

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

IN RE: :  
A.P. : CASE NO. CA2014-11-078  
: OPINION  
: 4/27/2015  
:  
:

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS  
JUVENILE DIVISION  
Case No. 2012 JC 04450

D. Vincent Faris, Clermont County Prosecuting Attorney, Nicholas Horton, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103, for appellee, Clermont County Department of Job and Family Services

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**HENDRICKSON, J.**

{¶ 1} Appellant, biological father of A.P., appeals a decision of the Clermont County Court of Common Pleas, Juvenile Division, granting permanent custody of A.P. to a children services agency. For the reasons outlined below, we affirm the decision of the juvenile court.

{¶ 2} The Clermont County Department of Job and Family Services (agency) filed a

complaint on November 20, 2012, alleging that A.P., who was born the same month, was an abused child. The complaint indicated that A.P. tested positive for methadone and opiates at birth and required methadone to combat withdrawal symptoms. A.P. was placed in the emergency temporary custody of the agency and remained in the care of the same foster family throughout the pendency of the case. A case plan was prepared requiring father to obtain and maintain housing and income, complete anger management, attend parenting courses, finish drug treatment, fulfill a mental health assessment, and visit A.P.

{¶ 3} A.P. was adjudicated an abused child and placed in the temporary custody of the agency following a dispositional hearing. On April 8, 2014, the agency filed for permanent custody of A.P. and a hearing was held on the motion on June 27, 2014. At the beginning of the permanent custody hearing, A.P.'s biological mother agreed to voluntarily relinquish her parental rights. The state then proceeded to present evidence regarding A.P.'s best interest and father's compliance with the case plan.

{¶ 4} Christina Strasel, a staff attorney for the child support enforcement agency, testified that father has been current with child support since payments starting being withheld from his social security disability insurance check. However, Strasel also noted that father has a total support arrearage of \$383.22.

{¶ 5} Kristy Macku, a parent educator with Child Focus, testified that she conducted family counseling with father and mother with goals of identifying and acknowledging risks associated with their substance abuse, including the impact on A.P., and identifying and meeting A.P.'s basic needs. Macku stated that father failed to attend parenting courses on two occasions and did not complete the program. Macku testified that when father attended the parenting courses he appeared concerned about A.P.'s well-being and appropriately fed, changed, and supervised her. However, Macku testified that the family failed to ascertain knowledge of the sessions, including a session on attachment and bonding. Furthermore,

while father maintained housing throughout the pendency of the case, Macku testified that father failed to provide a safe and stable home environment due to bullying and domestic violence, especially with his 18-year-old daughter living in the home.

{¶ 6} Cynthia Grayson, a caseworker for the agency, testified that father did not complete parenting courses as included in the initial case plan because he did not want to participate in the program provided by Child Focus. After father indicated to Grayson that he would pursue his own parenting courses, the agency cancelled the parenting courses with Child Focus. When the requirement was emphasized in April 2014 to father's attorney, father signed up for parenting courses even though Grayson testified father was notified about the parenting course requirement throughout his home visits.

{¶ 7} While Grayson did not personally observe issues with father's parenting, she expressed concerns with his parenting due to drug use because he continued to screen positive for various drugs even after he completed a program to address his drug issues. Furthermore, Grayson testified that father enrolled in an additional drug program that he failed to complete. However, Grayson admitted that the program may not have been acceptable because it did not conduct drug screens. Grayson testified father had one clean drug screen in June 2014.

{¶ 8} According to Grayson, while father had housing throughout the pendency of the case, the housing was not appropriate for A.P. because of the history of drug use within the family, including father's 18-year-old daughter. Father advised Grayson that his elder daughter no longer lived in the house. Despite father's assurances, Grayson observed otherwise, as the teenager's clothes and personal items were in the house with her bed appearing to have been slept in. Additionally, Grayson stated father had not yet completed anger management, and mother, with whom he has a history of domestic violence, is paying half the rent.

{¶ 9} Grayson further testified that father's interaction with mother was tumultuous as they have ended their relationship and reunited four or five times during the pendency of the proceedings. This inconsistent relationship impacted father's visitation with A.P. as Grayson testified that father only attended visitation 30 out of out of a possible 70 times because he was incarcerated, lacked transportation, or did not wish to see mother. When father did visit A.P., Grayson testified that father's interaction with A.P. was appropriate and appeared bonded. Grayson indicated that father had completed mental health treatment, but opined that she was unable to speak to his caseworker concerning his progress.

{¶ 10} Grayson indicated that A.P. was thriving and doing well in the care of her foster family in which she was placed at birth. Grayson testified A.P. has some developmental issues that require her foster family to take her to weekly therapy. Grayson stated that A.P. is very bonded with her foster family and that A.P.'s younger brother is placed in the same foster family.

{¶ 11} A.P.'s foster mother testified that when A.P. came into their home after being discharged from the hospital, A.P. tremored and failed to thrive, which required special care. While A.P. no longer has tremors, foster mother testified that A.P. lacks muscle tone in her mouth, making it hard for her to speak and eat. To improve A.P.'s muscle tone and correct her sensory, speech, and swallowing problems, foster mother takes A.P. to weekly speech and physical therapy. Foster mother indicated that she and her husband are committed to raising A.P. if given the opportunity. Julie Jordan, an adoption supervisor with the agency, testified that unless a relative came forward, it is highly likely A.P. would be matched with her foster family for adoption.

{¶ 12} After considering all of the evidence, the magistrate granted permanent custody of A.P. to the agency. Father's objections to the magistrate's decision were overruled. Father now appeals the juvenile court's decision to grant permanent custody of A.P. to the

agency and raises a single assignment of error for review:

{¶ 13} THE JUVENILE COURT ERRED WHEN IT OVERRULED THE OBJECTIONS OF [FATHER] AND AFFIRMED THE DECISION OF THE MAGISTRATE GRANTING PERMANENT CUSTODY TO [THE AGENCY] AND TERMINATING [FATHER'S] PARENTAL RIGHTS.

{¶ 14} Father argues that the juvenile court's finding granting permanent custody of A.P. to the agency was against the manifest weight of the evidence. An appellate court determining whether a permanent custody decision is against the manifest weight of the evidence "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *In re C. Y.*, 12th Dist. Butler Nos. CA2014-11-231 and CA2014-11-236 thru CA2014-11-238, 2015-Ohio-1343, ¶ 25, quoting *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 20. The presumption in weighing the evidence is in favor of the finder of fact, which we are especially mindful of in custody cases. *In re C. Y.* at ¶ 25. "If the evidence is susceptible to more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment." *Eastley* at ¶ 21.

{¶ 15} The state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met before a natural parent's constitutionally protected liberty interest in the care and custody of his child may be terminated. *Santosky v. Kramer*, 455 U.S. 745, 759, 102 S.Ct. 1388 (1982). "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 McCann*, 12th Dist. Clermont No. CA2003-02-017, 2004-Ohio-283, ¶ 11, citing *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three

of the syllabus. Where "the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Cross* at 477. "Accordingly, an appellate court's review of a decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination." *In re C.Y.* at ¶ 21.

{¶ 16} On appeal, Father specifically argues that he complied or substantially complied with his case plan, and as such, A.P. could have been placed with him. Father asserts that he maintained housing and income throughout the pendency of the case. Father contends that he completed both mental health assessments and anger management. Father asserts that missed visits with A.P. were out of his control due to his incarceration and lack of transportation. Father further asserts that his lack of compliance with parenting courses were out of his control because the courses were cancelled by the agency. Finally, father contends that he complied with drug treatment because he successfully completed one drug treatment program and does not have drugs in his system as evidenced by a clean drug screen conducted two weeks prior to the permanent custody hearing.

{¶ 17} "It is well-established in Ohio that the completion of case plan requirements does not preclude a grant of permanent custody to a social services agency." *In re Mraz*, 12th Dist. Brown Nos. CA2002-05-011 and CA2002-07-014, 2002-Ohio-7278, ¶ 13. A case plan is merely a means to a goal and not a goal in itself. *In re S.U.*, 12th Dist. Clermont No. CA2014-07-047, 2014-Ohio-5166, ¶ 35. Furthermore, even when a parent shows interest in complying with a case plan in months preceding the hearing, such interest is not indicative of history and may be too little, too late. *In re A.W.*, 12th Dist. Fayette No. CA2014-03-005, 2014-Ohio-3188, ¶ 23.

{¶ 18} Despite father completing his mental health assessment, the evidence indicated

that father was unable to provide a safe and stable living environment because of continued domestic violence and drug issues. Furthermore, father maintains an arrearage in child support payments. While father may now have completed anger management, at the time of the permanent custody hearing, anger management was still outstanding in his case plan. Father missed over half of the scheduled visits with A.P., many of which were within his control. Father missed visits over disagreements with mother. Father also missed visits with A.P. due to making poor choices that resulted in his incarceration. While parenting courses were officially terminated by the agency, father indicated that he did not want to complete parenting courses through Child Focus and that he was going to find his own parenting education course. Parenting courses have been part of father's case plan since its inception and, according to Grayson, father was notified of this requirement at home visits. Father tested positive for various drugs throughout the pendency of the case, and his only clean drug screen occurred in the same month as the permanent custody hearing.

{¶ 19} In light of the foregoing and after a thorough review of the record, we find no merit to father's arguments. While father complied with some of the portions of the case plan and attempted to comply, albeit late, with other portions of his case plan, portions of his case plan remain outstanding. In any event, compliance with the case plan is not dispositive of whether granting permanent custody of A.P. to the agency was proper. Rather, the juvenile court must have complied with a two-part test in order to grant permanent custody of A.P. to the agency.

{¶ 20} 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. 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). 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), (b), (c) and (d); *In re E.B.*, 12th Dist. Warren Nos. CA2009-10-139 and CA2009-11-146, 2010-Ohio-1122, ¶ 22.

{¶ 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} With respect to R.C. 2151.414 (D)(1)(a), the juvenile court considered A.P.'s relationship with her father, foster family, and brother. The juvenile court found that while there was some evidence indicating a bonded relationship between A.P. and father, evidence from Macku indicated that A.P. was not well-bonded with father. Furthermore, the juvenile



court found that father has not been a consistent presence in A.P.'s life. In contrast, the juvenile court found that all evidence indicated that A.P. had bonded very well with her foster family. Evidence indicated A.P. was happy in the care of her foster family and making progress in overcoming developmental issues. The juvenile court found that A.P. was placed with her foster family as soon as she was discharged from the hospital as a newborn and that her foster family has maintained a consistent presence in her life. The juvenile court also stated that A.P. has a younger brother who is placed with the same foster family. While the agency has not moved for permanent custody of A.P.'s brother, and siblings should generally be kept together, the juvenile court found it could not speculate as to the future custody status of A.P.'s brother.

{¶ 23} With respect to R.C. 2151.414(D)(1)(b), the juvenile court indicated that A.P. was too young to express her wishes, but the guardian ad litem recommended that permanent custody be granted to the agency and A.P. remain with her foster parents. With respect to R.C. 2151.414(D)(1)(c), the juvenile court found that the evidence clearly supported a finding that A.P. had been in the temporary custody of the agency for over 12 months of a 22-month period.

{¶ 24} With respect to R.C. 2151.414 (D)(1)(d), the juvenile court found that A.P. needs a legally secure placement that can only be achieved through granting permanent custody to the agency as there were no suitable relatives with whom to place A.P. A.P.'s mother permanently surrendered her parental rights and father failed to complete his case plan, including anger management, parent education, and drug treatment. Father also failed to provide a safe home environment for A.P.

{¶ 25} The juvenile court also found that father received plenty of time to complete his case plan, but failed to make significant progress. The juvenile court found father lacked consistency and commitment to A.P. The juvenile court was not convinced father would stay

out of jail and did not believe father's 18-year-old daughter would be an appropriate caregiver for A.P. as father's elder daughter has anger and drug abuse issues of her own. The juvenile court noted that father failed to consistently visit A.P. While father missed some visits with A.P. because he was incarcerated or lacked transportation, sometimes he chose not to visit A.P. because he did not want to see A.P.'s mother. The juvenile court expressed concern regarding father's ability to care for A.P.'s special needs that require her to attend speech and physical therapy on a weekly basis. In contrast, the juvenile court noted that A.P.'s foster parents have faithfully taken her to weekly therapy.

{¶ 26} We emphasize that the second prong of the two-part test is met as the juvenile court found by clear and convincing evidence, and father does not dispute, that A.P. was in the temporary custody of the agency for more than 12 months of a consecutive 22-month period as of the filing date of the permanent custody motion. As such, whether the juvenile court erred in granting permanent custody of A.P. to the agency turns on whether the first prong of the two-part test was met, whether granting permanent custody of A.P. to the agency was in her best interest.

{¶ 27} Within the context of A.P.'s best interest, father's arguments relate to R.C. 2151.414 (D)(1)(d) regarding A.P.'s need of a legally secure placement and whether such placement could be achieved without a grant of permanent custody to the agency. Father's arguments also relate to R.C. 2151.414 (D)(1)(a) concerning A.P.'s bond and interaction with parents, foster caregivers, siblings, and any other person who may significantly impact A.P.

{¶ 28} When interpreting the evidence consistent with the verdict and judgement, father was unable to provide a legally secure placement for A.P. as a safe and stable living environment was not established. From the testimony of Macku and Grayson, issues of domestic violence and drug abuse are still present in the home. Additionally, the juvenile court found that father's inconsistency and lack of commitment towards A.P. may affect his

ability to adequately care for A.P.'s special needs and ensure she attends weekly speech and physical therapy appointments. See *In re N.H.*, 4th Dist. Athens No. 14CA17, 2014-Ohio-4047, ¶ 50 (special needs of a child impact the evaluation of whether a parent can provide stability and security for the child). A.P. has lived with her foster family since birth and her foster family ensures she regularly attends weekly speech and physical therapy appointments where she is making significant progress in overcoming developmental delays. While some evidence pointed to A.P.'s bond with father, all evidence indicated A.P. is very bonded with her foster family. A.P.'s foster family is committed to raising her and cared for her during significant and continual health issues. Even though the agency did not file for permanent custody of A.P.'s brother, he is currently placed with A.P. in the same foster family. In addition to these factors, it is undisputed that the guardian ad litem recommended placing A.P. in the custody of the agency as it was in her best interest and A.P. has been in the agency's custody for 12 of 22 months.

{¶ 29} In light of the foregoing, the juvenile court did not lose its way in granting permanent custody of A.P. to the agency. The juvenile court carefully considered the evidence as it related to each of the best interest factors in R.C. 2151.414(D)(1) and the juvenile court's findings are supported by the record. Accordingly, the juvenile court's finding placing A.P. in the permanent custody of the agency was not against the manifest weight of the evidence and was supported by sufficient credible evidence. Father's sole assignment of error is overruled.

{¶ 30} Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.