

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE T.B., ET AL.	:	
	:	No. 110130
Minor Children	:	
	:	
[Appeal by Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 15, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD-19902215 and AD-19902216

Appearances:

Scott J. Friedman, *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} Mother appeals from the judgment of the Common Pleas Court, Juvenile Division, granting permanent custody of her minor children, Ta.B. and Ty.B, to the Cuyahoga Department of Children and Family Services (“CCDCFS” or “the agency”). For the reasons discussed below, we affirm.

I. Background

{¶ 2} In February 2019, CCDCFS filed a complaint alleging that Ta.B. and Ty.B. were abused, neglected, and dependent, and requesting pre-dispositional temporary custody. After a hearing on March 4, 2019, the children were committed to the pre-dispositional custody of CCDCFS. In June 2019, the children were adjudicated abused, neglected, and dependent, and placed in the temporary custody of CCDCFS.

{¶ 3} On January 30, 2020, CCDCFS filed a motion for an extension of temporary custody, but on February 27, 2020, the agency filed a motion to modify its request for an extension of temporary custody to a motion for permanent custody. After an evidentiary hearing in October 2020, the trial court granted CCDCFS's motion for permanent custody and terminated Mother's parental rights. Mother appeals from this judgment, raising as her single assignment of error that the trial court erred in committing the minor children to the permanent custody of CCDCFS because its judgment was against the manifest weight of the evidence.

II. Trial Testimony

{¶ 4} CCDCFS child protection specialist Albertanya Taylor testified that she was assigned to the case on January 15, 2020. She testified that neither Ta.B.'s nor Ty.B.'s alleged fathers had established paternity for the children, and neither had any involvement with the children.¹

¹ Neither alleged father has appealed from the trial court's decision granting permanent custody of the children to CCDCFS.

{¶ 5} Taylor testified that Mother was referred to the agency in January 2019, because she was homeless. The children initially stayed with an aunt, but after a physical altercation at the aunt's home, Ty.B. was placed at Village Network, a residential care facility, and Ta.B. was placed in a foster home.

{¶ 6} CCDCFS developed a case plan for Mother that included treatment for her substance abuse issue and procurement of stable housing. Taylor testified that in 2019, Mother took another child to Georgia, in violation of a court order, and consequently served jail time there from March 2, 2019, until May 10, 2019.

{¶ 7} Taylor said that she was initially unable to locate Mother when she was assigned the case in January 2020. Taylor said that the previous social worker on the case eventually located Mother on March 31, 2020, and Taylor finally spoke with her on April 16, 2020. Taylor said that Mother refused at that time to engage in substance abuse services because she had already participated in a 90-day inpatient treatment program in 2019.

{¶ 8} Michael Dorsey, a counselor at Northern Ohio Recovery Association ("NORA"), testified about Mother's treatment in 2019. He said that after completing an assessment at NORA, Mother was recommended for a 90-day inpatient program to treat her alcohol abuse. Dorsey said that Mother began her inpatient program on November 11, 2019, and was actively engaged in the treatment process and progressing well. He said that Mother did not complete the program, however, because she left when her father passed away in February 2020 and refused to come

back. Dorsey said that he encouraged Mother to return, but she reverted back to drinking to deal with her father's death.

{¶ 9} Taylor testified that Mother finally agreed to again engage with substance abuse services in July 2020. Taylor referred Mother to Moore Counseling on July 5, 2020, but Mother did not go. Taylor then referred Mother to New Visions. Taylor said that Mother participated in a telephonic assessment with New Visions on July 15, 2020, but never dropped off the required urine screen and paperwork to finalize the assessment, even though New Visions would have provided a ride for her through Uber or Lyft.

{¶ 10} Taylor testified that as of trial in October 2020, Mother had not engaged with nor successfully completed the substance abuse treatment component of her case plan. She said that after CCDCS opened the case, Mother provided a urine screen on January 28, 2019, that was positive for alcohol and a hair follicle sample that was positive for cocaine. Taylor said that the agency had no contact with Mother from March 2, 2019, to May 10, 2019, while she was in jail in Georgia, and sporadic contact with her after she returned to Cleveland in May 2019. Taylor agreed that Mother's urine screen on August 7, 2019, when the prior social worker was handling the case, was negative. She testified, however, that despite her many requests after April 16, 2020, and a court order dated June 29, 2020, that Mother provide urine screens every two weeks, as of the day of trial, Mother had not provided any urine samples in 2020 for testing.

{¶ 11} With respect to housing, Taylor said that despite acknowledging she needed permanent housing, Mother gave her four different addresses within the six months prior to trial. In April 2020, Mother told Taylor that she was living with her boyfriend and did not feel comfortable with Taylor visiting there. Mother next told Taylor that she was living with her aunt at “118th and St. Clair,” but did not give Taylor a specific street address. Taylor said she that did not visit the third address. She said she could not locate Mother at the fourth address, and based on information provided by someone at that address when she tried to visit, she was not sure that Mother actually lived there.

{¶ 12} Taylor testified that Mother had biweekly visits with Ta.B. beginning in July 2020, and that Mother attended all the visits.² Taylor said that although most of the visits went well, the visit on September 10, 2020, was “really alarming” because Mother came into the facility drunk. Taylor observed that Mother’s eyes were red, her speech was slurred, and she was staggering and crying. Taylor said that she consoled Mother and encouraged her to get into substance abuse treatment. Taylor said she spoke with Ta.B. after Mother left, and Ta.B. told her that Mother had whispered in her ear that she was drunk.

{¶ 13} Karla Trammell, a system of care manager at University Settlement, a non-profit organization that provides facilities for family visits, said that Mother visited Ta.B. there beginning in July 2020. Trammell testified that when Mother

² Taylor testified that most visits did not include Ty.B. because he was in a residential facility that did not allow him to leave, and Mother could not visit him at the facility due to Covid restrictions.

arrived for a visit on September 10, 2020, she observed that Mother's eyes were red and her speech was slurred, and she concluded that Mother was drunk. Trammell said she told Mother the visit would have to be rescheduled, but Mother told Trammell "[she] didn't know what [she] was doing," and went in the visitation room anyway, where she proceeded to whisper in Ta.B.'s ear. Trammell said she had to ask Mother multiple times to leave the room, and that as Mother was leaving, she told another staff member that she would beat Trammell up.

{¶ 14} Sandra Buckner, a workforce development manager at University Settlement, testified that two weeks later, on September 24, 2020, she was sitting in her car in the parking lot and observed Mother bring Ta.B. to her foster mother's car. Buckner said that after Ta.B. got in the backseat of the car, Mother stood outside the car and told the foster mother not to yell at her child. Buckner said she did not hear the foster mother's response, but heard raised voices by both women. She said the encounter went on for five to ten minutes, and she heard Mother tell the foster mother that if she continued to yell at Ta.B., she would "beat her a**." Buckner also heard Mother tell Ta.B. to get out of the car and come with her. Buckner went back into the building to find someone on staff to deal with the situation, and Mother eventually left the scene without Ta.B.

{¶ 15} Taylor testified that Ta.B. wanted to be reunited with Mother, but Ty.B. said he did not want to return to Mother because he was afraid of her and she had "put her hands on him." Taylor testified that Mother had not substantially benefitted from the services that had been provided to her, and she did not believe

that Mother could provide a safe and permanent home for the children. She said she believed that permanent custody was in the children's best interest, even though they were not in adoptive homes at the time.

{¶ 16} Pamela Hawkins, the guardian ad litem for the children, filed a report prior to trial recommending that permanent custody was in the children's best interest. Hawkins acknowledged that both children love their mother, but said that she did not believe they could safely be returned to her care. She said that she and social worker Taylor had tried to visit with Mother several days prior to trial at the address she had provided, but the male who answered the door said he did not know who Mother was, where she was, when she would return, or whether she even lived there. Hawkins said that was the fourth address she had been given for Mother, who never gave a reason as to why she did not have permanent housing.

{¶ 17} Hawkins acknowledged that "this has been a long struggle." She said that she had also been involved in a separate case regarding Mother's older child, and that she had been aware of the family and interacted with various family members for four years. Hawkins reported that "during that time, Mother's substance abuse issues have been a consistent struggle. Her housing has been reported to be a consistent struggle. Her follow-through with her kids has been reported to be a consistent struggle."

{¶ 18} Hawkins said that Ta.B. wanted to be reunited with Mother, and although Ty.B. did not want to return to Mother, he had within the last several weeks said there was an aunt in Georgia that he could perhaps live with, although he had

not provided a name. Hawkins acknowledged that her recommendation of permanent custody was not what the children wanted. She further acknowledged that Mother's mental state should probably have been investigated as part of her case plan, but stated that given Mother's lack of compliance to date, she saw no reason to extend temporary custody. Accordingly, she recommended the grant of permanent custody to CCDCFS.

III. Law and Analysis

{¶ 19} A trial court's decision to award permanent custody will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Adoption of Lay*, 25 Ohio St.3d 41, 42, 495 N.E.2d 9 (1986). Judgments supported by competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990).

{¶ 20} R.C. 2151.414(B)(1) establishes a two-part test for courts to apply when determining a motion for permanent custody to a public services agency. The movant must prove by clear and convincing evidence that (1) granting permanent custody of the child to the agency is in the best interest of the child, and (2) either the child (a) cannot be placed with either parent; (b) is abandoned; (c) is orphaned and no relatives are able to take permanent custody of the child; or (d) 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. R.C. 2151.414(B)(1).

{¶ 21} “Clear and convincing evidence is more than a mere preponderance of the evidence; it is evidence sufficient to cause a trier of fact to develop a firm belief or conviction as to the facts sought to be established.” *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 24, citing *In re Estate of Haynes*, 25 Ohio St.3d 101, 104, 495 N.E.2d 23 (1986).

{¶ 22} The trial court found that both Ta.B. and Ty.B. cannot be placed with either parent within a reasonable time or should not be placed with them. R.C. 2151.414(B)(1). In making its determination, the juvenile court considered the factors set forth in R.C. 2151.414(E), and concluded that notwithstanding reasonable case planning and efforts by the agency to assist Mother to remedy the conditions that led to the children’s removal, Mother had failed to complete and benefit from case plan services because she continued to drink alcohol and did not submit to court-ordered random urine screens. R.C. 2151.414(E)(1). The juvenile court further found that Mother and the alleged fathers had demonstrated a lack of commitment to the children by their actions that demonstrated an unwillingness to provide an adequate permanent home for the children. R.C. 2151.414(E)(4). The court found that the alleged fathers had abandoned the children, R.C. 2151.414(E)(10), and that Mother had abused Ty.B. R.C. 2151.414(E)(15). The juvenile court further found it to be relevant that Mother was intoxicated at the September 10, 2020 visit with Ta.B., and that she created a disturbance and threatened Ta.B.’s foster mother at the September 24, 2020 visit. R.C. 2151.414(E)(16). The manifest weight of the evidence supports these findings.

{¶ 23} Ta.B. was nine years old and Ty.B. was 13 years old at the time of trial. Neither of their alleged fathers had established paternity, and neither alleged father had any involvement with CCDCFS nor the children during the pendency of the case. With respect to Mother, the evidence was clear and convincing that she had not resolved her alcohol abuse nor obtained permanent housing as required by the case plan. Moreover, as reported by the guardian ad litem, Mother's inability to become sober, procure permanent housing, and provide a stable and secure environment for her children were issues that had been ongoing for years. Likewise, the evidence was clear and convincing that Mother was drunk at the September 10, 2020 visit with Ta.B. and that she threatened Ta.B.'s foster mother at the September 24, 2020 visit. Finally, the evidence was clear that Mother hit Ty.B. on at least one occasion. Mother offered no evidence whatsoever to rebut any of this testimony. Accordingly, we find that the trial court properly determined that the children could not be placed with either parent within a reasonable time or should not be placed with either parent.

{¶ 24} Having determined that the children could not be placed with either parent within a reasonable time or should not be placed with them, the trial court was then required to make a "best interest" determination pursuant to R.C. 2151.414(D).

{¶ 25} R.C. 2151.414(D) requires that in determining the best interest of the child, the court must consider all relevant factors, including but not limited to (1) the interaction and interrelationship of the child with the child's 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; (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 to the agency; and (5) whether any factors in R.C. 2151.414(E)(7) through (11) are applicable. "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. This court has stated that only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re Moore*, 8th Dist. Cuyahoga No. 76942, 2000 Ohio App. LEXIS 3958, 12 (Aug. 31, 2000).

{¶ 26} The juvenile court conducted an evidentiary hearing and considered the testimony and evidence presented. The journal entries regarding Ta.B. and Ty.B. demonstrate that in making its best interest determination, the court considered all relevant factors, including those listed in R.C. 2151.414(D)(1)-(5).

{¶ 27} Regarding interactions and relationships, the trial court found that Ty.B. did not have a bond with either parent while Ta.B. was bonded with Mother. Regarding the wishes of the children, the juvenile court noted that it had conducted an in-camera review with the children and was aware of their wishes. With respect to the custodial history, the juvenile court found that the children had come into agency custody in March 2019. Regarding their need for a legally secure permanent placement, the juvenile court found that Ta.B. and Ty.B. deserve a safe and stable

home environment where their basic needs can be met, but “[t]his cannot be achieved with either parent.” The court also found that Ta.B.’s and Ty.B.’s alleged fathers had abandoned them. In light of its findings regarding these factors, the juvenile court concluded that permanent custody of the children to the agency was in the children’s best interest.

{¶ 28} The record clearly and convincingly supports the juvenile court’s judgment. The record is clear that the children had no involvement whatsoever with their alleged fathers, who never established paternity for them. The evidence was also clear that neither the alleged fathers, who had abandoned the children, nor Mother, who continued to abuse alcohol, could provide a safe and stable home environment for the children.

{¶ 29} Mother contends that the trial court’s judgment awarding permanent custody was against the manifest weight of the evidence because she had substantially remedied the conditions that caused the removal of the children. The record overwhelmingly refutes this argument. Despite her initial success at NORA, Mother never completed the program and then refused to undergo any other substance abuse treatment, despite her obvious relapse. She refused to provide urine samples for alcohol screening, despite a court order that she do so, and showed up drunk for a visit with Ta.B. on September 10, 2020. Thus, Mother had obviously not remedied her substance abuse issues. Likewise, the record is clear that she did not obtain stable housing, as required by her case plan, and in fact, had four different addresses within the six months prior to trial.

{¶ 30} This is undoubtedly a sad case. However, in finding that granting permanent custody of the children to CCDCFS was in their best interest, the juvenile court thoroughly considered the evidence and testimony presented, and properly weighed all relevant factors. Upon our review of the record, we find there is clear and convincing evidence to support the juvenile court's determination. Accordingly, the assignment of error is overruled.

{¶ 31} 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

ANITA LASTER MAYS, P.J., and
MARY EILEEN KILBANE, J., CONCUR

