

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE Z.R.	:	
	:	No. 110146
A Minor Child	:	
	:	
[Appeal by K.N., Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: April 29, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-18909446

Appearances:

Patrick S. Lavelle, *for appellant.*

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

LARRY A. JONES, SR., J.:

{¶ 1} Mother-appellant, K.N., appeals the juvenile court's decision to grant permanent custody of Z.R. to the Cuyahoga County Division of Children and Family Services ("CCDCFS"). Finding no merit to the appeal, we affirm.

{¶ 2} Z.R. was born on July 26, 2018. Both Mother and child tested positive for marijuana at the time of Z.R.'s birth. CCDCFS became involved with

the family on July 31, 2018, and took emergency custody of Z.R. CCDCFS implemented a case plan, with a goal of reunification that included domestic violence counseling, mental health services, substance abuse assessment and treatment, parenting, and providing for the basic needs of Z.R. Father's case plan included the same recommendations and goal, but Father is currently incarcerated and serving a four-year sentence for attempted kidnapping. He is not a party to this appeal; therefore, we will focus our discussion and analysis on Mother.

{¶ 3} Z.R. was adjudicated neglected and was placed in the temporary custody of CCDCFS. As part of her case-plan services, Mother completed the domestic violence and mental health portions of her case plan. Mother also completed a substance-abuse assessment. She was referred for intensive, outpatient treatment that she completed in October 2019. Mother was required to submit to random drug screens upon completion of outpatient treatment. Mother initially complied with the random screens, but failed to submit to weekly random screens between January and September 2020. A failure to submit to a requested random screen is considered to be a positive result under CCDCFS guidelines; thus, the agency determined that Mother failed to demonstrate ongoing sobriety from January 2020 through the date of the permanent custody trial in September 2020.

{¶ 4} Mother was twice referred to a parenting-education program but did not complete the program either time. CCDCFS then referred Mother to a one-on-one parenting program. She completed that program and was referred to

additional services that were not completed as of the September 2020 permanent-custody trial.

{¶ 5} Z.R. received physical and occupational therapy for physical limitations that affected the left side of his body. Mother was provided dates, times, and transportation to and from the appointments, but failed to attend any of his therapy appointments.

{¶ 6} Mother did not have stable or appropriate housing and her CCDCFS caseworker, Melanie Green (“Green”), was unable to verify that Mother had a source of income. At the time of trial, Mother was temporarily residing with her sister in a two-bedroom apartment; CCDCFS had previously determined that the sister’s house was unsuitable for a child to live in. Mother planned to secure her own housing, but was unable to due to issues with her citizenship. At the time of trial, Mother had secured her green card but was unemployed and unable to provide for her own basic needs.

{¶ 7} Social worker Green observed Mother engaging with Z.R. during supervised visits and testified that they were making progress in the child’s recognition of Mother. Mother occasionally left the visits early and missed three visits with the child in June and July 2020. Green also described concerns over Mother’s lack of interaction with the child during some visits, noting that there were times where Mother left the toddler to entertain himself while she discussed personal relationship matters with her other child’s father who was also at the visitation.

{¶ 8} Green testified that there were concerns with the child's safety, including an incident where Mother dropped Z.R. in the hospital after he was born and situations that had arisen during supervised visitation. During one visit, the father of Mother's other child left that child unattended on a changing table and Green spoke to the father and Mother about the importance of supervising young children on a changing table. Later, during the same visit, Mother left Z.R. unattended on the changing table. Another time, Mother failed to ensure Z.R.'s safety near a busy street and had to be reminded that she needed to hold the toddler's hand while they crossed the street.

{¶ 9} Green also noted that, due to coronavirus restrictions, the agency had given Mother a personal bag containing engagement items such as toys and books along with instructions that she was to sanitize the items and bring the bag to each visit. Mother failed to consistently bring the bag to visits, which, Green testified, resulted in a lack of engagement and an increase in conflict at visits. Mother was also required to bring food (snacks) for Z.R. to the visits and failed to consistently bring food for the child. At the time of trial, Mother had not progressed to unsupervised visitation with Z.R. due to the safety concerns the agency noted during supervised visits.

{¶ 10} Green testified that Mother had not demonstrated sufficient benefit from the case-plan services, explaining that even two years after removal, Mother continued to exhibit the same concerns that led to Z.R.'s initial removal. Mother

still lacked appropriate housing, could not verify income, and, according to Green, the agency had concerns with Mother's sobriety as recent as the day before trial.

{¶ 11} Valerie Fredericks ("Fredericks"), a supportive-visit coach for the father of Mother's other child, Z.R.'s younger half-sibling, testified that she had observed Mother during that father's visits with his child. Fredericks testified that she never observed any safety concerns with regard to Mother and Z.R., and Mother interacted appropriately with Z.R. during the visits she observed.

{¶ 12} Green testified that Z.R. has been in his current placement since December 31, 2018, is bonded with his caregiver and the other children in the home, including his younger half-sibling, who is placed in the same home. Green testified that CCDCFS tried to identify an appropriate relative for placement, but the search was unsuccessful. The child's guardian ad litem ("GAL") recommended that the court grant permanent custody of Z.R. to CCDCFS, noting that the child was "in a place where he's been allowed to grow and thrive." The GAL indicated that the child was unable to discuss his wishes in this matter "because the child's only two years old, but he is happy where he is."

{¶ 13} Following trial, the juvenile court determined that Z.R. could not be placed with one of his parents within a reasonable time or should not be placed with either parent and that a grant of permanent custody was in Z.R.'s best interest.

{¶ 14} Mother appeals, assigning two errors for our review:

I. The trial court's award of permanent custody to DCFS, despite DCFS's failure to make reasonable efforts to eliminate the continued removal of the [child] from [his] home and to return the [child] to [his] home, violated state law and appellant's right to due process of the law as guaranteed by the Fourteenth Amendment of the United States Constitution and Section 16, Article I of the Ohio Constitution.

II. The trial court's decision to award permanent custody to DCFS was against the manifest weight of the evidence.

Reasonable Efforts at Reunification

{¶ 15} In the first assignment of error, Mother challenges the trial court's finding that CCDCFS made reasonable efforts to reunify her with her children.

{¶ 16} This court has previously noted that "a reasonable-efforts determination is not required by statute or controlling precedent upon a motion for permanent custody or to the hearings held on such motions." *In re L.D.*, 2017-Ohio-1037, 86 N.E.3d 1012, ¶ 18 (8th Dist.). The statute governing a reasonable-efforts determination "[b]y its terms,"

applies only at hearings * * * [that] involve adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children, all of which occur prior to a decision transferring permanent custody to the state. The statute makes no reference to a hearing on a motion for permanent custody.

In re C.F., 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 41.

{¶ 17} Thus, "[b]y its plain terms, the statute does not apply to motions for permanent custody brought pursuant to R.C. 2151.413, or to hearings held on such motions pursuant to R.C. 2151.414." *In re C.F.* at *id.* This does not mean, however,

* * * that the agency is relieved of the duty to make reasonable efforts. At various stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made

reasonable efforts toward family reunification. To the extent that the trial court relies on R.C. 2151.414(E)(1) at a permanency hearing, the court must examine the “reasonable case planning and diligent efforts by the agency to assist the parents” when considering whether the child cannot or should not be placed with the parent within a reasonable time. However, the procedures in R.C. 2151.414 do not mandate that the court make a determination whether reasonable efforts have been made in every R.C. 2151.413 motion for permanent custody.

Id. at ¶ 42.

{¶ 18} A review of the record in this case shows that the juvenile court found that CCDCFS made reasonable efforts to reunite Mother and Z.R. throughout the pendency of the case, including at the permanent-custody trial. The court made the following reasonable efforts determinations in the written judgment entry granting permanent custody of Z.R. to CCDCFS:

Following the placement of the child outside of the child’s home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home.

* * *

[R]easonable efforts were made to prevent the removal of the child from his home, or to return the child to the home, and to finalize the permanency plan, to wit: reunification.

* * *

Cuyahoga County Division of Children and Family Services has made reasonable efforts to finalize the permanency plan for the child.

{¶ 19} In light of the above, Mother’s contention that the trial court failed to make adequate findings regarding CCDCFS’s reasonable efforts at reunification is without merit.

Case Plan

{¶ 20} Mother next contends that CCDCFS failed to develop a case plan or provide Mother with services to assist with reunification.

{¶ 21} The agency took emergency custody of Z.R. on July 31, 2018, and developed a case plan for Mother that was filed with the juvenile court on September 14, 2018. As previously noted, the main objectives of the case plan were to address and remedy issues Mother had with substance abuse, mental health, parenting, housing, and training to address the child’s physical limitations. The case plan was discussed at the September 2018 adjudicatory and dispositional hearing, and the court noted that CCDCFS “has made reasonable efforts to prevent removal of the child to eliminate the continued removal of the child from home, or to make it possible for the child to return home and to make and finalize a permanency plan for the child.” The entry detailed the services as noted above, and the court indicated that “[t]he case plan filed herein and attached hereto is approved and journalized.”

{¶ 22} The case plan was discussed at other hearings throughout the pendency of this case, and the court orders reiterated Mother’s case plan. The testimonies of social worker Green and the GAL indicated that CCDCFS developed a case plan for Mother in an attempt to identify and address her substance abuse,

mental health, housing, and other issues, and reunify her with Z.R., but Mother was unable to remedy the issues that caused Z.R.'s initial removal. Thus, we find Mother's argument that CCDCFS failed to develop a case plan with reunification in mind not well taken.

{¶ 23} Accordingly, the first assignment of error is overruled.

Permanent-Custody Determination: Weight of the Evidence

{¶ 24} In the second assignment of error, Mother argues the trial court's judgment granting permanent custody of the children to CCDCFS is against the weight of the evidence.

{¶ 25} In addressing this assignment of error, we initially note that a parent has a "fundamental liberty interest" in the care, custody, and management of his or her child and an "essential" and "basic civil right" to raise his or her child. *In re Murray*, 52 Ohio St.3d 155, 156, 556 N.E.2d 1169 (1990). A parent's right is not absolute, however. "The natural rights of a parent are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed." *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979).

{¶ 26} "If the record shows some competent, credible evidence supporting the trial court's grant of permanent custody to the county, we must affirm that court's decision, regardless of the weight we might have chosen to put on the evidence." *In re P.R.*, 8th Dist. Cuyahoga No. 79609, 2002-Ohio-2029, ¶ 15. Thus, when some competent, credible evidence exists to support the judgment rendered by the trial court, an appellate court may not overturn that decision unless it is

against the manifest weight of the evidence. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984).

{¶ 27} We also note that a trial court enjoys wide discretion in custody matters, and that discretion should be accorded the utmost respect given the nature of the proceeding and the impact the court's determination will have on the lives of the parties involved. *In re Satterwhite*, 8th Dist. Cuyahoga No. 77071, 2001 Ohio App. LEXIS 3722, 6-7 (Aug. 23, 2001), citing *In re Benavides*, 8th Dist. Cuyahoga No. 78204, 2001 Ohio App. LEXIS 2002 (May 3, 2001).

The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding (i.e., observing their demeanor, gestures, and voice inflections, and using these observations in weighing the credibility of the proffered testimony) cannot be conveyed to a reviewing court by a printed record.

In re Satterwhite at 7, citing *In re Benavides*. As the Ohio Supreme Court has stated, "it is for the trial court to resolve disputes of fact and weigh the testimony and credibility of the witnesses." *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 23, 550 N.E.2d 178 (1990).

{¶ 28} Before a juvenile court can terminate parental rights and grant permanent custody of a child to CCDCFS, it must apply the two-prong test set forth in R.C. 2151.414: (1) the existence of one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e); and that (2) permanent custody is in the best interest of the child. *In re S.H.*, 8th Dist. Cuyahoga Nos. 97992, 97993, and 97994, 2012-Ohio-4064, ¶ 27.

{¶ 29} Here, the trial court made a finding under R.C. 2151.414(B)(1)(d) that the child had 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. The court further found, pursuant to R.C. 2151.414(E)(1), that “the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home.” Mother stopped submitting to random drug screens and therefore failed to demonstrate ongoing sobriety from January 2020 to September 2020; Mother failed to demonstrate that she benefitted from parenting classes; Mother did not have stable and appropriate housing; and Mother did not have a source of income. Our review demonstrates that the findings were supported by some competent, credible evidence.

{¶ 30} Second, the juvenile court must find by clear and convincing evidence that granting permanent custody to the agency is in the best interest of the child. R.C. 2151.414(D). This court reviews a trial court’s best-interest determination under R.C. 2151.414(D) for an abuse of discretion. *In re J.F.*, 2018-Ohio-96, 102 N.E.3d 1264, ¶ 55 (8th Dist.), citing *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47. In this regard, “[a] trial court’s failure to base its decision on a consideration of the best interests of the child constitutes an abuse of discretion.” *In re J.F.* at *id.*, quoting *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 60. “A court abuses its discretion when a legal rule entrusts a decision to a judge’s discretion and the judge’s exercise of that discretion is outside

of the legally permissible range of choices.” *State v. Hackett*, Slip Opinion No. 2020-Ohio-6699, ¶ 19.

{¶ 31} When determining the child’s best interest pursuant to R.C. 2151.414(D)(1), courts analyze the following factors (1) the interaction and interrelationship of the child with others, (2) the wishes of the child, (3) the custodial history of the child, (4) the child’s need for a legally secure placement and whether such a placement can be achieved without permanent custody, and (5) whether any of the factors in divisions R.C. 2151.414(E)(7) to (11) apply. Although the juvenile court is required to consider each factor listed in R.C. 2151.414(D)(1), no one factor is to be given greater weight than the others. *In re T.H.*, 8th Dist. Cuyahoga No. 100852, 2014-Ohio-2985, ¶ 23, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Only one of the factors set forth in R.C. 2151.414(D)(1) needs to be resolved in favor of permanent custody. *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17.

{¶ 32} Mother contends that CCDCFS did not present any evidence addressing any of the best interest factors and, therefore, the court could not have decided in regards to the best interest of the child. We disagree. Testimony from social worker Green and the GAL showed that Z.R. has been in his current placement since December 31, 2018, is happy and thriving in his placement, his basic needs are met, he is placed with his half-sibling, and he is bonded with his caregiver. Z.R.’s interaction and bonding with Mother was “inconsistent” and Mother failed to attend Z.R.’s occupational and physical therapy appointments.

Green also described concerns over Mother's lack of interaction with Z.R. and safety concerns she observed during supervised visitation. The GAL testified that Z.R. was too young to express his own wishes but he was happy in his placement.

{¶ 33} Z.R. has been in agency custody since he was a few days old and needs a legally secure placement that cannot be achieved without a grant of permanent custody to the agency. Green testified that the agency investigated relatives on both the mother and father's side but there were none that were able to provide Z.R. a safe and stable home. Finally, Mother was unable to remedy the conditions that led to Z.R.'s removal. She was unable to demonstrate sobriety, find stable housing, show she could provide for Z.R.'s basic needs, or benefit from her parenting classes.

{¶ 34} In light of the above, the trial court's best-interest determination was supported by some competent, credible evidence and the trial court did not abuse its discretion in determining that a grant of permanent custody to CCDCFS was in Z.R.'s best interest.

{¶ 35} We recognize that the "termination of the rights of a birth parent is an alternative of last resort." *In re Gill*, 8th Dist. Cuyahoga No. 79640, 2002-Ohio-3242, ¶ 21. The purpose of the termination of parental rights statutes is to make a more stable life for the dependent children and to facilitate adoption to foster permanency for children. *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67. This court does not look upon these matters lightly, and this case is certainly no exception. But in light of the above, there was competent credible

evidence supporting the juvenile court's determination and the court did not abuse its discretion in finding that it was in Z.R.'s best interest to be placed in the permanent custody of CCDCFS.

{¶ 36} Mother's assignments of error are overruled.

{¶ 37} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

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.

LARRY A. JONES, SR., JUDGE

SEAN C. GALLAGHER, P.J., and
EILEEN T. GALLAGHER, J., CONCUR