

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

L.G., L.P., & R.F.

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. W. Scott Gwin, J.

Hon. Craig R. Baldwin, J.

Case Nos. 2020CA00053, 2020CA00054,
& 2020CA00055

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Stark County Court of
Common Pleas, Family Court Division,
Case Nos. 2018-JCV-00016, 2018-JCV-
00017, 2018-JCV-00018

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 3, 2020

APPEARANCES:

For Appellant Mother

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For Appellee Stark County Department of
Job and Family Services

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Hoffman, P.J.

{¶1} In Stark App. Nos. 2020-CA-00053, 2020-CA-00054, and 2020-CA-00055, appellant Laquirah Green (“Mother”) appeals three February 7, 2020 Judgment Entries entered by the Stark County Court of Common Pleas, Family Court Division, which terminated her parental rights, privileges, and obligations with respect to her three minor children (“Child 1”, “Child 2”, “Child 3”, individually; “the Children”, collectively) and granted permanent custody of the Children to appellee Stark County Department of Job and Family Services (“SCDJFS”).

STATEMENT OF THE CASE AND FACTS¹

{¶2} On December 22, 2017, Mother contacted SCDJFS and advised she was very overwhelmed and needed her five children removed so she could get herself together. Mother also stated she was very frustrated and did not know what she might do to the children. An SCDJFS caseworker visited Mother and arranged for all five of the children to be placed outside of the home. Thereafter, Mother’s case was assigned to the alternative response unit for services.

{¶3} The caseworker interviewed Mother on December 26, 2017, at which time Mother indicated she needed 1 to 2 months to find a new place to live and purchase a car. Mother explained she had no family or support to help her. She also asked for coping skills to deal with the children’s behaviors. During a preventative family team meeting on January 3, 2018, Mother told SCDJFS she needed six months to get herself together.

¹Timothy Delaney is the father of Child 1. Eric Puckett is the father of Child 2. Daryl Sorrells is the alleged father of Child 3. The fathers did not appear at any of the hearings, did not engage in case plan services, and are not parties to these appeals.

{¶4} On January 4, 2018, SCDJFS filed five complaints alleging the Children and their two siblings were dependent and neglected and seeking temporary custody of the Children.² The trial court conducted an emergency shelter care hearing on January 5, 2018. Mother stipulated to a finding of probable cause for the issuance of the emergency shelter care order and the placement of the Children in shelter care with SCDJFS. The trial court found probable cause and placed the Children in the emergency temporary custody of SCDJFS. The trial court ordered Mother to undergo a psychological evaluation, a drug and alcohol assessment, and to submit to drug and alcohol urine screening. Attorney Patrick Cusma was appointed to represent Mother. The trial court appointed a Guardian ad Litem for the Children.

{¶5} At the adjudicatory hearing on January 31, 2018, Mother stipulated to a finding of dependency as to each of the Children. The trial court found the Children to be dependent. The trial court found Mother had been diagnosed with depression and anxiety. Mother was engaged in counseling through CommQuest and was scheduled to see a psychiatrist for a medication evaluation, but had not completed a parenting evaluation. The trial court placed the Children in the temporary custody of SCDJFS.

{¶6} The trial court conducted a review hearing on June 28, 2018, and maintained the status quo. SCDJFS filed a motion to extend temporary custody on November 19, 2018. Mother stipulated to the extension of temporary custody. SCDJFS filed a second motion to extend temporary custody on May 20, 2019. Mother again stipulated to an extension of temporary custody. The trial court conducted a review hearing on May 24, 2019, and maintained the status quo.

²The two siblings are placed with relatives and are not subject to these appeals.

{¶7} Following a review hearing on November 21, 2019, at which the trial court found no compelling reasons existed to preclude a request for permanent custody, SCDJFS filed motions for permanent custody on November 25, 2019. The trial court conducted a hearing on the motions on January 30, 2020.

{¶8} Kimberly Gabel, the ongoing caseworker assigned to the family, detailed the requirements of Mother's case plan. Mother was ordered to complete a parenting assessment at Northeast Ohio Behavioral, NKA Litehouse Family Services, and to follow through with all recommendations. Mother was also ordered to engage in mental health services.

{¶9} Mother completed her parenting assessment. The evaluator recommended Mother engage in mental health services, including weekly counseling. Mother had sporadically attended counseling in the past. In addition, Mother was to complete a psychiatric assessment and demonstrate a commitment towards taking any psychotropic medications as prescribed. Mother was to engage in Goodwill Parenting Skills Training Program and to follow through with all recommendations therefrom. Mother was to obtain and maintain independent, appropriate housing as well as a source of income. Mother was also to engage in counseling with the Children when it was appropriate for her to do so.

{¶10} Gabel testified Mother was referred to CommQuest for a psychiatric evaluation to be prescribed medication. Gabel noted Mother was not consistent with her treatment at CommQuest. Specifically, Mother did not consistently attend her appointments for assessments and medication refills. Gabel explained Mother originally attended counseling at CommQuest but was subsequently referred to Melymbrosia to

address her anger management issues. Mother was not consistent with her attendance at Melymbrosia.

{¶11} Gabel stated Mother attended Goodwill Parenting in December, 2018, earning a certificate of non-compliance. Because Mother failed to complete a minimal amount of the course requirements, Mother was referred to the program a second time. Mother completed her second ten-week program on August 9, 2019, with a certificate of attendance. Gabel explained a certificate of attendance means Mother completed only a minimal amount of the course requirements. Although Goodwill home-based parenting was recommended, Goodwill would not provide the services in Mother's home unless SCDJFS supervised the visits.

{¶12} Gabel testified SCDJFS assisted Mother in securing independent housing, however, as of the date of the permanent custody hearing, Mother had been evicted. Gabel noted Mother was being evicted from her previous residence when the case originated. Mother was unable to verify employment. Mother sporadically attended Child 2's counseling, but did not attend counseling with Child 1 or Child 3.

{¶13} Gabel indicated the Children have exceptional needs. Child 1 has been diagnosed with post-traumatic stress disorder (PTSD), attention deficit hyperactivity disorder (ADHD), and oppositional defiant disorder (ODD). Child 1 is currently in a residential treatment facility. Gabel explained Child 1 experienced several placement moves at the onset of the case due to his extreme aggressive behaviors. After a year, SCDJFS attempted to transition Child 1 from a residential treatment facility to a therapeutic foster home. Following one weekend in the therapeutic foster home, Child 1

was hospitalized for five days on the psychiatric floor of Akron Children's Hospital. Child 1 is currently in a residential facility.

{¶14} Gabel noted Child 2 is the "most typical" of the Children. Child 2 is engaged in counseling. Gabel described Child 2 as "a very emotional child, very sensitive." Tr. at 17.

{¶15} Gabel testified Child 3 receives weekly counseling during which he and his therapist engage in play therapy. Child 3 was diagnosed with PTSD, ADHD, and generalized anxiety disorder. He is prescribed medications for ADHD and aggression. Child 3's medications are managed through Akron Children's Hospital. Child 3 is currently being evaluated for an individualized education program (IEP) due to his behaviors at school. Gabel added Child 1 and Child 3 are physically aggressive and violent. Both Child 1 and Child 3 have attacked peers and authority figures. Child 3 stabbed a teacher.

{¶16} Gabel recalled a supervised home visit on September 5, 2019, with Mother and the Children, during which the Children's behaviors "were getting out of control." Tr. at 18. Mother became combative when Gabel attempted to offer redirection. Child 3 was jumping on the couch and fell off, striking the bottom of the window and cutting himself. Child 3 became terrified when he saw he was bleeding. Mother screamed and yelled at Gabel. As Gabel called 9-1-1, Mother continued to scream and curse. Gabel explained Child 1 has a history of running away when he is overwhelmed. Mother appeared to be enticing him to run away. Gabel was holding Child 3 while Child 2 and another sibling clung to her. Child 3 was transported to the hospital where he received six stitches. At no time did Mother attempt to comfort the Children. Mother showed no signs she had internalized any of the parenting skills she had been taught.

{¶17} Gabel indicated Mother had not done anything to reduce the risk she posed at the beginning of the case. Gabel also expressed her belief the Children would not be safe if returned to Mother. Despite nearly two years of services, the concerns which were present at the onset of the case remained.

{¶18} Phillip Heagerty, a therapist with Melymbrosia, testified Mother was referred to his office to address her anger management and control issues. Over the course of a year, Heagerty saw Mother between 16 and 18 times. Heagerty noted Mother had “no showed” 8 or 9 times, which he agreed was a significant amount of appointments to miss. Heagerty noted Mother’s lack of consistency with attendance impacted her ability to make progress on the issues she needed to address.

{¶19} Dr. Amy Thomas, a psychologist with Litehouse Family Center, formerly Northeast Ohio Behavioral Health, conducted Mother’s parenting evaluation. As part of the evaluation, Mother completed psychological testing which included a structured clinical interview for DSM IV disorders, a cognitive brief intelligence test, a parenting stress index, and a substance abuse screening inventory. During the evaluation, Mother disclosed she was struggling with significant mental health problems, including depression and anxiety. Mother also reported her housing situation was unstable and repeated moves interfered with her ability to provide stability for the Children. Mother also acknowledged she struggled with maintaining a structured routine as well as consistently handling the Children’s behaviors.

{¶20} Dr. Thomas detailed the results of Mother’s evaluation. The intelligence testing placed Mother in the below average range of intellectual ability. Dr. Thomas noted such did not preclude Mother from parenting, but added Mother would need additional

support. Mother would also require a more structured approach to parenting skills training. Mother's depressive symptoms added to her lack of energy and focus. Dr. Thomas emphasized it was important for Mother to address her mental health disorder. Mother engaged in attention seeking behavior, including making threats of suicide. Dr. Thomas diagnosed Mother with borderline personality disorder which was illustrated by her poor coping skills, need for attention, and lack of impulse control. In addition, Dr. Thomas diagnosed Mother with a major depressive disorder recurrent as well as an anxiety disorder.

{¶21} Dr. Thomas noted, although Mother had been engaged in mental health services for a year, she had concerns about Mother's follow through with attendance and medication adherence. Dr. Thomas recommended Mother consistently participate in mental health services, adding treatment was critical. When Mother was stabilized with her mental health, she should participate in Goodwill parenting classes.

{¶22} Goodwill parenting instructor April Bergert testified Mother attended parenting classes twice during the pendency of the case. Mother completed the first session with a certificate of non-compliance, meaning Mother failed to fulfill even a minimal amount of course requirements. Mother completed a second ten-week program, earning a certificate of attendance, meaning Mother fulfilled only minimal course requirements. Bergert stated Mother also received in-home instruction through Goodwill. Goodwill requested a caseworker supervise Mother's visits with the Children during home-based services. Bergert noted such request was not Goodwill's usual protocol. Bergert added at no time during Goodwill's involvement did Mother show sufficient progress to stop caseworker supervision.

{¶23} During the best interest portion of the hearing, Kimberly Gabel testified the Children are African American and they all have behavioral and emotional issues with Child 1 being the most extreme. Throughout most of the case, Child 1 was in a residential treatment facility. Gabel explained Child 1 can be physically aggressive and is easily triggered. Gabel described Mother's visits with the Children as "chaotic", noting Mother was unable to manage the Children's behaviors despite two years of case plan services. The Children behave "remarkably different" with their foster families. Tr. at 69. Child 2 is very attached to his foster family. The foster family is supportive of him and meet all of his needs. Likewise, Child 3 is attached to his foster parents as well as another child in their care. The foster parents created a sensory room where Child 3 can go to decompress when he is worked up. Child 3's foster parents have expressed an interest in adopting him.

{¶24} Gabel stated the benefit of granting permanent custody of the Children outweighed any harm in breaking the bond between Mother and the Children. Gabel added the Children's wellbeing would be at risk if they were returned to Mother. She concluded it was in the Children's best interest to grant permanent custody to SCDJFS.

{¶25} Attorney Angel Ruhl, the Guardian ad Litem, made a brief statement to the court. Attorney Ruhl indicated the concerns which were present at the beginning of the case remained. She noted the Children are doing well in their current placements. Although Child 1 was in a residential treatment facility, he is safe. Child 1 is working through the issues he is facing. Child 2 and Child 3 are doing well and are loving, sweet children. Attorney Ruhl believes finding a permanent placement for Child 2 would not be difficult. She is hopeful Child 3's current placement will become permanent.

{¶26} The trial court issued Findings of Fact and Conclusions of Law with respect to each of the Children on February 7, 2020. Via Judgment Entries filed February 7, 2020, the trial court terminated Mother's parental rights, privileges, and responsibilities as to Child 1, Child 2, and Child 3 and granted permanent custody of the Children to SCDJFS.

{¶27} It is from these judgment entries Mother appeals, raising the following assignments of error:

I. THE TRIAL COURT'S FINDING APPELLANT COULD NOT OR SHOULD NOT BE REUNIFIED WITH HER CHILDREN WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. THE TRIAL COURT'S FINDING THAT PERMANENT CUSTODY WAS IN L.G., L.P. AND R.F.'S BEST INTERESTS WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

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

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{¶29} We elect to address Mother’s assignments of error together.

{¶30} 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* (Feb. 10, 1982), Stark App. No. CA5758. 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.* (1978), 54 Ohio St.2d 279.

{¶31} 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.

{¶32} 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.

{¶33} 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.

{¶34} 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.

{¶35} As set forth in our Statement of the Facts and Case, *supra*, we find there was sufficient and substantial competent evidence Mother failed to remedy the problems which initially caused the removal of the Children from her home. Despite two years of case plan services, Mother was still unable to effectively handle the Children's behaviors. Mother failed to consistently attend counseling or medication checks for herself. Mother did not take her medications as prescribed. Although Mother was required to attend the Children's individual counseling, Mother was inconsistent in doing so. Mother needed constant supervision when she had in-home visits with the Children. Mother did not obtain and maintain stable housing or employment. When Child 3 was injured during an in-

home visit, Mother was unable to de-escalate the situation. In fact, she did the opposite – screaming and yelling at the caseworker. The Children were terrified and Mother did not provide any comfort.

{¶36} The Children each have behavioral and emotional issues. Child 1 was in a residential treatment facility, and had been there throughout most of the pendency of the case. Child 2 is in a foster home and is doing well. His foster parents provide for all of his emotional and physical needs. Child 3 is also doing well in his placement. His foster parents have expressed an interest in adopting him. Mother remains unable to meet the Children's emotional and physical needs. She has failed to address her own mental health issues and such prevents her from being able to parent the Children and provide them with a stable home.

{¶37} Based upon the foregoing and the entire record in this matter, Mother's first and second assignments of error are overruled.

{¶38} The judgments of the Stark County Court of Common Pleas, Family Court Division, are affirmed.

By: Hoffman, P.J.

Gwin, J. and

Baldwin, J. concur
