

Two Prong Test

It is well-settled that “parents who are ‘suitable’ persons have a ‘paramount’ right to the custody of their minor children.” *In re Perales*, 52 Ohio St.2d 89, 97, 369 N.E.2d 1047 (1977). “The fundamental interest of parents is not absolute, however.” *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, ¶ 11. In a custody determination, the best interest of the child controls. *Id.*

Before terminating parental rights and awarding permanent custody to a children services agency, a court must determine by clear and convincing evidence that (1) it is in the best interest of the child to grant permanent custody of the agency and that (2) any of the conditions listed in R.C. 2151.414(B)(1)(a)-(d) apply. R.C. 2151.414(B). In this case, it is not disputed that the condition set forth in R.C. 2151.414(B)(1)(d) was met—that each of the children had been in the temporary custody of HCJFS for 12 or more months of a consecutive 22-month period. We therefore focus our analysis on the “best-interest” determination.

Best-Interest Factors

Mother takes issue with what she considers to be the court’s “best interest” findings, or lack thereof, under both R.C. 2151.414(D)(1) and (2). However, R.C. 2151.414(D)(2) is inapplicable in this case. *See In re K.H.*, 2d Dist. Clark No. 2009-CA-80, 2010-Ohio-1609, ¶ 56 (if any one of the conditions enumerated in R.C. 2151.414(D)(2) does not exist, then the trial court weighs the factors set forth in (D)(1) to determine the child’s best interest). We therefore limit our analysis to the R.C. 2151.414(D)(1) factors.

Under R.C. 2151.414(D)(1), the court considers “all relevant factors,” including, but not limited to, the child’s interactions and relationships with his or her parents, siblings, relatives, and foster caregivers or any other out-of-home providers;

the wishes of the child, expressed directly through the child or through the child's guardian ad litem; the custodial history of the child; the child's need for a legally secure placement, and whether any of the factors under R.C. 2151.414(E)(7) through (11) apply.

Here, the trial court found that during the time the children were in HCJFS's temporary custody, mother failed to consistently visit with her children. The evidence presented established that mother regularly cancelled her weekly two-hour visit with the children. She also felt overwhelmed, at times, at the thought of expanding visitation.

The court also determined that mother did not take full advantage of services offered to her. Ms. Amanda Stegall, a service facilitator with Hamilton County Developmental Disability Services testified that mother had had a diagnostic assessment, but had failed to follow through with recommended therapy. Aside from coordinating diagnostic testing services, Ms. Stegall assisted mother with setting up services to help mother manage her money and find housing. Mother was not committed to this process. She missed 14 out of 32 appointments with Ms. Stegall. Mother eventually found housing on her own. However, she choose housing that would make access to her home difficult for Tie.S. due to his disability.

In regard to Tie.S., in particular, HCJFS presented evidence from multiple sources indicating that mother did not fully appreciate Tie.S's medical needs. In contrast, Tie.S.'s foster mother spent a week at Children's Hospital learning how to properly care for him. And she testified that Tie.S. was doing better in all aspects of his life compared with when he was first placed with her. Tie.S.'s foster mother indicated that she could care for Tie.S. for the indefinite future.

While Tie.S. has a strong bond with his mother and wanted to be returned to his mother's care, the court determined that his need for a safe environment and a caregiver attuned to his medical needs took precedence over his wishes. Tie.S.'s guardian ad litem recommended a termination of mother's parental rights.

The twins, Ta.S. and Tia.S., had been living with their foster mother since October 2011. At the time the children had been placed with their foster mother, they were described as quiet, sickly, and in need of services due to speech delays. At the time of trial, the undisputed evidence was that the children were very active, friendly, and testing beyond their years developmentally. They referred to their caregiver as "mommy momo," and had bonded with her. The court found that the caregiver had provided much needed structure for the children. The twins' guardian ad litem recommended terminating mother's parental rights.

Conclusion

Upon a review of the record, we hold that the "best interest" determination concerning each of the three children at issue is supported by sufficient evidence. *See In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 14-15; *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 11. And in weighing the evidence presented, there is no indication that the trial court so lost its way as to create a manifest miscarriage of justice warranting a new trial. *See A.B.* at ¶ 16; *Eastley* at ¶ 12; *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). Mother's sole assignment of error is therefore overruled.

The trial court's judgment is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., MOCK and STAUTBERG, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on March 2, 2016

per order of the court _____.

Presiding Judge