B. to the maternal grandfather was against the manifest weight of the evidence. Specifically, mother contends that she completed her case plan, and if it was determined that she did not benefit from the programs, it was CCDCFS's responsibility to refer her or make additional programs available so that she could be reunified with her child.

{¶ 14} A trial court enjoys broad discretion in custody proceedings because "custody issues are some of the most difficult and agonizing decisions a trial judge must make." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997). Thus, on appeal, a trial court's custody determination will not be disturbed unless the court abused that discretion. *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). An abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 15} Legal custody is defined by R.C. 2151.011(B)(21) as follows:

[A] legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities.

{¶ 16} Legal custody is significantly different than the termination of parental rights — despite losing legal custody of a child, the parents of the child retain residual parental rights, privileges, and responsibilities. R.C. 2151.353(A)(3)(c). For this reason, “when a juvenile court awards legal custody following an adjudication of abuse, neglect, or dependency, it does so by examining what would be in the best interest of the child based on preponderance of the evidence.” *In re A.C.*, 8th Dist. Cuyahoga No. 108442, 2019-Ohio-5127, ¶ 15, quoting *In re T.R.*, 8th Dist. Cuyahoga No. 102071, 2015-Ohio-4177, ¶ 44. “Preponderance of the evidence’ means ‘evidence that’s more probable, more persuasive, or of greater probative value.” *In re C.V.M.*, 8th Dist. Cuyahoga No. 98340, 2012-Ohio-5514, ¶ 7, quoting *In re D.P.*, 10th Dist. Franklin No. 05AP-117, 2005-Ohio-5097, ¶ 52.

{¶ 17} “Unlike R.C. 2151.414(D), which sets forth specific factors that the court must consider before terminating parental rights and granting permanent custody, R.C. 2151.353(A)(3) does not independently set forth factors that the court should consider for determining the child’s best interests in a request for legal custody.” *In re G.M.*, 8th Dist. Cuyahoga No. 95410, 2011-Ohio-4090, ¶ 16. Thus, the factors in R.C. 2151.414(D) are not mandatory but instructive when making a best-interest-of-the-child determination in legal custody matters. *Id.*; *In re M.J.M.*, 8th Dist. Cuyahoga No. 94130, 2010-Ohio-1674, ¶ 16. The statute instructs the court to consider:

- (a) 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;
- (b) 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;
- (c) 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 * * *;
- (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;
- (e) Whether any of the factors in divisions (E) (7) to (11) of this section apply in relation to the parents and child.

{¶ 18} In this case, a preponderance of the evidence supports the trial court's decision granting legal custody to J.B.'s maternal grandfather. At the time of the hearing, J.B. had been in the emergency and predispositional custody of maternal grandfather for over two years. During this time, maternal grandfather has been financially supporting J.B. and providing him with a secure and stable home. The testimony at trial demonstrates that J.B. has bonded with his maternal grandfather. Importantly, maternal grandfather also has legal custody of J.B.'s brother, and the testimony reveals that J.B. has a good relationship with his brother. Additionally, the record demonstrates that mother is welcome in the maternal grandfather's home for visitation and other appropriate interaction with J.B.

{¶ 19} Mother contends on appeal that she completed her case plan and CCDCFS should have offered her additional services if she was not demonstrating a

significant or sufficient benefit from the services and programs offered. According to mother, it was CCDCFS's responsibility to make additional referrals, and because it failed to do so, CCDCFS did not make reasonable efforts for reunification.

{¶ 20} Pursuant to R.C. 2151.419, the agency that removed the child from the home must have made reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the home, or make it possible for the child to return home safely. The statute assigns the burden of proof to the agency to demonstrate it has made reasonable efforts. *Id.*; *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 29.

{¶ 21} When considering whether the agency made reasonable efforts to prevent the continued removal, the issue is not whether the agency could have done more, but whether it did enough to satisfy the reasonableness standard under the statute. *In re Davidson-Rush*, 5th Dist. Stark No. 2006 CA 00121, 2006-Ohio-4873, ¶ 50. "Reasonable efforts' does not mean all available efforts." *In re Lewis*, 4th Dist. Athens No. 03CA12, 2003-Ohio-5262, ¶ 16. "In determining whether reasonable efforts were made, the child's health and safety shall be paramount." R.C. 2151.419(A)(1).

{¶ 22} In this case, the record shows that CCDCFS made reasonable efforts to reunite mother with J.B. by establishing a workable case plan that included parenting and substance abuse programs, and also medication management and compliance. Although mother completed her case plan programs, the testimony presented at trial demonstrated that mother failed to benefit from those services,

largely due to her mental health conditions and inability to stay compliant with her medications. This noncompliance caused concern because mother was unable to appreciate safety issues in her home and provide appropriate responses even to small triggers or conflict. Moreover, mother's history with J.B.'s sibling was also considered in determining whether J.B. would be safe in mother's care. This court notes that compliance with medications is one facet of her case plan that only mother has complete control over, and her failure to maintain consistency with this component of her case plan demonstrates an inability to provide a safe and stable environment for J.B. Although the record demonstrates that it is not in J.B.'s best interest to reunite with mother, it is in his best interest to maintain a relationship with his mother through visitation.

{¶ 23} Based on the record before this court, the trial court did not abuse its discretion in granting legal custody of J.B. to maternal grandfather. Mother's assignment of error is overruled.

{¶ 24} 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.

KATHLEEN ANN KEOUGH, JUDGE

PATRICIA ANN BLACKMON, P.J., and
LARRY A. JONES, SR., J., CONCUR

