

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In the Matter of: : No. 09AP-653
(C.P.C. No. 07JU04-5201)
E. O., :
(H. T., : No. 09AP-713
(C.P.C. No. 07JU04-5200)
Appellant). : (ACCELERATED CALENDAR)

D E C I S I O N

Rendered on February 2, 2010

Harry Panitch, for appellees A.O., E.O., and S.O.

John Klein, for appellee L.O.

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

Rosemarie A. Welch, for appellant H.T.

Linda Allison, Guardian ad Litem

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

CONNOR, J.

{¶1} Appellant, H.T. ("appellant" or "mother"), appeals from the judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, terminating her parental rights and awarding permanent custody of her three

minor children, A.O., E.O., and S.O., to appellee, Franklin County Children Services ("FCCS" or "agency"). For the following reasons, we affirm the decisions of the trial court.

{¶2} Mother and the children's father, L.O. ("father"), have a history of involvement with FCCS dating back to 2001, the year when A.O. was born. Apparently, A.O. was removed from the home as an infant for several months before being returned.

{¶3} The facts underlying this matter, however, began in September 2006 after father threw a set of keys at mother, which necessitated medical treatment for injuries to her wrist and hand. As a result of the incident, father was charged with domestic violence. On October 2, 2006, father pled guilty to an amended charge of criminal mischief.

{¶4} In December 2006, FCCS caseworker Bobbie Watson, and a community service worker visited the family home to deliver Christmas presents. When they arrived, they discovered that mother was no longer living in the home. Instead, she was living with her boyfriend. The children were residing in the family home with father and a few other adults. Ms. Watson described the living conditions as deplorable. There was neither a stove nor a refrigerator. There was spoiled milk on the counter. There was excrement on the floor. And the diapers of E.O. and S.O. were overflowing and running down their legs to the floor.

{¶5} Mother and father then voluntarily relinquished custody of their children to their paternal uncle and his wife. Shortly thereafter, father took the children from their uncle and was found driving them in his truck without car seats or seat belts. Additionally, E.O. had blood on his shirt that he described as having come from his nose after father

had hit him. As a result, father was arrested and charged with endangering children and domestic violence. He was convicted of both charges.

{¶6} On January 10, 2007, an emergency care order was issued. FCCS then received a temporary order of custody on January 11, 2007. Under the order, father was to have no contact with the children, and mother was to have supervised visitation.

{¶7} In February 2007, uncle indicated to FCCS that he and his wife could no longer care for the children. As a result, on February 8, 2007, the children began living in a foster home with a foster mother who they all call "grandma." The children have continuously lived with grandma since that date.

{¶8} FCCS filed a complaint alleging that the children were abused, neglected, and dependent. On May 29, 2007, the children were adjudicated abused, neglected, and dependent. As a result, FCCS received a temporary court commitment ("TCC") for the children. At the time, the trial court approved and adopted a case plan. Under the case plan, the objectives for mother and father were to complete parenting classes, domestic violence classes, and have the ability to demonstrate what they learned. Mother and father were to submit to psychological evaluations and follow any recommendations provided. They were also to maintain stable housing and legally adequate income. They were to have visitation with the children to ensure that bonding could occur. They were to provide for the children's basic needs. Finally, father was supposed to follow the terms of his probation.

{¶9} The trial court granted two separate six-month extensions to the TCC. On September 23, 2008, FCCS filed a motion for permanent court commitment ("PCC"). The trial court presided over a two-day trial on the PCC motion from May 18 through 19, 2009.

On June 17 and 24, 2009, the trial court issued its decisions finding clear and convincing evidence that it was in the best interest of the children to grant permanent custody to FCCS, that the children had been in the temporary custody of FCCS for 12 or more months of a consecutive 22-month period, and that father has legally abandoned his children. As a result, the trial court granted the PCC motions. Although father has not appealed these decisions, mother has timely appealed and raises the following assignments of error:

Assignment of Error One:

FRANKLIN COUNTY CHILDREN SERVICES FAILED TO MAKE REASONABLE EFFORTS TO REUNIFY THE CHILDREN WITH THEIR MOTHER PRIOR TO ASKING FOR PERMANENT CUSTODY OF THE CHILDREN.

Assignment of Error Two:

THE TRIAL COURT'S DECISION TO GRANT PERMANENT CUSTODY OF THE MINOR CHILDREN IS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE AND, THEREFORE, NOT IN THE BEST INTERESTS OF THE CHILDREN.

{¶10} It is well-settled that a parent has a constitutionally protected fundamental interest in the care, custody, and management of her child. *Santosky v. Kramer* (1982), 455 U.S. 745, 102 S.Ct. 1388; *Troxel v. Granville* (2000), 530 U.S. 57, 66, 120 S.Ct. 2054. Indeed, it is "well recognized that the right to raise a child is an 'essential' and 'basic' civil right." *In re Hayes* (1997), 79 Ohio St.3d 46, 48, citing *In re Murray* (1990), 52 Ohio St.3d 155, 157. This right, however, is not absolute and must give way to the ultimate welfare of the child. *In re Awkal* (1994), 95 Ohio App.3d 309, 315; *In re Sims*, 7th Dist. No. 02-JE-2, 2002-Ohio-3458, ¶23; *In re Cunningham* (1979), 59 Ohio St.2d 100, 106. Indeed, parental rights may be permanently terminated when it is in the best interest

of the child. *In re Wise* (1994), 96 Ohio App.3d 619, 624. Because the termination of parental rights is considered "the family law equivalent of the death penalty in a criminal case," a parent "must be afforded every procedural and substantive protection the law allows." *In re Hayes*, quoting *In re Smith* (1991), 77 Ohio App.3d 1, 16.

{¶11} In order to permanently terminate parental rights, a juvenile court must engage in a two-step process. First, a court must determine by clear and convincing evidence that one of the four factors enumerated in R.C. 2151.414(B)(1) is satisfied. If a child has been in the temporary custody of a children services agency for 12 or more months of a consecutive 22-month period, then R.C. 2151.414(B)(1)(d) is satisfied. In the instant matter, FCCS was granted temporary custody of the children in January 2007. When FCCS filed its motions for permanent custody in September 2008, FCCS still had temporary custody of the children. Based upon these circumstances, the trial court found that the children had been "in the custody of FCCS for over 12 of 22 consecutive months." (June 17 and 24, 2009 decisions, at 12.) Indeed, mother makes no contention to the contrary. Because R.C. 2151.414(B)(1)(d) is undisputedly satisfied, our analysis must focus upon the second step in the process.

{¶12} The second step of the analysis requires a court to determine by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody to the agency. R.C. 2151.414(B)(1). In determining the best interest of the child, a court is required to 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, or 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 and, as described in division (D)(1) of section 2151.413 [2151.41.3] of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(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.

R.C. 2151.414(D)(1).

{¶13} Despite the clear and convincing evidence standard set forth in R.C. 2151.414(B)(1), an appellate court may not "substitute [its] own judgment for that of a trial court applying a 'clear and convincing evidence' standard where some competent and credible evidence supports the trial court's factual findings." *In re West*, 4th Dist. No. 03CA20, 2003-Ohio-6299, ¶9, citing *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74. Indeed, an appellate court must give the utmost respect to the trial court's discretion in making the final determination in these matters. *Id.*, citing *In re Alfrey*, 1st Dist. No. 01CA0083, 2003-Ohio-608, ¶102. Therefore, when reviewing a decision to terminate parental rights, an appellate court must determine whether the juvenile court abused its discretion. *In re Snow*, 11th Dist. No. 2003-P-0080, 2004-Ohio-1519, ¶28. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the

court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶14} In appellant's second assignment of error, she argues that the decisions to grant permanent custody to FCCS was not supported by the manifest weight of the evidence. Again, however, "[j]udgments supported by some competent, credible evidence going to all essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Young v. Univ. of Akron*, 10th Dist. No. 04AP-318, 2004-Ohio-6720, ¶25 (citing *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, paragraph one of the syllabus).

{¶15} R.C. 2151.414(D)(1)(a) regards the interaction and interrelationship of the children with their mother, their other relatives, their foster family, and others. In its decisions, the trial court explained its belief that mother loves the children and is emotionally attached to them. However, the trial court noted that mother is unable to act on this love and attachment due to her mental health, the limitations associated with her developmental disabilities, and her inability to leave the children's father, who has a history of domestic violence against both mother and E.O. and has yet to complete that portion of his case plan.

{¶16} Based upon the record, mother testified that she calls the children on holidays, their birthdays, and occasionally on weekends. She has been diagnosed with major depression disorder, adjustment disorder with anxiety, and a mood disorder. Her reading skills are equivalent to a second grade level, while her math skills are equivalent to a kindergarten level. Although mother completed parenting classes, she was apparently unable to demonstrate that which she learned in the class. After being

referred to Berea Children's Home and Family Service, which is an organization providing hands-on, in-home training and mentoring for parents, mother cancelled 10 of the 26 appointments with her mentor. She testified that she felt uncomfortable around her mentor because she felt as though she was being judged. On top of all of this, mother has remained with father despite his history of domestic violence and his failure to complete domestic violence classes.

{¶17} Ms. Watson and the lay guardian testified that the children were bonded to each other, their mother, and their foster mother. However, the opinions of Ms. Watson and the lay guardian diverged when discussing the interactions of the children with their mother. The lay guardian saw no difference between the interactions of the children with their mother versus that with their foster mother. Conversely, Ms. Watson testified that the interaction amongst mother and the children was noticeably absent. She testified that mother sometimes sat back and watched the children, rather than interacting with them. Other times, mother held her newborn baby, rather than interacting with A.O., E.O., and S.O. Furthermore, during some visits, S.O. paid more attention to Ms. Watson than to mother, despite Ms. Watson's efforts to refocus S.O.'s attention and engage mother. Ms. Watson also testified that sometimes mother became frustrated and irritable when the children would not listen to her.

{¶18} On the other side, when testifying about the interaction and interrelationships of the children with their foster mother, Ms. Watson indicated that such interaction was appropriate. The children frequently sat on her lap, hugged her, and obeyed her requests. They rode bikes and played outside with her. During visits, E.O. required foster mother to remain in the lobby and has even asked to use the bathroom to

make sure she is still waiting for him. The trial court noted that there were no separation issues when mother returned the children to foster mother. Further, the children have also bonded with foster mother's family, including her son and daughter-in-law and brother and sister-in-law, all of whom are also foster parents. The children frequently talk about these individuals and show pictures of them during their visits.

{¶19} Based upon the record, we find that the interaction and interrelationships of the children with other individuals weighs in favor of the trial court's best interest finding.

{¶20} Next, R.C. 2151.414(D)(1)(b) regards the wishes of the children as expressed by them or through their guardian ad litem. According to the guardian ad litem's report, she believed the PCC motions should be granted. Additionally, before the trial on the PCC motions, the trial court conducted an in-camera interview with the children to determine their wishes. During the interviews, A.O. and E.O. indicated they wished to remain with their foster mother but would be upset if they no longer had the chance to see mother. S.O. was too young to express her wishes. The lay guardian confirmed that the children, except S.O., wished to remain with their foster mother. We find that this factor weighs in favor of the trial court's best interest finding.

{¶21} R.C. 2151.414(D)(1)(c) concerns the custodial history of the children. The children were removed from appellant's care in January 2007 and have been in foster care since February 2007. At the time FCCS filed its PCC motion, the children had been in foster care for 18 months. At the time of the trial, the children had been in foster care for over 28 months. The children's custodial history weighs in favor of the trial court's best interest finding.

{¶22} Next, R.C. 2151.414(D)(1)(d) assesses whether the children's needs for a legally secure placement can be met without granting permanent custody to FCCS. The trial court held that they could not. Specifically, the trial court noted that A.O. was removed for a few months in 2001 as an infant. The court also noted how mother had changed her address seven different times during the pendency of this dispute. She was evicted from two of these residences. She has been forced to continue to rely upon father for financial support. Therefore, mother remains with father, despite his history of domestic violence. Based upon these circumstances, the court held, "[mother] simply cannot or will not protect her children and give them stability." (June 24, 2009 Decision and Judgment Entry, at 11.) On the other side, the court contrasted the children's foster placement, which has been consistently stable since February 2007. In reaching its conclusion on this factor, the trial court held, "[p]ermanent custody for purpose of adoption is the only avenue to achieve a legally secure permanent placement for [the children]." (June 24, 2009 Decision and Judgment Entry, at 12.) We find that the record supports the trial court's finding in this regard. Further, this factor weighs in favor of the trial court's best interest finding.

{¶23} Next, R.C. 2151.414(D)(1)(e) takes into account whether certain of the R.C. 2151.414(E) findings exist. Given the fact that father has not appealed the trial court's decisions, none of the R.C. 2151.414(E) findings are applicable to this appeal.

{¶24} Based upon the foregoing, it is undisputed that the children were in the custody of FCCS for over 12 of 22 consecutive months. Further, the record reflects competent, credible evidence upon which the trial court could rely in determining that an award of permanent custody was in the best interest of the children. Accordingly, the

decisions to award permanent custody to FCCS are not against the manifest weight of the evidence. Therefore, we overrule mother's second assignment of error.

{¶25} In mother's first assignment of error, she argues that FCCS did not make reasonable efforts to reunify her with the children because her case plan was not tailored to meet her particular needs in light of her developmental disabilities. Mother argues that the parenting portion of her case plan essentially set her up to fail. She argues that she should have been enrolled in a parenting program offered by the Department of Mental Retardation and Developmental Disabilities. Additionally, mother argues that her developmental disabilities prevented her from understanding and following a budget.

{¶26} In response, FCCS argues that it did make reasonable efforts at reunification. FCCS argues that mother's failure to meet the objectives of the case plan had nothing to do with her developmental disabilities. FCCS also notes that the law does not require it to provide special accommodations for parents with developmental disabilities. Nevertheless, FCCS argues that it did make accommodations for mother's developmental disabilities.

{¶27} It is true that an agency must make reasonable efforts to reunify the family during the proceedings prior to the termination of parental rights. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, ¶43. Reasonable efforts are efforts to " 'resolve the threat to the child before removing the child or to permit the child to return home after the threat is removed[.]' " *Id.* at ¶28, quoting Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation* (2003), 12 B.U.Pub.Int.L.J. 259, 260. If the agency has not established that reasonable efforts have

been made before the hearing on a motion for permanent custody, then it must demonstrate such efforts at that hearing. *Id.*

{¶28} After reviewing the record, we find that reasonable efforts toward reunification were made. Indeed, the trial court made reasonable efforts findings on several occasions, including such findings made in April and June 2007. The trial court again made a reasonable efforts finding in January and June 2008, when it extended temporary custody to FCCS.

{¶29} In addition to the trial court's express findings, the testimony and evidence in the record support the finding that FCCS made reasonable efforts to reunify the children and mother. The case plan, amended case plans, and semiannual administrative reviews all indicated that the ultimate goal was for reunification. Further, Ms. Watson testified that the TCC extensions were sought to provide additional time for mother to attempt to complete the objectives of the case plan. Despite this consistent goal and the accommodations that were made, according to Ms. Watson, mother did not complete many portions of the case plan.

{¶30} Again, mother's case plan involved parenting classes, psychological evaluations, domestic violence classes, stable housing, legally adequate income, visitation, and the ability to meet the basic needs of the children.

{¶31} Regarding the parenting classes, mother completed parenting classes, but, according to Ms. Watson, mother could not demonstrate the skills she learned. Ms. Watson therefore engaged the hands-on, in-home services of Berea, which mother failed to complete because she cancelled 10 of 26 appointments over a six-month period. As a result, according to Ms. Watson, mother did not complete this portion of the case plan.

{¶32} As for the psychological portion of the case plan, Ms. Watson testified that she scheduled the appointments for the evaluations, arranged for transportation, and completed the appropriate paperwork. According to Ms. Watson, she explained to mother that she had to follow the recommendations resulting from the psychological evaluations in order to complete that portion of the case plan. One recommendation was that mother should attend individual counseling on a weekly basis. Ms. Watson testified that she arranged transportation for mother to attend these sessions. Mother's attendance at these sessions, however, was sporadic and included two separate periods of time when mother consistently cancelled sessions. It was not until a week before the final trial that mother again began attending these sessions. Another recommendation was for mother to see a psychiatrist and obtain medication for her mental health conditions. Mother's psychologist referred her to the psychiatrist. However, mother failed to follow through with this recommendation until around one month before the final trial. Another recommendation was that mother should limit her reliance upon and involvement with father. Mother refused to do this, and according to Ms. Watson, began canceling her sessions as a result of this recommendation. Based upon these circumstances, Ms. Watson indicated that mother had not completed the psychological evaluations portion of the case plan.

{¶33} Similarly, under the case plan, mother was to attend and complete domestic violence classes and counseling. Again, however, mother began cancelling these sessions when it was recommended that she limit her involvement with father, who had not completed his portion of the domestic violence classes.

{¶34} Mother was also required to maintain legally adequate income and stable housing, neither of which she completed. With regard to mother's income, Ms. Watson testified that she told mother not to use the social security checks that were improperly disbursed to her while the children were no longer in her care. Ms. Watson testified that on two separate occasions she told mother the money did not belong to her and she should not be spending the funds. Despite these warnings, mother spent the funds and is still having money deducted from her monthly checks to repay the improperly disbursed funds. Additionally, mother frequently had bills in excess of the amount of her monthly income.

{¶35} With regard to mother's housing, Ms. Watson testified that on numerous occasions, she expressed her concerns to mother over her ability to financially afford various housing. She directed mother to consider low income housing, but mother demonstrated no interest in such arrangements. As a result, mother changed her residence no less than seven times throughout the history of this matter. Two of these changes were the result of evictions. According to Ms. Watson, FCCS considers a housing situation "stable" if it has been the residence for six to eight months.

{¶36} Based upon the foregoing portions of the record, FCCS established reasonable efforts at reunification had been made. This matter does not run afoul of the principles set forth in *In re C.F.* Therefore, mother's first assignment of error is overruled.

{¶37} For the foregoing reasons, mother's two assignments of error are overruled. Accordingly, we affirm the judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgments affirmed.

BROWN and FRENCH, JJ., concur.
