

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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| IN RE S.A., JR. | : | |
| | : | No. 110122 |
| A Minor Child | : | |
| | : | |
| [Appeal by Mother] | : | |

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: April 15, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-18907154

Appearances:

Steven L. Miles, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Joseph C. Young, Assistant Prosecuting Attorney, *for appellee* CCDCFS.

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Appellant-Mother (“mother”) appeals from the juvenile court’s decision awarding permanent custody of her minor child to the Cuyahoga Department of Children and Family Services (“CCDCFS” or “the agency”). For the reasons that follow, we find no merit to the appeal and affirm.

{¶ 2} On June 5, 2018, CCDCFS filed a complaint for abuse and temporary custody following the child's birth due to both mother and child testing positive for drugs, the child's significant medical needs, and both mother and father's inability to provide appropriate care for the child. Two days later, the child was committed to the predispositional temporary custody of CCDCFS. On August 27, 2018, mother stipulated to an amended complaint for abuse. On September 14, 2018, the child was adjudicated abused, and the court granted the agency temporary custody. The agency developed a case plan to address mother's substance abuse and mental health issues, as well as her ability to provide basic needs for the child, including housing. The permanency plan was for reunification.

{¶ 3} On May 24, 2019, CCDCFS filed a motion to modify temporary custody to permanent custody because of mother's failure to engage in case plan services, and her incarceration on pending federal drug charges, and father's failure to engage in substance abuse services and obtain stable housing. At a review hearing held in July 2019, the agency advised the court that despite the permanency plan for reunification, both mother and father had made no progress on their case plans. At that time, mother was incarcerated, and father had not engaged in any case plan services. On August 27, 2019, mother filed a motion for legal custody to her sister, the child's maternal aunt. A hearing was held on both motions in October 2020.

{¶ 4} CCDCFS social worker Chantelle Matthews testified that she was assigned to the case in March 2019, approximately a year after the child's removal. Prior to her involvement, mother had been referred to Recovery Resources to

address her substance abuse issues, but mother was inconsistent in attending that program. From April 2019 until January 2020, mother was incarcerated on federal drug charges. Following her confinement, mother's federal probation officer referred mother to Signature Health Services. Although mother told Matthews that she would be on federal probation monitoring for three years, she failed or refused to provide Matthews with her probation officer's contact information so that Matthews could monitor her progress and treatment.

{¶ 5} Matthews testified that mother was referred to the Hitchcock Center for Women residential facility in April 2020. However, in June, mother was unsuccessfully discharged due to suspicions that she had drugs delivered to her at the facility. Matthews stated that mother denied the allegation but failed to comply with the agency's request for random drug screening. Matthews referred her again to Recovery Resources, but Mother failed to follow through as referred.

{¶ 6} Regarding drug screens, Matthews testified that mother had tested positive in February 2020, but tested negative while at the Hitchcock Center. Since her discharge, however, mother has failed to submit to any drug screens requested by CCDCFS. Matthews stated that based on her experience and training, mother exhibited behaviors and characteristics that were indicative of ongoing substance abuse during this time.

{¶ 7} Matthews testified that mother was reincarcerated on a federal probation violation in August 2020 until her release on October 23, 2020, just four days before the hearing. According to Matthews, mother would continue her

substance abuse treatment at the Oriana House in Summit County. Matthews stated that she was unsure of her compliance with treatment, but as of the time of trial, mother had not demonstrated a verifiable period of sobriety since January 2020.

{¶ 8} Regarding the mental health aspect of mother's case plan, Matthews testified that mother engaged in mental health services through Signature Health to address her generalized anxiety disorder. Mother stopped with those services in April 2020, and had not verified participation in any further mental health services, despite having received another referral to Recovery Resources. Matthews testified that she was unsure whether mother was taking her prescribed medications.

{¶ 9} Regarding obtaining housing, Matthews testified that mother was referred to the Community Collaborative for assistance in obtaining and maintaining appropriate housing. According to Matthews, mother had failed to demonstrate the ability to obtain or maintain permanent housing. Prior to mother's incarceration in August 2020, she was living with her sister.

{¶ 10} At the time of trial, the child had been residing in a "medically fragile" foster home, where he receives in-home services to address his specialized needs. Matthews testified that the child was born without toe bones and does not have use of his hands. She stated that the child has undergone successful surgeries that have improved his range of motion, but the ability to walk is unlikely. Matthews also testified that the child may have some mental health or behavioral concerns for which he will be subsequently tested. Matthews stated that she provided mother with a schedule of the child's medical appointments, but mother did not attend any

of those appointments, and has not received any specialized training to enable her to provide appropriate care for the child's needs. According to Matthews, the child's foster parents engage in all therapies and have medical training.

{¶ 11} Following her release from incarceration in January 2020, mother was scheduled for weekly in-person visitation with the child at a community collaborative along with a visitation coach. Matthews stated that in-person visitation remained in effect until March 2020, when the coronavirus pandemic restrictions required visitation to occur virtually. According to Matthews, during the in-person visits with the child, mother was appropriate, her interaction was positive, and she appeared to have bonded with the child. Mother's participation in the virtual visits was sporadic, and she only attended about half the scheduled visits. Mother explained to Matthews that did not attend because she was upset that the visits could not be in-person, despite being told that the restriction on in-person visits was due to the coronavirus pandemic and the medically fragile condition of the child and others in the child's placement.

{¶ 12} Mother testified at trial that she was recently released from incarceration and residing at the Community Assessment Treatment Services rehabilitation facility for the next 30 days. Afterwards, she would transition to Oriana House for six months. Mother admitted that she did not have much contact with Matthews between March and April 2019 because she was actively using drugs and then incarcerated on federal drug charges until January 2020. Mother acknowledged that upon release, she was referred to Signature Health for intensive

outpatient treatment, but did not engage in one-on-one counseling or any mental health counseling. She testified that she completed the residential portion of her substance abuse treatment at the Hitchcock Center, but after transitioning to the sober living component of the program, she was asked to leave. Mother admitted that she violated her federal probation by failing to return to a sober living program. She admitted that she has a substance abuse problem, and that she has state and federal drug-related convictions. Mother further acknowledged that the child is a very special-needs child and that at the time of the agency's permanent custody request she was unable to meet his needs due to her incarceration and need for substance abuse treatment. She admitted that during the time she was submitting drug screens for Signature Health she tested positive for drugs, and had admitted her relapse to Matthews. Mother further admitted that after her discharge from Hitchcock and until the time of her most recent incarceration, she had not submitted to any drug screens as requested by CCDCFS and was at the time homeless.

{¶ 13} The child's guardian ad litem ("GAL") testified that his recommendation in his report did not change with the testimony given at trial — that permanent custody is in the child's best interest. In his written report, the GAL detailed the many physical challenges that the child faces, noting that "[Mother]'s drug use during her pregnancy played a factor in this child's medical condition," and "[t]he child's medical needs are being met in the foster home." The GAL reiterated during the hearing that "[t]he child had medical concerns as a result of the substance abuse during the pregnancy. Substance abuse has been an issue for the last two

years along with stability in housing. And also the child’s medical needs. The child has been through numerous surgeries and needs constant medical attention.” And in his written report, the GAL stated that while the child is too young to express his wishes, the child “has been with them [the foster caregivers] since his birth and [they are] who he knows to be his parents and his providers.”

{¶ 14} Mother presented no testimony or evidence in support of her motion for legal custody of the child to her sister. And at the close of testimony, mother requested that the court extend temporary custody to the agency to allow her additional time to continue with her case plan, receive services, and maintain sobriety.

{¶ 15} The juvenile court granted CCDCFS’s motion for permanent custody and denied mother’s request for legal custody to the maternal aunt.

{¶ 16} Mother now appeals, raising as her sole assignment of error that the juvenile court abused its discretion when it awarded permanent custody to CCDCFS because the decision is against the weight of the evidence and not supported by clear and convincing evidence.¹

{¶ 17} Termination of parental rights is an alternative of last resort but is sanctioned when necessary for the welfare of a child. *In re T.H.*, 8th Dist. Cuyahoga No. 107947, 2019-Ohio-3045, ¶ 15, citing *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 7. Under R.C. 2151.414, a trial court may grant

¹ Father did not contest CCDCFS’s motion for permanent custody, and he has not appealed the trial court’s decision. Accordingly, this appeal will discuss the matter only as it pertains to mother.

permanent custody of a child to an agency if, after a hearing, the court determines by clear and convincing evidence that one of the factors enumerated in R.C. 2151.414(B)(1)(a) through (e) applies, and that an award of permanent custody is in the child's best interest. 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.

I. R.C. 2151.414(B) Factors

{¶ 18} The R.C. 2151.414(B)(1)(a) through (e) factors are: (a) the child cannot be placed with either parent within a reasonable time or should not be placed with either parent; (b) the child is abandoned; (c) the child is orphaned and no relatives are able to take permanent custody of the child; (d) the child has been in the temporary custody of one or more public or private children services agencies for 12 or more months of a consecutive 22-month period; and (e) the child or another child of the parent or parents has been adjudicated an abused, neglected, or dependent child.

{¶ 19} In this case, the trial court found that the condition set forth in R.C. 2151.414(B)(1)(a) was satisfied — the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.²

{¶ 20} To determine whether a child cannot be placed with a parent within a reasonable time or should not be placed with a parent, courts look to the factors set forth in R.C. 2151.414(E). If a court determines that one or more of the R.C. 2151.414(E) factors exist as to each of the parents, 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); *In re Ca.C.*, 8th Dist. Cuyahoga No. 107514, 2019-Ohio-546, ¶ 12.

{¶ 21} In this case, the trial court found that several factors under R.C. 2151.414(E) applied. Specifically, the court found that mother had failed to substantially remedy the conditions causing the child to be placed outside the home (R.C. 2151.414(E)(1)); mother has a chronic mental illness and chemical dependency that is so severe that it makes her unable to provide an adequate permanent home for the child at the present time, and as anticipated, within one year after the court holds a hearing on the matter (R.C. 2151.414(E)(2)); mother has neglected the child

² Although the trial court also made the finding that the child has been in the temporary custody of CCDCFS for 12 or more months of a consecutive 22-month period, that timeframe is calculated from when the child enters agency custody and the filing of the motion for permanent custody. *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, ¶ 26. When the permanent custody hearing was held in October 2020, the child had been in agency custody for over two years. However, when the agency filed its motion for permanent custody in May 2019, the child had only been in the agency's custody for eight months.

by failing to support the child between the date of the complaint and the filing of the agency's motion (R.C. 2151.414(E)(3)); mother has demonstrated a lack of commitment by failing to regularly support, visit, or communicate with the child, or by showing an unwillingness to provide an adequate, permanent home (R.C. 2151.414(E)(4)); mother is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering emotional or mental neglect as evidenced by her unwillingness to successfully complete a case plan (R.C. 2151.414(E)(14)); and mother is going to be confined to a sober living facility for at least six months from the date of trial (R.C. 2151.414(E)(16)).

{¶ 22} Mother contends that the trial court's findings are unsupported by competent and credible evidence. Specifically, mother challenges the trial court's conclusions pertaining to R.C. 2151.414(E)(1) and (4). According to mother, when the agency filed for permanent custody, she was visiting with the child and engaging in services, and at the time of the hearing, she was in treatment, had sober living arrangements planned, and had bonded with the child. Based on our review, the record clearly and convincingly supports the court's conclusion that the child could not or should not be placed with mother.

{¶ 23} Mother's case plan involved addressing her substance abuse and mental health issues, as well addressing her ability to provide basic needs for the child, including housing. When the agency filed for permanent custody, mother had not completed any of her case plan objectives, and her ability to do so became more difficult because she was in jail on federal drug charges. She remained incarcerated

until her release in January 2020 and was then placed on house arrest. Following incarceration, mother was in and out of treatment facilities, and unable to demonstrate a sober lifestyle, which was one of her case plan objectives. Additionally, she did not engage in any mental health treatment or counseling, which was another aspect of her case plan. Finally, mother did not have adequate housing for her special-needs child. Although mother had visited and bonded with her child prior to the pandemic, those visitations were less frequent when conducted virtually. Moreover, mother did not attend any of her child's medical appointments and had not received any medical training that would allow her to adequately address his unique medical needs.

{¶ 24} Mother was reincarcerated for a probation violation in June 2020 until four days prior to the hearing on the agency's motion in October 2020. Mother was living in a temporary rehabilitation facility, where she would remain for the next 30 days and then transition to Oriana House for the next six months. This confinement is a factor to consider in deciding whether within a reasonable time, the child could be placed with mother.

{¶ 25} Based on the foregoing, mother has not substantially remedied the conditions that caused the child's removal because she has failed to adequately address her substance abuse issues since June 2018. During this time, she also has not completed any of her case plan objectives, thus demonstrating an inability to provide for her child's basic necessities, including adequate housing and medical care for a child that requires substantial medical attention and frequent physician

appointments. Accordingly, clear and convincing evidence supports the juvenile court's finding that the child could not be placed with mother within a reasonable time or should not be placed with her.

II. Best Interest of the Child

{¶ 26} Having found that the trial court properly concluded that at least one of the R.C. 2151.414(B)(1) conditions applied, we must determine whether the trial court appropriately found that permanent custody to the agency was in the child's best interest.

{¶ 27} When determining the best interest of a child, R.C. 2151.414(D)(1) directs the court to consider all relevant factors, including, but not limited to: (a) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers; (b) the wishes of the child, as expressed directly by the child or through the child's guardian ad litem; (c) the custodial history of the child; (d) the child's need for a legally secured permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; and (e) whether any of the factors set forth in R.C. 2151.414(E)(7) through (11) apply. Although a trial court is required to consider each of the R.C. 2151.414(D)(1) factors in making its permanent custody determination, “[o]nly one of these factors needs to be resolved in favor of the award of permanent custody.” *T.H.*, 8th Dist. Cuyahoga No. 107947, 2019-Ohio-3045, at ¶ 17, quoting *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17.

{¶ 28} In this case, the trial court stated that it considered the relevant R.C. 2151.414(D)(1) factors and the GAL's report, and found "by clear and convincing evidence that the grant of permanent custody is in the best interests of the child." We agree.

{¶ 29} Regarding the child's interaction and relationships with his foster caregivers and others, Matthews testified that "[w]hen [the child] either sees the foster mom or foster father, his entire face lights up. He's very excited to see them. He's very bonded with both of them as they've been caring for him since his release from the hospital." The child also has strong support from the relatives of the foster caregivers, who were described as "[v]ery appropriate, very caring, very hands-on with [the child]. They have a knowledge as to what [the child] needs, so they're very appropriate." Matthews testified that the child has bonded with the other children in the foster home and that the foster parents have expressed a desire to adopt the child. The child's GAL reported that although the child is too young to express his wishes, the child "has been with them [the foster caregivers] since his birth and [they are] who he knows to be his parents and his providers."

{¶ 30} Regarding custodial history, the record is uncontroverted the child was removed from mother's care in June 2018 and has been with his current foster caregivers since that time, which at the time of trial was over two years.

{¶ 31} The trial court did not discount mother's love for her child but noted that due to the months of sober living ahead of her, mother is unable to provide her child with the 24-hour care and attention he needs due to his medically fragile

condition. The record demonstrates that the child needs a legally secure placement, and it cannot be achieved without granting the agency's motion for permanent custody. Clear and convincing evidence supports the trial court's best-interest determination.

{¶ 32} Mother's assignment of error is overruled. The juvenile court's decision granting permanent custody to CCDCFS and terminating mother's parental rights is supported by clear and convincing evidence.

{¶ 33} 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

LARRY A. JONES, SR., P.J., and
LISA B. FORBES, J., CONCUR

