

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

IN THE MATTER OF:

J.G.G., et al.

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CASE NO. CA2014-10-215

OPINION
3/9/2015

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case Nos. JN2013-0219, JN2012-0030, JN2012-0031, JN2012-0032

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HENDRICKSON, J.

{¶ 1} Appellant, the biological father of Jn.G.G, Je.G.G, C.G.G, and M.G.G, appeals a decision of the Butler County Court of Common Pleas, Juvenile Division, granting permanent custody of the children to appellee, the Butler County Department of Job and Family Services (BCDJFS). For the reasons detailed below, we affirm.

{¶ 2} On January 30, 2012, BCDJFS filed a complaint alleging appellant's children were abused, neglected, and dependent children. The complaint alleged that the children's mother, who had a history with BCDJFS, had untreated substance abuse problems, inadequate housing, and legal issues related to an outstanding warrant. In the complaint, BCDJFS detailed several reported instances in which the children received inappropriate care or had been left unsupervised for substantial periods of time. Specifically, the complaint alleged that the children had been left alone while their mother had been out on a "drug binge." The complaint further referenced additional reports that the children's mother had been abusing drugs and was involved in prostitution, including one incident in which the children's mother allegedly left the children in the care of a "John" for two days. Additional reports included in the complaint alleged that there was no food in the home and the children's mother had sold all of her food stamps.

{¶ 3} Jn.G.G., Je.G.G. and C.G.G. were removed from their residence after their mother disappeared and the children's maternal aunt filed a dependency request, indicating that she could no longer provide for the children. When the children were removed from their residence, the children's mother had reportedly left the home to "buy food," but did not return. Likewise, appellant was reported to be somewhere in Texas.

{¶ 4} At a subsequent hearing, appellant stipulated to the emergency placement of his children in foster care and temporary custody with BCDJFS was continued. A case plan was prepared and adopted by the juvenile court.

{¶ 5} While those proceedings were ongoing, appellant and the children's mother had another child together, M.G.G., born on November 12, 2012. After M.G.G. was born, the child remained in the parents' custody. Both the children's mother and appellant initially made some progress in the case plan and were eventually permitted to have unsupervised overnight visitation with the children. However, on April 16, 2013, BCDJFS filed a complaint

for custody of M.G.G and also filed a motion for change of visitation for the other three children. After hearing testimony, the court granted BCDJFS's emergency custody motion. Appellant failed to appear at the subsequent hearings held on May 23, 2012, July 25, 2013, and October 1, 2013. In addition, appellant stopped all visitation and communication with the children as of May 22, 2013.

{¶ 6} On December 11, 2013, BCDJFS filed a motion for permanent custody of the children. Thereafter, on May 28, 2014, the juvenile court held the first day of hearings on the permanent custody motion. According to his attorney, appellant was unable to appear at the proceedings because he was "taken by immigration" and was being held on an immigration detainer related to his status in this country. BCDJFS called the foster father of Jn.G.G, Je.G.G, C.G.G, and also called the foster mother of M.G.G.¹ Both foster parents testified the children were well-acclimated and bonded in their respective foster families and expressed a willingness to adopt the children if permanent custody was granted. The trial court then continued the proceedings until June 9, 2014.

{¶ 7} At the final hearing, appellant appeared and testified that he is the father of the children and was married to the children's mother, but had been separated from her for approximately one year. Appellant further explained that he had been released from incarceration on June 4, 2014 and was currently wearing "a bracelet," which the juvenile court interpreted as an ankle monitoring bracelet. Appellant also acknowledged the uncertainty in his immigration status and noted that he may be deported. Nevertheless, appellant testified that he should have custody of the children because he has an income and could care for the children.

{¶ 8} On cross-examination, appellant acknowledged that he had not seen his

1. The record reflects that the children are residing with two separate foster families. Jn.G.G, Je.G.G, C.G.G. reside together with one foster family, while M.G.G. resides with another foster family.

children since May 22, 2013. Appellant explained that he had not attempted to contact his children since then because he knew there was a warrant for his arrest and was concerned that he may end up in jail. Furthermore, appellant testified, in pertinent part:

At that time I had courts, I had court dates with the State. I had been, around that time, assaulted by six (6) black men. They hit me in the head, they knocked out teeth. I had to go to the hospital. I didn't realize I had a court date after that happened until later, and then I missed the court date because I didn't remember that I had it, and there was an arrest warrant against me by that time.

{¶ 9} On July 2, 2014, a juvenile court magistrate granted the motion for permanent custody. Appellant then filed objections to the magistrate's decision, which were overruled on September 29, 2014. Appellant now appeals the juvenile court's decision granting permanent custody of the children to BCDJFS, raising three assignments of error for review.

{¶ 10} Assignment of Error No. 1:

{¶ 11} THE COURT ERRED IN ADMITTING THE HEARSAY AND IMPROPER SUMMARY DOCUMENTS OF THE STATE AS EVIDENCE.

{¶ 12} In his first assignment of error, appellant argues the juvenile court erred in admitting social summaries prepared by BCDJFS. Appellant contends these documents contained prejudicial hearsay. However, "[i]t is well-established that as the fact-finder, a trial court is presumed to have considered only properly admissible evidence unless the record affirmatively demonstrates otherwise." *In re A.S.*, 12th Dist. Butler Nos. CA2009-03-071, CA2009-03-083, and CA2009-03-088, 2009-Ohio-3932, ¶ 53. This court has rejected identical arguments in instances where "the trial court determined that the summaries contained hearsay and specifically stated it would disregard this hearsay." *In re A.F.*, 12th Dist. Butler No. CA2011-12-233, 2012-Ohio-2958, ¶ 33; *In re K.B.*, 12th Dist. Butler Nos. CA2014-02-042, CA2014-02-043, and CA2014-02-044, 2014-Ohio-3654, ¶ 83. Therefore, in the present case, we find the juvenile court did not err when it admitted the social summaries,

as the juvenile court determined that the summaries contained hearsay and specifically stated it would disregard that information. Appellant's first assignment of error is overruled.

{¶ 13} Assignment of Error No. 2:

{¶ 14} THE COURT ERRED AS A MATTER OF FACT AND LAW AND ABUSED ITS DISCRETION WHEN IT FOUND TERMINATING THE PARENTAL RIGHTS OF APPELLANT TO BE IN THE CHILD'S BEST INTERESTS AND TERMINATED THE PARENTAL RIGHTS OF APPELLANT BECAUSE SUCH WAS NOT THE ONLY MEANS OF OBTAINING A LEGALLY SECURE PLACEMENT FOR THE CHILD AND/OR BECAUSE PERMANENT CUSTODY WAS NOT IN THE CHILD'S BEST INTEREST.

{¶ 15} Assignment of Error No. 3:

{¶ 16} THE COURT'S DECISION AND ORDER OF PERMANENT CUSTODY AND DENIAL OF LEGAL CUSTODY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING AND THE EVIDENCE PRESENTED FAILED TO MEET THE REQUISITE CLEAR AND CONVINCING STANDARD.

{¶ 17} In his second assignment of error, appellant argues the juvenile court's decision granting permanent custody to BCDJFS was not in the children's best interest. In his third assignment of error, appellant incorporates the identical argument regarding the children's best interest, but alleges the decision was against the manifest weight of the evidence. We will address these assignments of error together.

{¶ 18} Before a natural parent's constitutionally protected liberty interest in the care and custody of his child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *Santosky v. Kramer*, 455 U.S. 745, 759, 102 S.Ct. 1388 (1982). An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient

credible evidence exists to support the juvenile court's determination. *In re M.B.*, 12th Dist. Butler Nos. CA2014-06-130 and CA2014-06-131, 2014-Ohio-5009, ¶ 6. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *Id.*

{¶ 19} Pursuant to R.C. 2151.414(B)(1), a court may terminate parental rights and award permanent custody to a children services agency if it makes findings pursuant to a two-part test. *In re G.F.*, 12th Dist. Butler No. CA2013-12-248, 2014-Ohio-2580, ¶ 9. First, the court must find that 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). *In re D.K.W.*, 12th Dist. Clinton No. CA2014-02-001, 2014-Ohio-2896, ¶ 21. Second, the court must find that any of the following apply: the child is abandoned; the child is orphaned; the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; or where the preceding three factors do not apply, the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1)(a) through (d); *In re E.B.*, 12th Dist. Warren Nos. CA2009-10-139 and CA2009-11-146, 2010-Ohio-1122, ¶ 22; *In re R.E.*, 12th Dist. Butler No. CA2013-12-245, 2014-Ohio-2338 at ¶ 14. Only one of those findings must be met for the second prong of the permanent custody test to be satisfied. *In re A.W.*, 12th Dist. Fayette No. CA2014-03-005, 2014-Ohio-3188, ¶ 12.

{¶ 20} In this case, the juvenile court found by clear and convincing evidence that Jn.G.G., Je.G.G., and C.G.G. had been in the temporary custody of BCDJFS for more than 12 months of a consecutive 22-month period as of the date the agency filed for permanent custody. In addition, the juvenile court found that all four children were abandoned based on the fact that appellant had not contacted the children in over a year. Appellant does not dispute these findings. Rather, appellant raises several issues regarding the juvenile court's finding that granting permanent custody of the children to BCDJFS was in the children's best

interest.

{¶ 21} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing:

[T]he court shall consider all relevant factors, including, but not limited to the following:

(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) 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;

(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period * * *;

(d) 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 to the agency;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶ 22} In granting the motion for permanent custody, the juvenile court considered each of the best interest factors in light of the evidence presented at the hearings. With respect to R.C. 2151.414(D)(1)(a), the juvenile court found appellant's children have been in the care of the foster parents for a significant period of their lives and, because of the lengthy period of no contact with the natural parents, the children have no current relationship with their mother or appellant. The court also found the children were receiving appropriate and nurturing care from their foster families and have been fully incorporated into the foster family and their extended families. The court further found the foster families are willing to adopt the children if permanent custody is granted to the agency. In addition, the juvenile court noted that appellant stopped visiting the children in May 2013 and was unable to provide

documentation or information regarding his immigration issues.

{¶ 23} In its consideration of R.C. 2151.414(D)(1)(b), the juvenile court indicated that it did not conduct an in camera review, but that the guardian ad litem recommended that the court grant permanent custody to the agency.

{¶ 24} With respect to R.C. 2151.414(D)(1)(c), the juvenile court reviewed the custodial history of the children. The court found that Jn.G.G., Je.G.G., and C.G.G. were placed in foster care in March 2012 and had been in agency custody for 12 months of a 22-month period. The court also noted that M.G.G. was adjudged a dependent child in May 2013 and had been in foster care for approximately 15 months. In addition, and in consideration of R.C. 2151.414(D)(1)(e), the juvenile court also found that the parents had abandoned the children, as they have not any contact with the children for approximately one year.

{¶ 25} In considering R.C. 2151.414(D)(1)(d), the juvenile court found the children are in need of a legally secure placement, the agency can provide the necessary legally secure placement, and such placement is the only way the children's needs can be achieved. The juvenile court indicated that the whereabouts of the children's mother is unknown and neither she nor appellant have made any progress towards completion of their case plan over the previous year. Although he professed a desire to reunify with his children, the juvenile court again noted that appellant voluntarily ceased contact with them more than a year ago. The court also found that appellant's immigration status is presently unknown and he could be facing deportation. Furthermore, the court found that no appropriate relatives have come forward as placement options.

{¶ 26} Based on these factors, the juvenile court found by clear and convincing evidence that it was in the children's best interest to grant permanent custody to BCDJFS. On appeal, appellant disputes the juvenile court's findings and argues that he should retain

custody of the children because these proceedings were initially based on the actions of their mother, including neglect and drug abuse, and he no longer has a relationship with her. In addition, appellant alleges that he was the children's primary caregiver throughout their lives and now has the ability to support his children. Therefore, appellant argues that he should retain custody of the children.

{¶ 27} We have carefully and thoroughly reviewed the evidence in this case and find that the juvenile court's determination regarding the best interest of the children is not against the manifest weight of the evidence. At the time of the permanent custody hearings, Jn.G.G., Je.G.G., and C.G.G. had been in foster care for more than two years. M.G.G., who was adjudged dependent at the age of five months, had been in foster care for approximately 15 months. While appellant maintained that he held a steady job, he did not have independent housing or transportation. Furthermore, appellant failed to provide any documentation or information related to his immigration issues and testified that he was not sure if he was going to be deported.

{¶ 28} Although appellant began the case plan adopted at the beginning of these proceedings, he never completed it and was absent from the children's lives for more than a year. While in foster care, the children's respective families have provided stable and loving environments, and both foster families have indicated their desires to adopt the children. In light of the foregoing, we find the juvenile court's decision was not against the manifest weight of the evidence and find no error in the juvenile court's decision to grant permanent custody of the children to BCDJFS. Appellant's second and third assignments of error are overruled.

{¶ 29} Judgment affirmed.

S. POWELL, P.J., and RINGLAND, J., concur.