

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

IN THE MATTER OF:

N.F.

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CASE NO. CA2010-12-097

OPINION
8/23/2011

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 2007 JC 3878

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Robert C. Bauer, 501 West Loveland Avenue, Loveland, Ohio 45140, guardian ad litem

PIPER, J.

{¶1} Appellant, the Clermont County Department of Job and Family Services (CCDJFS), appeals the decision of the Clermont County Court of Common Pleas, Juvenile Division, denying its motion for permanent custody of the minor child, N.F. For the reasons

set forth below, we affirm the juvenile court's decision.

{¶2} This case concerns the second permanent custody determination made by the juvenile court with respect to N.F., a minor child born on August 8, 2007, to appellees L.C.F. (Mother) and J.F. (Father). On February 2, 2009, the juvenile court granted permanent custody of N.F. to CCDJFS. The child's parents appealed, and on December 14, 2009, this court reversed the juvenile court's decision on the basis that there was insufficient evidence to support the juvenile court's finding that granting permanent custody to CCDJFS was in the best interest of the child. See *In re N.F.*, Clermont App. No. CA2009-07-040, 2009-Ohio-6553.

{¶3} On January 14, 2010, CCDJFS filed a second motion for permanent custody of N.F, and a hearing on the motion was held on July 30, 2010. The evidence presented at the July 30, 2010 hearing was largely duplicative of the evidence presented at the initial hearing on the first permanent custody motion. CCDJFS presented testimony by Dr. William Moore, a clinical psychologist, Edward Stanton, a staff attorney with Clermont County Child Support Enforcement, Erin Meadows, the agency caseworker assigned to N.F.'s case, Cheryl Humphrey, an adoption caseworker for CCDJFS, and the foster parents of the child. The court also heard testimony from the child's guardian ad litem, Robert Bauer. The guardian ad litem's report and recommendations were entered into evidence. CCDJFS also had the following reports admitted into evidence: Mother's March 10, 2006 psychological evaluation; Father's August 28, 2007 psychological evaluation; and CCDJFS case plans dated August 9, 2007, January 10, 2008, July 3, 2008, November 18, 2008, and June 2, 2009.

{¶4} On August 9, 2010, the magistrate issued a decision denying the motion for permanent custody on the ground that "it was not proved by clear and convincing evidence that it is in the child's best interests to grant permanent custody to the Agency." CCDJFS filed objections to the decision, arguing that the magistrate's decision was contrary to law and

against the manifest weight of the evidence. On November 10, 2010, the juvenile court overruled the agency's objections and affirmed the magistrate's decision in its entirety. CCDJFS timely appealed, alleging a single assignment of error.

{¶5} Assignment of Error No.1:

{¶6} "THE TRIAL COURT ERRED IN DENYING THE MOTION FOR PERMANENT CUSTODY."

{¶7} Before a natural parent's constitutionally protected rights to care and maintain custody of a child may be terminated, the state is required to prove that clear and convincing evidence exists to support an award of permanent custody. *Santosky v. Kramer* (1982), 455 U.S. 745, 769, 102 S.Ct. 1388. "Clear and convincing evidence is that which will produce in the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Ament* (2001), 142 Ohio App.3d 302, 307, citing *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus. "An appellate court's inquiry is limited to whether sufficient credible evidence exists to support the trial court's determination." *In re Ament* at 307.

{¶8} "R.C. 2151.414(B) requires the juvenile court to apply a two-part test when terminating parental rights and awarding permanent custody to a children services agency. Specifically, the trial court must find that (1) the grant of permanent custody to the agency is in the best interest of the [child], utilizing, in part, the factors of R.C. 2151.414(D); and, (2) any of the following apply: the child cannot be placed with either parent within a reasonable time or should not be placed with either parent; the child is abandoned; the child is orphaned; or the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a), (b), (c) and (d) * * *." (Internal citations omitted.) *In re G.N.*, 170 Ohio App.3d 76, 2007-Ohio-126, ¶28.

{¶9} In *In re N.F.*, 2009-Ohio-6553, we discussed the shortcomings behind CCDJFS' initial motion for permanent custody. Although the juvenile court originally heard testimony

from Moore, Stanton, Meadows, and Julie Jordon, an adoption supervisor for CCDJFS, the testimony alone did not establish facts sufficient to meet the level of proof required to award a grant of permanent custody. Id. at ¶¶35-37. Moore had testified "largely in broad terms, regarding his evaluations of the parents, [but the] reports themselves were not admitted into evidence." Id. at ¶33. Further, CCDJFS failed to present evidence regarding any of the facts that led to the agency's decision to remove N.F. from his parents' care at his birth. Id. at ¶33.

Although the agency claimed to have a history with N.F.'s parents, the agency failed to present evidence of its prior contacts with appellees. Id. CCDJFS failed to introduce into evidence the case plans for N.F. Id. at ¶35. Additionally, while there was a reference to another child, a daughter of Mother's, that had previously been removed from appellees' care, there was no testimony or evidence presented, including case plans, regarding the specifics of the agency's involvement with that child or the incident which led to the removal of that child. Id. at ¶34. Further, the juvenile court had not taken "judicial notice * * * of the facts of [the daughter's] case or previous efforts on the part of the agency or parents." Id.

{¶10} It appears CCDJFS attempted to remedy the shortcomings of its case by having the case plans and Moore's psychological evaluations admitted into evidence at the July 30, 2010 hearing on the second motion for permanent custody. However, other than these two additional pieces of evidence, the evidence proffered by CCDJFS was duplicative of the evidence presented at the first permanency hearing. Having reviewed all of the evidence submitted in the case, we find that the juvenile court did not err in reaching the determination that CCDJFS was not entitled to permanent custody of N.F.

{¶11} Although the case plans submitted by CCDJFS make reference to a daughter who Mother lost care and custody of, the case plans do not detail the incident or incidents that initially invoked the agency's involvement with Mother or the child. Further, the case plans do not indicate what facts led to the agency's decision to remove N.F. from his parents

at his birth. While the addition of the case plans are helpful in demonstrating the progress Mother and Father have made towards the goal of reunification and the potential concerns that may impede such reunification, the case plans do not provide evidence of the agency's history of involvement with Mother and Father.

{¶12} Similarly, while the psychological reports admitted into evidence contain information about Mother and Father's mental and emotional states as of March 10, 2006 and August 28, 2007, respectively, the reports are of limited relevance in determining their current mental and emotional states. Moore's psychological evaluations of Mother and Father were completed after one interview, and in Mother's case, occurred prior to the birth of N.F. Moore's evaluations indicate that Mother's psychological well-being, at the very least, was subject to improvement with the use of medication. However, Moore has not reevaluated Mother or Father since their initial interviews to determine how their psychological well-being may have progressed. Accordingly, because the reports do not contain information relating to Mother and Father's current ability or inability to care and provide for N.F., the reports are of limited relevance.

{¶13} The case plans and psychological evaluations, in combination with the guardian ad litem's report and the testimony presented at the custody hearing did not clearly and convincingly establish that it is in the best interest of the child to have permanent custody awarded to the agency. The juvenile court, therefore, did not err in denying CCDJFS permanent custody of N.F.

{¶14} The agency's assignment of error is overruled.

{¶15} Judgment affirmed.

POWELL, P.J., and HUTZEL, J., concur.