

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

IN RE: :
M.G., et al. : CASE NOS. CA2009-10-253
: CA2009-10-254
: CA2009-10-259
: CA2009-10-261
:
: OPINION
: 3/26/2010
:

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case Nos. JN2008-0079 and JN2008-0080

Robin N. Piper III, Butler County Prosecuting Attorney, Daniel G. Eichel, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for appellee, BCDJFS

Heather Felerski, P.O. Box 181342, Fairfield, Ohio 45018, guardian ad litem for M.G. and J.G.

Dawn S. Garrett, 7865 Paragon Road, Suite 107, Centerville, Ohio 45459-2748, for appellant, T.G.

Amy R. Ashcraft, 240 East State Street, Trenton, Ohio 45067, for appellant, N.G.

Suzanne J. Darling, 5770 Gateway Blvd., Suite 101, Mason, Ohio 45040, guardian ad litem for N.G.

YOUNG, P.J.

{¶1} Appellants, T.G. and N.G., appeal a decision of the Butler County Court of Common Pleas granting permanent custody of their two children to the Butler County

Department of Jobs and Family Services.

{¶2} On March 18, 2008, the BCDJFS filed a complaint alleging that appellants' children, M.G. and J.G., were neglected, abused and dependent. The children were removed from the home at the time the complaint was filed. The complaint alleged that BCDJFS had been working with the family since 2005 with older siblings who had been previously been removed from the home.¹ When M.G. was born in February 2006, the agency continued to work with the family. Concerns included the cleanliness and safety of the home, along with issues involving M.G.'s health and development that the parents failed to follow with professional evaluation and treatment. J.G. was born in February 2008 and the issues with the family continued. It was also reported that a man with an extensive history of violence was living with the family. The complaint alleged instances where BCDJFS workers noticed the home cleanliness and safety issues. Due to these ongoing concerns and failure of the parents to correct these issues, the complaint was filed.

{¶3} The court found the children were dependent following a settlement conference on June 23, 2008 and temporary custody was continued to the agency. On December 1, 2008, the agency moved for permanent custody of the children, alleging that the children could not be placed with either parent within a reasonable time and should not be placed with the parents, and that permanent custody was in the children's best interest. Hearings were held over several dates in March and April 2009. Witnesses at the hearing included the agency caseworker, two family resource specialists, the foster mother, a Help Me Grow coordinator, a psychologist who

evaluated the parents, a physical therapist, and a support coordinator for Butler County MRDD. A magistrate issued a decision granting permanent custody of the children to the agency on May 26, 2009. The parents filed objections to the magistrate's decision which were heard on September 23, 2009. The trial court overruled the objections and adopted the magistrate's decision.

{¶4} Appellants now appeal the trial court's decision granting permanent custody of their children to the agency. On appeal, the mother raises one assignment of error contesting the trial court's determination that permanent custody is in the children's best interest. The father raises two assignments of error related to the court's finding that the children cannot be placed with their parents within a reasonable time and arguing that the court's decision is against the manifest weight of the evidence. For ease of discussion, these assignments of error will be addressed together.

{¶5} Before a natural parent's constitutionally protected liberty interest in the care and custody of her 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* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. 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 Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. As an appellate court reviewing a decision granting permanent custody, we neither weigh the evidence nor assess the credibility of the witnesses, but instead determine whether there is sufficient clear and convincing evidence to support the juvenile court's decision. See *In re Dunn*,

1. Eventually, custody of one of these children, a half-sibling, was given to a paternal grandparent, and

Tuscarawas App. No. 2008AP030018, 2008-Ohio-3785.

{¶16} R.C. 2151.414 (B)(1) 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 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 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 above 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).

{¶17} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to the following:

{¶18} "(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;

{¶19} "(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;

{¶110} "(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 ending on or after March 18, 1999;

permanent custody of the other child was granted to the agency.

{¶11} "(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;

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

{¶13} With respect to R.C. 2151.414(D)(1)(a), the juvenile court found that the mother interacts well with the children during their visits. Consistency in attendance of the visits, however, was a chronic issue and despite being provided with transportation resources the mother's attendance at visits was not as good as expected. The juvenile court also found that there were doubts cast on the veracity of the excuses that the parents gave for missing visits, and that illness was a frequent reason used, creating questions about the parents' physical health. The trial court found that the father visits less frequently than the mother, but his interactions were age-appropriate and loving. The trial court further found that visits were at one time supervised in the parents' home, but because of problems concerning the appropriateness and safety of the family home, the visits were moved to the agency. Since that change, the quality of the visits improved.

{¶14} The children have numerous developmental delays and health issues. M.G. sees a physical therapist, a speech therapist, an occupational therapist, and is on a feeding plan developed by a nutritionist due to eating problems. J.G. has begun working with a physical therapist and weekly group services, and may need speech services. The trial court found that the foster mother arranges and attends all the various services provided for the children for various health and development issues.

The foster mother also works with the children at home. The parents have attended some of these appointments, but have not attended consistently, and have chosen to attend separately, which has a negative impact on their ability to gain the knowledge needed to care for their children's needs.

{¶15} With respect to R.C. 2151.414(D)(1)(b), the juvenile court indicated that the guardian ad litem offered a recommendation that permanent custody was in the best interest of the children.

{¶16} With respect to R.C. 2151.414(D)(1)(c), the juvenile court found that the children were removed from the home on March 18, 2008 and have remained with the foster parents since that time. M.G. was removed around the age of two and J.G was removed a little more than a month after birth. The court found that the children had not been in the agency's custody for 12 of the previous 22 months before the filing of the permanent custody motion.

{¶17} With respect to R.C. 2151.414(D)(1)(d), the juvenile court found that the parents contend they can provide a legally secure placement for the children. Factors in their favor include staying together as a couple, maintaining housing for the most part, participating in some case plan services, some progress in individual counseling by the mother and some efforts to visit with the children. Negative factors included the father's psychological assessment, which included poor anger control, a history of antisocial activities, impulsivity, a high need for social approval, narcissistic yet dependent, bipolar, labile moods and inflated self-esteem. The psychologist opined that the father may have an active mental illness in need of psychiatric intervention. The court found it particularly troubling that the father's psychological makeup included his tendency to

"confabulate" or tell exaggerated and embellished stories about himself in order to impress others or to bolster self-esteem or create an identity. As examples, the father claimed to have earned three college degrees in one year and to have served as a marine in the Gulf War, Desert Shield and Desert Storm.

{¶18} The court further found that the parents' demeanor and actions in the case appeared consistent with the concerns raised regarding their intellectual and psychological conditions. The court noted they are unable to manage their financial affairs without the assistance of a designated payee and much of the testimony focused on the parents' struggles to live on various forms of public and charitable assistance. The court found this raises serious questions regarding the parents' ability to make prudent decisions regarding their own lives, let alone the lives of their children. The juvenile court found that the situation was complicated by the children's developmental delays and medical conditions which require consistent and ongoing medical and therapeutic intervention. The court found that considering all the facts, there is no other option presented to the court which can presently provide the children with a secure permanent placement other than the grant of permanent custody to BCDJFS.

{¶19} After review of the evidence presented in this case, we find no error in the court's determination regarding the best interest of the children as the evidence supports the court's finding. While it is clear that the parents love the children, as stated by the juvenile court, "the evidence discloses, unfortunately, that these parents, because of their own intractable issues are simply not able to provide [the children] with even the lowest level of acceptable and appropriate day-to-day care."

{¶20} In addition, the juvenile court found that the children cannot be placed with

their parents within a reasonable time or should not be placed with either parent. R.C. 2151.414(E) provides that in considering "whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence." This section also provides several findings a court may make which require a determination that a child cannot or should not be placed with his parents.

{¶21} In this case, the juvenile court considered R.C. 2151.414(E)(1), which provides:

{¶22} "Following the placement of the child outside his home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly for a period of six months or more to substantially remedy the conditions causing the child to be placed outside his home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties."

{¶23} As discussed above, the father challenges the finding that the children cannot be placed with the parents within a reasonable time. The juvenile court found that the children were removed from the parents' home essentially because the parents were unable to care for the children. The court further found that BCDJFS put a comprehensive plan in place to address the shortcomings of the parents with parenting

education, evaluations, counseling and supervised visitation, but despite these interventions, the parents made little progress. The court found that instead, new issues arose as the parents' visits became infrequent and they had problems attending court-mandated counseling.

{¶24} We find the court's findings in this regard are supported by the record. Although the parents argue that the agency gave them little time to work towards reunification before filing for permanent custody, BCDJFS has been working with these parents since before the birth of these children, yet little progress has been made. Safety problems continued to be an issue during supervised visits in the home, including items such as medicine bottles, lighters, thumbtacks, cigarette butts and knives lying around. Moreover, the parents seemed to not comprehend the presence of safety issues, such as an occasion when a child placed a plastic bag over his head at a visit and the parents had to be told how dangerous this was, and once the parents removed the bag, they placed it right back where the child could grab it again. Cleanliness of the home was a constant issue as there was frequently trash overflowing, dirty dishes, food and clutter everywhere. At one point when visitations were taking place in the home, M.G. became covered in cat feces he found in the toy box. There was evidence that at times, the home appeared cleaner, but there was no consistency. Testimony from several witnesses indicated that the parents are instructed, but there is very little carry over, and that while they listen, they continually have to be instructed regarding the same issue over and over again. In addition, issues arose with the developmental and health needs of the children and despite agency intervention in referring services, the parents failed to follow through.

{¶25} The trial court also found that the factor in R.C. 2151.414(E)(2) applied. Under this section, a court must consider "[c]hronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code."

{¶26} The juvenile court found that both parents have substantial issues which relate to this factor. The court found that the mother has "notable intellectual shortcomings while the father has significant psychological concerns" and that it was those issues which render the parents unable to provide an adequate permanent home for the children. The juvenile court found that the mother's cognitive limitations were largely untreatable and the father has demonstrated a fairly consistent reluctance to participate in meaningful treatment, and that it is unlikely that the situation can ever be addressed, let alone within a year. Again, these findings are supported by the record, which shows that the mother is cognitively limited and functions on the borderline-low range of intelligence. The psychologist's report indicates several risk factors to be considered in the mother's parenting ability, including difficulty with abstract reasoning, information-processing, along with problems in appropriate judgment and insight. Her awareness of childcare needs and age-appropriate behavior is limited. In addition, it was noted that the mother has been noncompliant in previous parenting services and has shown increasing hostility to various service providers.

{¶27} The court found that the agency provided the parents with diagnostic

services and the opportunity to participate in treatment related to those services, parenting education, transportation services and visitation with the children, making reasonable efforts to prevent the placement of the children outside the home. Despite these efforts on the part of the agency, very little progress was made in correcting the issues that caused the removal of the children. While the record does show some improvement in areas, this improvement has not been consistent, as in the case of the cleanliness and safety of the home, or has essentially required removing control of an area from the parents, such as depositing all of their money from government programs with a payee who takes care of the parents' finances. Despite extensive agency intervention and assistance for many years, very little progress has been made towards rectifying problems by the parents. Accordingly, after considering the arguments of the parents on appeal, we find that the trial court's findings are supported by clear and convincing evidence and are not against the manifest weight of the evidence. Appellants' assignments of error are overruled.

{¶28} Judgment affirmed.

POWELL and RINGLAND, JJ., concur.