

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: :
K.S. aka K.M.B. et al., : No. 10AP-49
(M.S., : (C.P.C. No. 06JU-07-10847)
Appellant). : (ACCELERATED CALENDAR)

D E C I S I O N

Rendered on June 22, 2010

Robert J. McClaren, Franklin County Children Services, for
appellees.

Andrew Russ, Guardian ad Litem.

Rosemarie A. Welch, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

BRYANT, J.

{¶1} Appellant, M.S. ("Mother"), appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, that on remand determined the best interests of the children, K.S. aka K.M.B. ("K.M.B.") and K.S. aka K.X.B. ("K.X.B."), are served by granting the motion of Franklin County Children Services ("FCCS") for permanent custody. Mother assigns a single error:

THE TRIAL COURT FAILED TO SPECIFICALLY CONSIDER THE RELATIONSHIP BETWEEN K.S. AKA K.M.B., K.S. AKA K.X.B. AND THEIR MOTHER IN VIOLATION OF R.C. 2151.414(D).

Because the trial court, complying with this court's direction on remand, considered the relationship between K.M.B., K.X.B., and Mother, we affirm.

I. Facts and Procedural History

{¶2} In Mother's initial appeal of the judgment of the trial court granting FCCS's permanent custody motion, this court outlined the facts in detail, noting Mother has eight children, four of whom were the subject of the initial appeal. The family voluntarily began working with FCCS in June 2006. Due to the conditions of Mother's home, FCCS on July 11, 2006 filed a complaint asserting the children were neglected and dependent. FCCS was granted protective supervision of the children on July 14, 2006, and the trial court issued an order on August 17, 2006 committing the children to the temporary custody of FCCS. In the fall of 2006, the trial court adjudicated the children to be dependent, issued a protective supervision order, approved a case plan, and returned custody of the children to Mother because she completed an intensive drug program and had adequate housing. FCCS reacquired custody of the children on April 10, 2007 after a S.W.A.T. raid at Mother's home where the children were present. Mother admitted she recently had abused drugs.

{¶3} As a result, the trial court on June 27, 2007, granted FCCS an order of temporary custody. Although the court approved the reunification plan and scheduled a review for the following year, FCCS filed a motion for permanent custody prior to the review date. After a number of continuances, the matter was tried on November 3, 4, and

6 of 2008. Based on the evidence before it, and consistent with the guardian ad litem's recommendation, the trial court granted FCCS's motion for permanent custody. The trial court concluded under R.C. 2151.414(B)(1)(a) that the children could not be placed with Mother within a reasonable time. The court further concluded the best interests of the children were served by granting permanent custody to FCCS.

{¶4} On appeal, this court overruled the errors K.M.B. and K.X.B. assigned in case Nos. 08AP-1122 and 09AP-39. In Mother's appeal in case Nos. 08AP-1108 and 08AP-1109, we overruled Mother's first two of three assignments of error. Mother's third assignment of error asserted "the trial court failed to consider the relationship between [K.M.B. and K.X.B.] and their Mother in violation of R.C. 2151.414(D)." *In re J.B.*, 10th Dist. No. 08AP-1108, 2009-Ohio-3083, ¶17. Mother argued that although the trial court mentioned the children's interaction and interrelationship among themselves and with their foster parents, it failed to consider Mother's interaction and interrelationship with K.M.B. and K.X.B. Agreeing with her contentions, we concluded "it does not appear that the trial court took into account the interaction and interrelationship of K.M.B. and K.X.B. with [Mother]. For this reason, we sustain [Mother's] third assignment of error." *Id.* at ¶46.

{¶5} On remand, the trial court issued a judgment entry on December 17, 2009, acknowledging the remand, and issuing findings "by clear and convincing evidence" that addressed the relationship of the children to Mother. (Dec. 17, 2009 Judgment Entry, 1.) In doing so, the trial court adopted and incorporated by reference the findings of fact and conclusions of law that FCCS provided. Noting it considered the factors set out in R.C. 2151.414(D) in its earlier journal entry, the trial court pointed to the psychological

evaluation supporting the trial court's conclusion that Mother's relationship with the children is strained at best. The court concluded K.M.B. and K.X.B. have a good relationship with their siblings, and, based on all of the above, it "reaffirm[ed] its prior decision and Journal Entry." (Judgment Entry, 2.)

II. Assignment of Error

{¶6} In her single assignment of error, "Mother contends that the filed Judgment Entry is not specific enough and does not go far enough to address the mandates of [R.C.] 2151.414(D)." (Appellant's brief, 4.) Although Mother acknowledges that the judgment "addresses the relationship generally between the children and their mother," she contends "[t]he entry does not specifically mention or address the relationship that [K.M.B. and K.X.B.] have with [Mother]." (Appellant's brief, 4.) Arguing that the relationship between the older children and Mother will be different than the relationship between the younger children and Mother, Mother contends the court failed to address "the mandates of [R.C.] 2151.414(D)." (Appellant's brief, 4.)

{¶7} As Mother correctly asserts, the right to rear a child is a basic and essential civil right. *In re Hayes* (1997), 79 Ohio St.3d 46, 48. A parent must be given every procedural and substantive protection the law allows prior to terminating that parent's right to the child. *Id.* Due process includes a hearing upon adequate notice, assistance of counsel, and, under most circumstances, the right to be present at the hearing. *In re Thompson* (Apr. 26, 2001), 10th Dist. No. 00AP-1358.

{¶8} In order to terminate Mother's rights, FCCS was required to demonstrate by clear and convincing evidence that (1) one of the four factors enumerated in R.C.

2151.414(B)(1) applies, and (2) termination of parental rights is in the children's best interests. *In re Gomer*, 3d Dist. No. 16-03-19, 2004-Ohio-1723, ¶11. Clear and convincing evidence is the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. *In re Abram*, 10th Dist. No. 04AP-220, 2004-Ohio-5435, ¶14. It does not mean the evidence must be clear and unequivocal and does not require proof beyond a reasonable doubt. *Id.*

{¶9} On appellate review, permanent custody motions supported by the requisite evidence going to all the essential elements of the case will not be reversed as against the manifest weight of the evidence. *In re Brown*, 10th Dist. No. 03AP-969, 2004-Ohio-3314, ¶11, citing *In re Brofford* (1992), 83 Ohio App.3d 869; *Abram*, *supra*. Further, in determining whether a judgment is against the manifest weight of the evidence, the reviewing court is guided by the presumption that the findings of the trial court are correct. *Brofford*, *supra*, citing *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Id.* at 80; *Abram*, *supra*.

A. The Trial Court's Decision on Remand

{¶10} Because Mother's initial appeal resulted in a remand solely to address Mother's interaction and interrelationship with K.M.B. and K.X.B. as part of the analysis of the best interests of the two children, we examine the trial court's judgment entry to determine compliance with that limited issue.

{¶11} Under R.C. 2151.414(D)(1), the trial court is to consider the interaction and interrelationship of the children with their parents. In that regard, the trial court on remand concluded the children's interaction and interrelationship with Mother "have been good and bad." (Judgment Entry, 1.) Although the trial court acknowledged the evidence reflects the children love Mother and she loves them, "that affection as genuine as it may be, does not overcome the repeated episodes of neglect, abandonment and emotional abuse suffered by the children as a result of the mother's behavior." (Judgment Entry, 1.) In explaining, the trial court acknowledged that when Mother was clean and sober, "things can go well for everyone." (Judgment Entry, 1.) In those instances, she provides food, shelter, clothing, and nurturing. The court, however, further noted that "more often than not, mother has been neither clean nor sober." (Judgment Entry, 1.) When she is not, "she can not even care for herself much less care for her children." (Judgment Entry, 1.)

{¶12} With that factual premise, the court concluded Mother's "inconsistency is devastating to the children * * * [and] destroys the relationships all around." (Judgment Entry, 1.) The trial court thus decided that "[o]n balance the bad outweighs the good and there is no reason, given her history, to think that there is any likelihood mother will change." (Judgment Entry, 1.) While the court acknowledged the children have a good relationship among themselves, the court found they have "at best a very strained and inconsistent relationship with their mother." (Judgment Entry, 1.) The court recognized that "the granting of permanent custody * * * is likely to damage or destroy what little relationship the children have with their mother, but in this case the good for the children outweighs the bad for mother." (Judgment Entry, 1-2). The trial court laid the cause at

Mother's feet, noting her failure to perform parental duties damaged the relationship with her children.

B. Mother's Argument

{¶13} In response to the trial court's findings, Mother does not challenge the factual predicate for the trial court's conclusion. Rather, she asserts the discussion of Mother's relationship with K.M.B. and K.X.B. is not addressed with sufficient specificity, especially, in view of the trial court's evaluation of Mother's relationship with all the children, not just K.M.B. and K.X.B. The trial court, however, adopted FCCS's proposed findings of fact and conclusions of law which specifically address the bond K.M.B. and K.X.B. have with Mother, noting it is neither natural nor secure due to the children's exposure to much negative activity while they resided with Mother, including significant domestic violence and substance abuse. Moreover, the psychological evaluations of K.M.B. and K.X.B. the trial court referenced "describe in great detail the estranged bond all the children have with their mother due to mother's deficits." (Findings of Fact, R. 387.) The psychological evaluations indicate both children have either strong feelings of resentment or a great deal of anger due to the dysfunctional environment in which they lived with Mother.

{¶14} Given that the trial court addressed Mother's relationship with K.M.B. and K.X.B. and further adopted the findings of fact and conclusions of law of FCCS, incorporating them by reference, we cannot say the trial court's judgment entry on remand lacks specificity.

{¶15} Because the trial court's judgment entry addresses both R.C. 2151.414(D)(1), and the interaction and interrelationship between Mother, K.M.B., and K.X.B, the trial court complied with our directions on remand. The trial court's judgment entry made clear the trial court considered Mother's interrelationship and interaction with K.M.B. and K.X.B., but concluded that, because the negative aspects of the relationship outweigh the positive aspects, the best interests of the children were served in granting FCCS's motion for permanent custody. Accordingly, we overrule Mother's single assignment of error and affirm the judgment of the trial court.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.
