

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

IN THE MATTER OF: M.S. & D.S.	:	
	:	C.A. CASE NO. 2008 CA 70
	:	T.C. NO. 20071498/20072499
	:	(Civil appeal from Common Pleas Court, Juvenile Division)
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OPINION

Rendered on the 26th day of June, 2009.

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FROELICH, J.

{¶ 1} P.O. (“Mother”) appeals from a judgment of the Clark County Court of Common Pleas, Domestic Relations Division, Juvenile Section, which awarded permanent custody of two of her children, M.S. and D.S., to the Clark County Department of Job and Family Services (“CCDJFS”).

{¶ 2} Mother raises one assignment of error on appeal, in which she contends that the trial court's conclusion as to the best interest of the children is not supported by clear and convincing evidence. We conclude that the trial court's decision was supported by clear and convincing evidence, and we will affirm the trial court's judgment.

I

{¶ 3} M.S. and D.S. are young girls, ages three and two at the time of the trial court proceedings, who are the second and third of Mother's five children. CCDJFS first became involved with M.S. and D.S. in August 2006 after receiving numerous "referrals" or concerns about how Mother was caring for the girls. Mother's older child had previously been placed in the permanent custody of CCDJFS. CCDJFS determined that Mother was overwhelmed by the needs of her daughters and was allowing "inappropriate people" to care for them for extended periods of time. M.S. has special social and emotional needs and was removed from the home from August through October 2006 to give the agency time to put as many support services as possible into place for Mother. M.S. was returned to the home after sixty days, but CCDJFS continued to work with the family and set up respite care to give Mother some breaks from caring for the children. CCDJFS did not believe it had a sufficient basis to seek temporary custody of the children at that time.

{¶ 4} After M.S. returned to the home, Mother cooperated less with the services CCDJFS provided and missed appointments. She also permitted others, particularly a neighbor named Misty, to provide extensive care for the children, especially D.S. and her new baby, D.O., who was born in July 2007. According to the

caseworkers, Mother and Misty were dishonest with CCDJFS about how much Misty was caring for the children.

{¶ 5} Following D.O.'s premature birth, CCDJFS received additional referrals raising concerns about Mother's ability to care for him. After CCDJFS investigated, D.O. was placed with his paternal grandmother. The investigation raised renewed concerns about M.S. and D.S. as well.

{¶ 6} On August 18, 2007, CCDJFS filed Complaints for Emergency and Temporary Shelter Care of M.S. and D.S., and the trial court granted temporary custody. CCDJFS developed a case plan which required Mother to do the following: 1) complete a mental health assessment and follow any recommendations resulting therefrom; 2) work with a parent aide on daycare, transportation, budget, housing, and other issues; and 3) attend parenting classes. CCDJFS also tried to refer Mother to MRDD, the Bureau of Vocational Rehabilitation ("BVR"), and to get a GED, with limited success. She worked with the BVR, but she was not eligible for MRDD and her reading level was too low to participate in a GED program.

{¶ 7} During their interactions with her, caseworkers observed that Mother did not retain information that she was given, had a very difficult time handling more than one task, and was overwhelmed when more than one child was in her care. They also observed that Mother needed substantial help from the caseworkers with tasks that parents usually manage on their own, such as refilling prescriptions, changing the name on an utility account, and anticipating the recurring needs of the children, such as feedings and diaper changes. Sometimes a boyfriend or neighbor would "stabilize" Mother for a time by temporarily acting as a support person, but if that circumstance

changed, Mother seemed unable to manage on her own. One of the caseworkers stated: “[Mother] always needs somebody in her life to support her and help her through the daily tasks. If not, then those daily tasks end up becoming a crisis.”

{¶ 8} Mother completed cleaning and cooking classes, but not parenting classes. She worked with the parent aide initially, but resisted such assistance as time passed. She did not complete the mental health assessment.

{¶ 9} A case plan was also developed for the children’s father, but he did not make any substantial efforts to comply.

{¶ 10} In April 2008, CCDJFS filed a Complaint and Motion to Modify Temporary Custody to Permanent Custody. The father of the children was notified of the proceedings, but did not participate or object to the termination of his parental rights. On July 3, 2008, the trial court held a hearing at which CCDJFS and Mother presented evidence about her ability to parent the children. On July 16, 2008, the trial court granted CCDJFS’s motion for permanent custody.

{¶ 11} Mother raises one assignment of error on appeal.

II

{¶ 12} Mother’s assignment of error states:

{¶ 13} “THE TRIAL COURT ERRED BY GRANTING THE MOTION FOR PERMANENT CUSTODY FILED BY THE CLARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES BECAUSE THE DECISION WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.”

{¶ 14} Mother contends that the trial court’s finding that it was in the children’s best interest to award permanent custody to CCDJFS was not supported by clear and

convincing evidence. In particular, she disputes the trial court's findings that M.S. and D.S. "had no regular and meaningful contact" with their biological family, that Mother could not provide a safe, secure home in the near future and had not remedied the problems that led to the children's removal, and that the children did not have a "safe, appropriate, harmonious and loving relationship" with their extended family. She also argues that the trial court's finding that the "wishes of the children as expressed directly by the Guardian Ad Litem indicate a strong desire to be placed in a loving, secure, permanent home that neither parent can provide" is not supported by the record. Further, Mother asserts that the trial court improperly placed the burden of proof on her to show that she had met case plan objectives or was making progress toward meeting them.

{¶ 15} The United States Supreme Court has recognized that parents' interest in the care, custody, and control of their children "is perhaps the oldest of the fundamental liberty interests recognized" by the Court. *Troxell v. Granville* (2000), 520 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49. In a proceeding for the termination of parental rights, all of the court's findings must be supported by clear and convincing evidence. R.C. 2151.414(E); *In re J.R.*, Montgomery App. No. 21749, 2007-Ohio-186, at ¶9. However, the court's decision to terminate parental rights will not be overturned as against the manifest weight of the evidence if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established. *In re Forrest S.* (1995), 102 Ohio App.3d 338, 344-345. We review the trial court's judgment for an abuse of discretion. See, *In re C.F.*, 113 Ohio St.3d 73,

83, 2007-Ohio-1104, at ¶48 (applying abuse of discretion standard to trial court's findings under R.C. §2151.414).

{¶ 16} R.C. 2151.414(B) sets forth the circumstances under which a court may grant permanent custody of a child to a children services agency. Pursuant to R.C. 2151.414(B)(1)(a), the court may grant permanent custody of a child to the agency if the court determines, by clear and convincing evidence, that: (1) it is in the best interest of the child to grant permanent custody of the child to the children services agency; (2) the child is not abandoned or orphaned or has not 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 (3) the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents. *In re K.S.*, Clark App. No. 2008 CA 77, 2009-Ohio-533, at ¶17.

{¶ 17} R.C. 2151.414(D) directs the trial court to consider all relevant factors when determining the best interest of the child, including but not limited to: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers, and any other person who may significantly affect the child; (2) the wishes of the child, as expressed directly or through the guardian ad litem, with due regard for the maturity of the child, (3) the custodial history of the child; (4) 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; and (5) whether any of the factors in R.C. 2151.414(E)(7) through (11) are applicable. The factors in R.C. 2151.414(E)(7) through (11) include convictions of various crimes such as

homicide, assault and child endangerment, and withholding food or medical treatment from a child.

{¶ 18} In evaluating whether a child can be placed with either parent within a reasonable time, a trial court must comply with R.C. 2151.414(E), which provides, in pertinent part:

{¶ 19} “In determining at a hearing *** 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. If the court determines, by clear and convincing evidence, *** that one or more of the following exist as to each of the child’s parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

{¶ 20} “(1) Following the placement of the child outside the child’s 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 to substantially remedy the conditions causing the child to be placed outside the child’s 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.

{¶ 21} “***”

{¶ 22} The trial court concluded that the best interest of M.S. and D.S. would be

served by granting permanent custody to CCDJFS for the following reasons:

{¶ 23} “a. The children have had no regular and meaningful contact with their biological family.

{¶ 24} “b. There is no probability that the parents will be able to provide a safe, secure and appropriate home for the children any time soon.

{¶ 25} “c. The Guardian ad Litem for the children recommended that the motion for permanent custody be granted.

{¶ 26} “d. Neither parent has substantially remedied the conditions that caused removal of these children.

{¶ 27} “e. There are no known or interested relatives on either side of the family that can care for the children.

{¶ 28} “f. The wishes of the children as expressed directly by the Guardian ad Litem indicate a strong desire to be placed in a loving, secure, permanent home that neither parent can provide.

{¶ 29} “g. There is no safe, appropriate, harmonious and loving relationship between the children and the children’s parents or extended family. The children will benefit from continued removal from the birth families. There is no indication of a significant risk or harm to the children by not returning the children to the parent. In fact, the evidence is clear that the children will benefit significantly if the children are not returned to either parent.”

{¶ 30} The evidence presented by CCDJFS established that, even with substantial support from the agency, Mother was overwhelmed by the responsibilities of caring for her children, attributable largely to her own cognitive limitations. Dr.

Daniel Hrinko, a psychologist, testified that Mother read at a fourth grade level and had attended special education classes in school. He observed that she handles most routine, day-to-day activities well “with few prompts and redirection,” but that she cannot manage when things out of the ordinary occur. Dr. Hrinko stated that, in Mother’s case, her cognitive impairments significantly affected her ability to parent. He concluded that Mother was unable to parent without a support system because her “cognitive limitations make it difficult for her to accurately assess, plan and react to her children’s needs.” He also stated that, because Mother’s parenting problems are rooted in her cognitive limitations, she cannot meet her children’s needs safely and effectively “across time,” noting that as the children get older, they will cognitively surpass her and be able to manipulate her. Dr. Hrinko was pessimistic about the possibility of reunification of the family because many of the services that might be recommended for Mother had already been tried, without any improvement in the situation.

{¶ 31} The caseworkers testified that Mother had not completed the parenting classes or mental health assessment required by her case plan. The caseworkers testified that Mother left the children in the care of inappropriate people for extended periods of time and then lied to the caseworkers about her child care arrangements. In particular, they noted that Misty, who served as one of Mother’s support givers and babysitters, watched D.S. for very extended periods of time – perhaps as long as eight months – during Mother’s pregnancy with D.O., even though Misty had also been involved with CCDJFS for domestic violence. The caseworkers also observed that Mother was unable to cope with even the most basic of parenting challenges during

her supervised visitations, seeking help with such events as a child's pulling her hair and needing reminders to change diapers and dirty bandages and to feed the children.

M.S. and D.S. also missed medical appointments when they were in Mother's care, and Mother struggled to understand how to refill their prescriptions. Mother also needed help with her own care and activities, such as making calls to the utility company and getting bus passes. Although Mother obtained a job at Wendy's, she testified that she had never worked more than four hours in one week.

{¶ 32} The caseworkers and visitation coordinator stated that Mother did not fully engage with the children during visitation and often seemed anxious for the visits to end, although her attendance was consistent. D.S., in particular, did not seem to have a normal bond with Mother and seemed withdrawn around her, whereas M.S. got a lot of attention.

{¶ 33} The guardian ad litem expressed concern about the friends Mother chose to have around the children, including men with criminal records and drug involvement. She also testified that Mother was susceptible to manipulation by her friends and by M.S. due to her (Mother's) cognitive limitations. The guardian ad litem stated that, although Mother loves the children, she could not control them or meet their basic needs and had no support system to help her do so. Mother had difficulty dealing with more than one thing at a time and sometimes got so focused on a task, such as determining whether she had received a check, that she gave no attention to the children at all. There was no structure or consistency in Mother's home. Like the caseworkers, the guardian ad litem observed that Mother struggled with feeding the children, keeping them clean, and changing wet diapers or clothes when necessary.

The guardian ad litem also observed M.S. remove a gate from a door and run out, a situation which Mother was unable to handle. She stated that the children had a stable environment with their foster family, including structure and consistency that Mother could not provide. The guardian ad litem recommended that the trial court award permanent custody to CCDJFS. M.S.'s social and emotional problems improved dramatically in the care of her foster family, and there was some improvement in her speech.

{¶ 34} The trial court's conclusion that permanent custody was in the children's best interest was supported by clear and convincing evidence at the hearing. The psychologist and the caseworkers agreed that Mother's cognitive limitations prevented her from anticipating, planning for, and meeting the children's needs. Moreover, due to the nature of this limitation, it was not likely to be overcome through support services and was likely to become more problematic as the children grew older. All of these factors supported the trial court's conclusion that the children's best interest would be served by awarding permanent custody to CCDJFS.

{¶ 35} Mother takes issue with the trial court's finding that M.S. and D.S. "had no regular and meaningful contact" with their biological family, and we recognize that, by all accounts, Mother did have regular visitation with the children. However, there was evidence that these visits were somewhat chaotic, that Mother needed a great deal of help with the children or was ignored or manipulated by them during the visits, and that she seemed glad to have the visits end. The guardian ad litem also stated in her report that she "has a strong concern regarding the bonding between [D.S.], [M.S.] and their mother due to the girls' being with multiple caregivers in their formative

years.” Based on the testimony and guardian ad litem’s report, the trial court could have reasonably concluded that, although the visits were regular, they were not both regular *and* meaningful. Stated differently, the trial court could have reasonably concluded that the nature and quality of Mother’s interaction with the children at visitation did not compel the conclusion that it was in the children’s best interest to deny permanent custody.

{¶ 36} Mother also contends that the evidence did not support the trial court’s conclusion that she could not provide a safe, secure home in the near future and had not remedied the problems that led to the children’s removal. According to Mother, the children were removed because “her electricity [was] disconnected,” and she has kept it connected since that time. She also notes that, according to the guardian ad litem, her house was “uncluttered” and the only concern with the living environment was the “suspicious” people outside. Mother contends that the other reasons cited by CCDJFS for the children’s initial removal, such as the children being dirty and her being overwhelmed, were obviously remedied because M.S. was returned to her after her initial sixty-day removal from the home.

{¶ 37} Mother’s argument about the obstacles to returning the children to her care fails to recognize the wide range of issues about which the caseworkers were concerned when CCDJFS sought temporary custody of M.S. and D.S. Her lack of electricity was one consideration but, based on the testimony of the caseworkers, this was only one of many concerns. Thus, the fact that electricity had been maintained at the residence during these proceedings did not demonstrate that the trial court’s determination of best interest was unsupported by the evidence. Moreover, CCDJFS

had renewed concerns about Mother's parenting after the birth of her fourth child, D.O. Mother's suggestion that CCDJFS's concerns were not substantiated because, at an earlier point, M.S. was returned to her, is without merit.

{¶ 38} Next, Mother contends that the trial court's conclusion about the children's wishes is not supported by the evidence. The trial court stated that the "wishes of the children as expressed directly by the Guardian Ad Litem indicate a strong desire to be placed in a loving, secure, permanent home that neither parent can provide." It appears that this statement reflects the guardian ad litem's recommendation on the children's behalf, rather than any wishes expressed by the children themselves. At the hearing, the guardian ad litem stated her belief that D.S., age 2, likely would not have an opinion about custody and that M.S., age 4, might express a preference but would not fully understand what she was saying. Thus, the trial court's statement is arguably inconsistent with the evidence offered at trial. However, the trial court was permitted to consider the wishes of the child as expressed directly or through the guardian ad litem. R.C. 2151.414(D).

{¶ 39} The statute recognizes that the wishes of the children must be considered "with due regard for [their] maturity." In our view, the opinions of very young children are entitled to little weight, and, in this case, such "wishes" were not directly expressed; however, the trial court's reliance on the guardian ad litem recommendation was not misplaced.

{¶ 40} Similarly, Mother challenges the trial court's statement that the children did not have a "safe, appropriate, harmonious and loving relationship" with their parents or extended family. She contends that this finding was not supported by the

evidence because no evidence was presented about the children's relationship with their extended family. Mother testified that her parents provided her with financial support, but no evidence was presented about her personal relationship with them or her children's relationship with her parents.

{¶ 41} The trial court's statement described the children's relationships with their parents *and* extended family. We have noted that the father had little contact with the children and no interest in custody. We also noted above that Mother's relationship with the children, as evidenced by the caseworkers' visits to the home and the supervised visitations, was not safe, appropriate, and harmonious, although it may have been loving. The caseworkers were unaware of any support from Mother's family members. We cannot say that the trial court's conclusion that M.S. and D.S. did not have safe, appropriate, harmonious and loving relationships with their parents and extended family was unsupported by the evidence.

{¶ 42} Finally, Mother asserts that the trial court improperly placed the burden of proof on her to show that she had met case plan objectives or was making progress toward meeting them. We disagree. The trial court's judgment does not indicate that the court misallocated the burden of proof. CCDJFS submitted substantial evidence to establish that Mother was unable to care for her children and would be unable to do so within a reasonable time. Mother failed to rebut this evidence, and the trial court's statement reflects this fact.

{¶ 43} Based on the evidence presented, it appears that Mother's cognitive limitations were central to her parenting limitations and her inability to remedy the problems identified by CCDJFS. However, the court did not rely *solely* on Mother's

limited cognitive abilities in determining that the best interest of M.S. and D.S. was served by an award of permanent custody, as prohibited by the Supreme Court in *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, at ¶36. In *In re D.A.*, the child was initially removed at the parent's request, the parents complied with every aspect of their case plan except one, which the agency suspended, and the ten year-old child expressed a preference to be with his parents. The court recognized that the family in *In re D.A.* “[did] not demonstrate many of the irresponsible, uncaring, or dangerous characteristics that are regularly evident in many permanent custody cases.” *Id.* at ¶26.

{¶ 44} In Mother's case, on the other hand, her cognitive limitations may have contributed to numerous other serious problems, and she showed little ability to remedy those problems, even with substantial support services. We have discussed many of these issues above, but we reiterate that Mother was unable to respond effectively to the children's basic needs for regular feedings, diaper changes, and medical treatment, such as prescriptions. She also left the children with a caregiver who had a CCDJFS case of her own for very lengthy periods of time and exposed the children to unsavory men. She was unable to respond effectively to unexpected or changing circumstances and was easily manipulated. She failed to satisfy several aspects of her case plan. Despite CCDJFS's efforts to provide Mother with support services through parenting classes, a parent aide, respite care, job training and support, and psychological services, Mother had demonstrated an inability or unwillingness to address the problems. Thus, unlike in *In re D.A.*, Mother's cognitive limitations were not the basis for the trial court's conclusion that the best interest of the

children would be served by granting permanent custody to CCDJFS; rather, there was “objective evidence to show that the statute was satisfied.” *In re D.A.* at ¶96 (internal citations omitted).

{¶ 45} In sum, the trial court reasonably concluded, based on clear and convincing evidence, that granting permanent custody to CCDJFS was in the children’s best interests and that the children cannot be placed with Mother within a reasonable time or should not be placed with her.

{¶ 46} The assignment of error is overruled.

III

{¶ 47} The judgment of the trial court will be affirmed.

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DONOVAN, P.J. and GRADY, J., concur.

Copies mailed to:

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