

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

IN RE: J.C.

C.A. No.       28865

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     DN 15-03-191

DECISION AND JOURNAL ENTRY

Dated: June 29, 2018

---

CARR, Presiding Judge.

{¶1} Appellant, B.G. (“Mother”), appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights to her minor child and placed the child in the permanent custody of Summit County Children Services Board (“CSB”). This Court affirms.

I.

{¶2} Mother is the biological mother of J.C., born March 29, 2015. The child’s father (“Father”) did not participate in the permanent custody hearing and did not appeal from the trial court’s judgment.

{¶3} Two days after J.C. was born, CSB filed a complaint, alleging that the child was dependent because the agency had an open case with J.C.’s one-year-old sibling, who was born 16 weeks premature and tested positive for drugs. The complaint further alleged that, while pregnant with J.C., Mother continued to abuse drugs, sought limited prenatal care, and continued

to struggle with the other parenting problems. CSB also alleged ongoing concerns about Mother's mental health and domestic violence between the parents.

{¶4} J.C. was adjudicated a dependent child on May 11, 2015, and was later placed in the temporary custody of CSB. The older sibling was eventually placed in the legal custody of a relative and is not a party to this appeal. Mother later gave birth to a third child, who was also removed from her custody, but that child is also not a party to this appeal.

{¶5} In addition to ongoing drug problems, Mother had untreated mental health issues and a history of domestic violence with the Father. On the recommendation of a mental health and substance abuse assessment, the case plan required Mother to attend parenting classes, engage in individual counseling, complete a domestic violence program, submit samples for regular drug screening, and participate in other services to address the lack of stability in her life.

{¶6} During the following year, Mother engaged in some counseling, but she did not submit drug screens as required. Although Mother completed a domestic violence course, the domestic violence between Mother and Father continued throughout this case.

{¶7} On September 16, 2016, CSB moved for permanent custody of J.C, alleging that the child had been in the temporary custody of CSB for more than 12 months of a consecutive 22-month period, that the parents had failed to remedy the problems that had caused J.C. to remain placed outside their custody, and that permanent custody was in the best interest of J.C. *See* R.C. 2151.414(B)(1)(a) and (d); R.C. 2151.414(E)(1). The trial court continued the permanent custody hearing numerous times because of illness of the parties, withdrawal of the parent's attorneys, Mother giving birth to her third child, and other reasons.

{¶8} Prior to the final hearing, CSB filed another motion for permanent custody and Mother moved to have the child returned to her legal custody or, alternatively, to have the child

placed in the legal custody of a relative. The matter ultimately proceeded to a final dispositional hearing during September 2017.

{¶9} Following a hearing on the competing dispositional motions, the trial court terminated Mother's parental rights and placed J.C. in the permanent custody of CSB. Mother appeals and raises two assignments of error.

## II.

### **ASSIGNMENT OF ERROR I**

THE TRIAL COURT COMMITTED REVERSIBLE AND PLAIN ERROR IN GRANTING PERMANENT CUSTODY UNDER R.C. 2151.414(B)(1)(D) WHEN [CSB] HA[D] NOT HAD AGENCY INVOLVEMENT WITH J.C. FOR AT LEAST TWENTY-TWO CONSECUTIVE MONTHS.

{¶10} Through her first assignment of error, Mother raises a legal argument about the construction of the "12 of 22" language set forth in R.C. 2151.414(B)(1)(d). In relevant part, R.C. 2151.414(B)(1)(d) provides that an agency may establish the first prong of the permanent custody test if it proves, by clear and convincing evidence, that "[t]he child has been in the temporary custody of one or more public children services agencies \* \* \* for twelve or more months of a consecutive twenty-two-month period[.]" Mother asserts that this provision is satisfied only if the child has been in temporary custody for at least 12 months and the agency has been working with the family for at least 22 months.

{¶11} This court has always construed this language as written, to require at least 12 months of temporary custody out of a consecutive "twenty-two month period." If, at the time the agency moves for permanent custody, the child has been in the temporary custody of one or more children services agencies for a total of 12 months out of a 22-month time period, R.C. 2151.414(B)(1)(d) is satisfied. *See, e.g., In re T.B.*, 9th Dist. Summit No. 21124, 2002-Ohio-5036, ¶ 23.

{¶12} Mother asks this Court to overrule its long-standing construction of this language and instead follow the reasoning set forth *In re K.L.*, 6th Dist. Lucas Nos. L-17-1201, L-7-1210, 2017-Ohio-9003, ¶ 38-39. The Sixth District applied a “strict interpretation” to this language, and concluded that the “12 of 22” provision could be satisfied only if the child had been in the agency’s temporary custody for at least 12 months of a consecutive 22-month period *of agency involvement*. *Id.* at ¶ 38-40.

{¶13} A primary rule of statutory construction is to apply a statute as it is written when its meaning is unambiguous and definite. *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.*, 74 Ohio St.3d 543, 545 (1996); *see also* R.C. 1.49. A court cannot simply ignore or add words to the statute. *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St.3d 78, 81 (1997). The plain and unambiguous language of R.C. 2151.414(B)(1)(d) requires 12 months of temporary custody “of a consecutive twenty-two month period[.]” By construing “a consecutive twenty-two month period” to require a consecutive twenty-two month period *of agency involvement*, the Sixth District added language to the statute and altered its plain meaning. This Court is not persuaded by the reasoning of the Sixth District in *In re K.L.* and declines to depart from prior precedent on this issue. Mother’s first assignment of error is overruled.

### **ASSIGNMENT OF ERROR II**

THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND PLAIN ERROR IN PLACING J.C. IN THE PERMANENT CUSTODY OF CSB AS THE DECISION WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶14} Mother’s second assignment of error is that the trial court’s decision was not supported by the evidence presented at the hearing. Before a juvenile court may terminate parental rights and award permanent custody of a child to a proper moving agency it must find

clear and convincing evidence of both prongs of the permanent custody test: (1) that the child is abandoned; orphaned; has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; the child or another child in a parent's custody has been adjudicated abused, neglected, or dependent on three separate occasions; or the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, based on an analysis under R.C. 2151.414(E); and (2) that the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under R.C. 2151.414(D). *See* R.C. 2151.414(B)(1) and 2151.414(B)(2); *see also In re William S.*, 75 Ohio St.3d 95, 99 (1996).

{¶15} CSB satisfied the first prong of the permanent custody test because J.C. had been in the temporary custody of CSB for at least 12 of 22 months at the time it moved for permanent custody. R.C. 2151.414(B)(1)(d). The evidence was not disputed that J.C. was adjudicated on May 11, 2015 and that CSB filed its first motion for permanent custody on September 16, 2016, 16 months later.<sup>1</sup> Mother's only challenge to the "12 of 22" finding is the argument she raised in her first assignment of error, which this Court has determined lacks merit.

{¶16} Mother also challenges the trial court's finding that permanent custody was in the best interest of J.C. Mother argues that she had sufficiently complied with the reunification requirements of the case plan, but the record reveals otherwise. The caseworker and the guardian ad litem both testified that they had opined that Mother was under the influence of drugs on multiple occasions, as recently as two months before the hearing, because her speech

---

<sup>1</sup> Although the trial court focused on the date CSB later filed another motion for permanent custody, the original motion remained pending, so the date of its filing must be used for the "12 of 22" calculation. *See In re J.B.*, 9th Dist. Summit Nos. 28752, 28753, 2018-Ohio-244, ¶ 7, 10.

was slurred and she would doze off. Mother was not regularly submitting to drug testing. According to the explicit terms of her case plan, missed screens were considered to be positive.

Even after CSB had moved for permanent custody, Mother submitted 7 samples for drug screening. Samples number 1, 4, 5, and 6 tested positive for benzodiazepines. Mother claimed to have a prescription for a seizure medication, but she did not verify that with CSB, the trial court, or the drug testing agency. Moreover, the trial court heard evidence that if Mother were taking a prescribed seizure medication, she should have consistently tested positive for it.

{¶17} The caseworker also expressed concern that Mother lacked insight into her history of poor decision making. Mother, who had a long history as the victim of domestic violence perpetrated by other men, continued her “toxic relationship” with Father. The caseworker testified that Mother tended to put Father ahead of her children. Father had not complied with any of the reunification requirements of the case plan. Serious incidents of domestic violence continued throughout this case, including one or two days before the final hearing.

{¶18} Moreover, Mother’s case plan compliance was relevant to the children’s best interest, but it was not dispositive. *See In re G.A.*, 9th Dist. Summit Nos. 28664, 28665, 2017-Ohio-8561, ¶ 13. When determining the child’s best interest under R.C. 2151.414(D), the juvenile court must consider all relevant factors, including the interaction and interrelationships of the child, the child’s wishes, the custodial history of the child, the need for permanence in the child’s life, and whether any of the factors set forth in R.C. 2151.414(E)(7) to (11) apply to the facts of the case. *See In re R.G.*, 9th Dist. Summit Nos. 24834, 24850, 2009-Ohio-6284, ¶ 11.

{¶19} Mother’s interaction with J.C. during visits was usually appropriate, but Mother’s ability to have any relationship with J.C. since the infant’s release from the hospital and throughout the child’s young life had been limited to supervised or monitored visits because

Mother had not complied with the mental health and substance abuse components of the case plan. Mother missed many visits and, although she attempted to justify some of her missed visits, the caseworker was able to determine that many of Mother's excuses were not true.

{¶20} J.C. had been in the same home for most of her life and was thriving there. J.C.'s younger sibling was later placed in the same home and the foster parents were arranging for J.C. to visit her older sibling. The foster parents were interested in adopting J.C.

{¶21} Because J.C. was only two and a half years old at the time of the hearing, the guardian ad litem spoke on her behalf. The guardian ad litem opined that permanent custody was in the child's best interest because Mother had not resolved her parenting problems.

{¶22} J.C.'s custodial history did not include any period of time living with Mother. She had lived her entire life in a temporary placement and was in need of a legally secure permanent placement. The parents could not provide the child with a suitable permanent home and CSB had been unable to find any suitable relatives to care for her. The trial court reasonably concluded that permanent custody was in the best interest of J.C. Mother's second assignment of error is overruled.

### III.

{¶23} Mother's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

---

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

---

DONNA J. CARR  
FOR THE COURT

HENSAL, J.  
CALLAHAN, J.  
CONCUR.

APPEARANCES:

SHUBHRA N. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and JACQUENETTE S. CORGAN, Assistant Prosecuting Attorney, for Appellee.

JOSEPH KERNAN, Guardian ad Litem.