

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: ED,

S.D., JR.,

M.K.

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Patricia A. Delaney, J.
Hon. Earle E. Wise, Jr., J.

Case No's 2018CA00036,
2018CA00037, 2018CA00042,
2018CA00043, 2018CA00044

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from Stark County Court of
Common Pleas, Family Court Division Case
No.'s 2017JCV00249, 2017JCV00250,
2017CV00251

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 6, 2018

APPEARANCES:

For Father

For Appellee

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Guardian Ad Litem

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Hoffman, P.J.

{¶1} In Stark App. No. 2018-CA-00036, appellant Somchai Datewoon (“Father”) appeals the March 14, 2018 Judgment Entry, and Findings of Fact and Conclusions of Law (“Entry I”) entered by the Stark County Court of Common Pleas, Family Court Division, which terminated his parental rights, privileges, and responsibilities with respect to his minor child (“Child 1”), and granted permanent custody of Child 1 to appellee Stark County Department of Job and Family Services (“SCJFS”). In Stark App. No. 2018-CA-00037, Father appeals a second March 14, 2018 Judgment Entry, and Findings of Fact and Conclusions of Law (“Entry II”) entered by the same court, which terminated his parental rights, privileges, and responsibilities with respect to his other minor child (“Child 2”), and granted permanent custody of Child 2 to SCJFS. In Stark App. No. 2018-CA-00042, appellant Christina Keiffer (“Mother”) appeals the March 14, 2018 Judgment Entry, and Findings of Fact and Conclusions of Law (“Entry III”) entered by the same court, which terminated her parental rights, privileges, and responsibilities with respect to her minor daughter (“Child 3”), and granted permanent custody of Child 3 to SCJFS. In Stark App. No. 2018-CA-00043, Mother appeals Entry I with respect to the termination of her parental rights, privileges and responsibilities to Child 1. In Stark App. No. 2018-CA-00044, Mother appeals Entry II with respect to the termination of her parental rights, privileges, and responsibilities to Child 2.

STATEMENT OF THE CASE AND FACTS

{¶2} Mother and Father are the biological parents of Child 1 and Child 2. Mother is the biological mother of Child 3. The alleged father of Child 3 is Terrell Dukes, however, Dukes never established paternity and did not participate in the instant action.

{¶3} On March 2, 2017, SCJFS filed a complaint alleging Child 1, Child 2, and Child 3 were dependent and/or neglected children. At an emergency shelter care hearing the following day, the trial court found probable cause and placed the children in the emergency temporary custody of SCJFS. Parents were ordered to complete parenting evaluations, drug assessments, and follow all resulting recommendations.

{¶4} At an adjudicatory hearing on May 5, 2017, the trial court found Child 1, Child 2, and Child 3 to be dependent and placed them in the temporary custody of SCJFS. The trial court conducted a review on September 1, 2017, at which time it approved and adopted the case plan and maintained the status quo. The trial court conducted a review hearing on February 1, 2018, and again approved and adopted the case plan and maintained the status quo.

{¶5} SCJFS filed motions for permanent custody of all three the children on December 26, 2017. The guardian ad litem filed her report on February 20, 2018, recommending the children be placed in the permanent custody of SCJFS. The trial court conducted a hearing on the motions on February 26, 2018. Prior to the start of the hearing, Counsel for Father made an oral motion for a continuance of the hearing to extend the time in which he could complete his case plan.

{¶6} Vicki Mitchell, the ongoing caseworker assigned to the family, detailed the requirements of Mother and Father's case plans. Mitchell testified Parents were required to complete parenting evaluations and follow any recommendations; complete substance

abuse assessments and follow any recommendation, comply with urine drug testing, submit to any additional drug testing such as hair follicle and/or oral fluid tests; each participate in a twelve step program and obtain a sponsor; and find and maintain stable housing and employment.

{¶7} Mitchell explained SCJFS had received numerous reports regarding Mother and Father throughout the years, dating back to 1997. The concerns centered on the deplorable home conditions, Parents' substance abuse, and Father's physical abuse of Child 2. Parents refused to cooperate with SCJFS and refused to allow the Agency to speak with the children, and, as a result, those cases were ultimately closed. The instant case involved the same concerns as well as concerns reported by the school. Specifically, Parents' refusal to follow through with services for Child 1 and Child 2, who both have special needs. Child 1 had Downs Syndrome and needed additional services. Child 2 had significant behavioral and emotion issues, which included self-harming and hiding under desks curled into the fetal position, sucking his thumb. The children would arrive at school dirty and smelly. When Mother was contacted, she would not speak with anyone unless Father was present. Parents failed to appear at scheduled school meetings.

{¶8} Mitchell testified Parents attended only one appointment at Northeast Ohio Behavioral Health on January 17, 2018, approximately ten months after the children's removal from their home. Parents did not complete their substance abuse assessments and refused to comply with any drug testing. One drug test was conducted at a review hearing. Mother was positive for marijuana. Father was negative. Parents refused repeated, subsequent requests for additional drug testing. Parents did not attend family

team meetings and did not appear at the last six month review hearing. Parents failed to provide Mitchell with any verification of stable housing and employment during the proceedings. Father provided Mitchell with a phone number, which was not a working number. At the final visit before the hearing on the motion for permanent custody, Mitchell attempted to schedule a home visit, but Father refused to give her an address. Mitchell asserted Parents had not been cooperative in any way during the case.

{¶9} Mitchell added she attempted to meet with Mother individually. Mother met with Mitchell on one occasion. During the meeting, Mother either refused to answer Mitchell's questions or advised Mitchell she would need to ask Father. Father was extremely controlling of Mother. Mitchell reiterated Parents' on-going refusal to comply with the case plan and engage in any services.

{¶10} The children completed trauma evaluations at Northeast Ohio Behavioral Health. Child 1 was diagnosed with adjustment disorder with anxiety and depression. Child 2 and Child 3 were diagnosed with post-traumatic stress disorder, and both were attending on-going trauma focused therapy. Child 2 receives additional services and counseling at school. Child 2 takes medication for ADHD related symptoms as well as medication for anxiety. Child 3 is prescribed anti-depressants. Child 1 is receiving services through Stark DD and his school.

{¶11} Parents did not visit with the children during the first month and a half after the case initially commenced. When Parents began to visit with the children, they failed to appear or were late on several occasions. Parents visited consistently in the seven or eight months prior to the permanent custody hearing. Mother missed one visit two months prior to the hearing after sustaining physical injuries from Father. During the visits, Father

was extremely controlling of Mother, on occasion telling her where to sit. Father had minimal interaction with the children during the visits. The children were anxious and nervous, fearing something bad would happen. Mitchell described the visits as chaotic. Father did not comply with the rules for visitation. He ignored redirection or became argumentative. Mother made efforts to engage with the children. However, Mother was unable to protect the children from Father's inappropriate behavior and did not step in to redirect Father's behaviors. After the last review hearing, Mother and Father separately visited the children.

{¶12} Mitchell noted Mother did not make eye contact when Mitchell spoke to her. When asked direct questions, Mother would tell Mitchell she needed to ask Father. For example, when Mitchell asked Parents to submit to drug testing, Mother initially did not answer, and Father refused. When Mitchell asked Mother directly, Mother would either say, "No", or repeat what Father said. The children disclosed a significant amount of domestic violence between Parents. Mitchell offered to assist Mother with getting into a shelter and domestic violence services.

{¶13} Although Father used a phone during visits, he would not give Mitchell the phone number. Parents were evicted from their home shortly after the children were removed. Although Mitchell repeatedly asked Father about his employment, Father never provided Mitchell with verification of employment. A month prior to the hearing, Father informed Mitchell he was working at Napoli's restaurant. The Wednesday prior to the hearing, Mitchell again asked Father for verification of his employment, but he would not provide the information to her. Mitchell noted she could not call Napoli's as Father refused to sign a release of information. On the day of the hearing, Mitchell received a copy of a

lease in Father's name. The Wednesday before the hearing, Mitchell asked Father for an address so she could conduct a home study, again Father refused to provide the information.

{¶14} Father testified between March, and November, 2017, he worked to save money to secure housing. Parents leased their current residence in November, 2017. Father indicated he had been employed since March, 2017. Father explained he was controlling and set rules in an effort to protect Child 1 because of his disabilities. Father stated he is willing to complete a substance abuse assessment and a parenting assessment. Father claimed they had remedied the deplorable home conditions and he was ready to move forward on his case plan. On cross-examination, Father admitted he had not provided Mitchell with a paystub or an address of his residence. Father explained he did not complete his case plan services because of time. Father acknowledged he did not submit to drug testing and had not completed his parenting evaluation. He stated he did not start the parenting evaluation until January, 2018, because that was when things were stable and he had the time.

{¶15} Mother did not testify. Counsel for Father renewed his motion for an extension of time. Counsel for Mother joined in the motion.

{¶16} During the best interest portion of the hearing, Mitchell testified Child 1 and Child 2 are Caucasian and Asian, and Child 3 is Caucasian and African American. Child 1 has Downs Syndrome. His full scale IQ is 32. When he first arrived in SCDJFS custody, Child 1 could not correctly write his name. Test results showed Child 1 was in the extremely low range for communication, academic functioning, and self-care. Child 1 is currently receiving occupational therapy and speech therapy. Child 1 has been

diagnosed with an adjustment disorder with anxiety and depressed mood. Child 1 receives services through school and Stark DD. Child 1 is participating in the independent living program through SCDJFS, which has been modified due to his very limited abilities. Child 1 received services through school while he was in Parents' care. However, when the school wanted specific services or wanted to make a referral, Parents refused to participate in meetings. Child 1 has made a lot of emotional progress.

{¶17} Child 2 was diagnosed with PTSD. He has a history of significant emotional and behavior issues, including self-harm and physical aggression. When he first arrived in SCDJFS custody, he had a lot of anxieties and nightmares. Child 2 saw a counselor at school on the days of visitation with Parents due to extreme anxiety. Child 2 has made tremendous progress and is doing extremely well in school. The school has a behavioral plan in place if he feels overwhelmed.

{¶18} Child 3 was diagnosed with PTSD. Child 3 is prescribed anti-depression medication and attends trauma focused therapy. Child 3 also receives independent living services through SCDJFS. Child 3 is doing much better in all areas of her life.

{¶19} Child 1 stated he wanted to return to Mother and Father's home if he has his own room. He seemed anxious about returning to Parents' home if conditions remained as they were when he was removed. Child 1 always stated, first and foremost, he wanted to stay with Child 3. Child 2 and Child 3 have stated they wished to stay with their foster parents. They want to move on with their lives. The foster parents are attentive to the children's needs and are very caring. All three of the children have a close bond with the foster parents. The foster parents have expressed a desire to adopt the children.

{¶20} The children were bonded with Mother and were also worried about her. Child 1 disclosed numerous incidents of domestic violence between Parents. The children had strained relationships bond with Father and were very fearful of him. Father physically abused Child 2. Mitchell stated the children needed and deserved safety and stability in their lives.

{¶21} Via Entries I, II, and III filed on March 14, 2018, the trial court terminated Parents' parental rights, privileges, and responsibilities, and granted permanent custody of the children to SCJFS.

{¶22} It is from these judgment entries Parents appeal.

{¶23} In Stark App. Nos. 2018-CA-00036 and 2018-CA-00037, Father raises identical assignments of error:

I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DID NOT GRANT APPELLANTS MOTION FOR A CONTINUANCE.

II.THE JUDGMENT OF THE TRIAL COURT THAT THE MINOR CHILD CANNOT AND SHOULD NOT BE PLACED WITH APPELLANT AT THIS TIME OR WITHIN A REASONABLE PERIOD OF TIME WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

III.THE JUDGMENT OF THE TRIAL COURT THAT THE BEST INTEREST OF THE MINOR CHILD WOULD BE SERVED BY THE GRANTING OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

{¶24} In Stark App. Nos. 2018-CA-00042, 2018-CA-00043, and 2018-CA-00044,

Mother raises two similar assignments of error:

I. THE TRIAL COURT'S FINDING THAT, [SIC] CHILDREN CANNOT BE PLACED WITH EITHER PARENT WITHIN A REASONABLE AMOUNT OF TIME AND SHOULD NOT BE PLACED WITH EITHER PARENT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. THE TRIAL COURT'S FINDING THAT PERMANENT CUSTODY WAS IN MK, ED, AND SD'S BEST INTEREST WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶25} These cases come to us on the expedited calendar and shall be considered in compliance with App. R. 11.2(C).

FATHER

Stark App. No. 2018CA00036

I

Stark App. No. 2018CA00037

I

{¶26} Because Father's first assignments of error in both appeals are identical, we shall address them together. In his first assignments of error, Father asserts the trial

court erred in denying his motion to continue the permanent custody trial. We note Father's request was expressed as an extension of time to work on his case plan.

{¶27} The decision to grant or deny a motion to continue is entrusted to the broad discretion of the trial court. *Hartt v. Munobe*, 67 Ohio St.3d 3, 9, 615 N.E.2d 617 (1993). Ordinarily, a reviewing court analyzes a denial of a continuance in terms of whether the court has abused its discretion. *Ungar v. Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964); *State v. Wheat*, 5th Dist. Licking App. No.2003-CA-00057, 2004-Ohio-2088. An abuse of discretion connotes more than a mere error in law or judgment; it implies an arbitrary, unreasonable, or unconscionable attitude on the part of the trial court. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶28} In evaluating whether the trial court has abused its discretion in denying a continuance, appellate courts apply a balancing test which takes into account a variety of competing considerations, including the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; and whether the defendant contributed to the circumstance which gives rise to the request for a continuance. *State v. Unger*, 67 Ohio St.2d 65, 67-68, 423 N.E.2d 1078 (1981).

{¶29} Likewise, the decision to grant or deny an extension of temporary custody lies in the discretion of the juvenile court. *In re P.B.*, 9th Dist. Summit No. 23276, 2006-Ohio-5419, ¶ 36, citing R.C. 2151.415(D)(1) and (2). The juvenile court is authorized to exercise its discretion to extend temporary custody only if it finds, by clear and convincing evidence, the following three things: “ ‘(1) that such an extension is in the best interests

of the child, (2) that there has been significant progress on the case plan, and (3) that there is reasonable cause to believe that the child will be reunified with a parent or otherwise permanently placed within the period of extension.' ” *In re J.P.–M.*, 9th Dist. Summit Nos. 23694 and 23714, 2007–Ohio–5412, ¶ 12, quoting *In re P.B.* at ¶ 36. Before the juvenile court may grant either permanent custody or a six-month extension of temporary custody, it must conduct a best interest analysis. *In re S.D.*, 9th Dist. Lorain Nos. 15CA010864 and 15CA010867, 2016–Ohio–1493, ¶ 30. Accordingly, “[i]f permanent custody was in the children's best interests, the alternative disposition of extending temporary custody was not.” *Id.*, citing *In re I.A.*, 9th Dist. Summit No. 26642, 2013–Ohio–360, ¶ 10; see also *In re N.M.*, 9th Dist. Summit No. 28118, 2016–Ohio–5212, ¶ 18.

{¶30} Father sought additional time in order to work on his case plan. At the hearing, Father provided Mitchell with a copy of a lease signed in November, 2017. Father testified he had been employed since March, 2017. Throughout the pendency of the case, Mitchell repeatedly requested verification of employment as well as housing. Father refused every request. Father failed to complete any aspect of his case plan. Although the children were removed in March, 2017, Father waited until January, 2018, to begin his parenting assessment. His first appointment was on January 17, 2018. Father was late for his second appointment, which was cancelled as a result. Father refused to submit to any requested drug tests or start his substance abuse assessment.

{¶31} Based upon the information presented to the trial court, the absence of sufficient grounds for the continuance, and the children's need for permanency, we find the trial court did not abuse its discretion in denying Father's request for a continuance.

We further find the trial court did not abuse its discretion in denying Father's request to extend the temporary custody order as Father failed to show by clear and convincing evidence the extension was in the best interest of the children, failed to demonstrate he had made substantial progress on his case plan, and failed to establish there was reasonable cause to believe the children would be reunified with one or both of Parents within the period of extension.

{¶32} Father's first assignments of error are overruled.

FATHER

Stark App. No. 2018CA00036

II, III

Stark App. No. 2018CA00037

II, III

MOTHER

Stark App. No. 2018CA00042

I, II

Stark App. No. 2018CA00043

I, II

Stark App. No. 2018CA00044

I, II

{¶33} We elect to address Father's second and third assignments of error in both of his appeals, and Mother's first and second assignments of error in her three appeals together.

{¶34} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Cross Truck v. Jeffries*, Stark App. No. CA5758 (Feb. 10, 1982). Accordingly, judgments supported by some 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. *C.E. Morris Co. v. Foley Constr.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶35} R.C. 2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court schedule a hearing and provide notice upon the filing of a motion for permanent custody of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

{¶36} Following the hearing, R.C. 2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (a) the child is not abandoned or orphaned, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents; (b) the child is abandoned; (c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of one or

more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶37} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates the trial court must consider all relevant factors, including, but not limited to, the following: (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, with due regard for the maturity of the child; (3) the custodial history of the child; and (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.

{¶38} Therefore, R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶39} If the child is not abandoned or orphaned, the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. 2151.414(E), the trial court must consider all relevant evidence before making this determination. The trial court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the

factors enumerated in R.C. 2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶40} As set forth in our statement of the facts and case, supra, we find there was sufficient and substantial competent evidence Parents failed to remedy the problems which initially caused the removal of the child from their home. Parents failed to complete their case plan services. They did not complete their parenting assessments. Parents did not commence their substance abuse assessments. They failed to submit to requested drug testing.

{¶41} Based upon the foregoing, we find the trial court's finding Child 1, Child 2, and Child 3 could not be placed with either parent within a reasonable period of time or should not be placed with the parents was not against the manifest weight of the evidence. We further find the trial court's finding it was in the best interest of the children to grant permanent custody to SCDJFS was not against the manifest weight of the evidence. The children have mental health and emotional issues. Child 1 has Downs Syndrome as well as adjustment disorder with anxiety and depression. Child 2 and Child 3 were both diagnosed with PTSD. The children were doing well in foster care. They are receiving the necessary services. The foster parents are interested in adopting the three of them.

{¶42} Father's second and third, and Mother's first and second assignments of error are overruled.

{¶43} The judgment of the Stark County Court of Common Pleas, Family Court
Division, is affirmed.

By: Hoffman, P.J.

Delaney, J. and

Wise, Earle, J. concur