

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

IN RE: J.C. : APPEAL NO. C-170212  
: TRIAL NO. Foo-2926X  
:  
: *JUDGMENT ENTRY.*

We consider this expedited appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E) and 11.2(C)(1); 1st Dist. Loc.R. 11.1.1.

Raising two assignments of error, appellant Father challenges the judgment of the Hamilton County Juvenile Court adopting the magistrate’s decision and granting permanent custody of J.C., his minor child, to the Hamilton County Department of Job and Family Services (“HCJFS”). We affirm.

J.C., aged 12 years when permanent custody was granted to HCJFS, suffers from significant behavioral and mental-health issues. Her mother suffers from alcohol-related and mental-health issues. Father has a significant criminal record for offenses including theft, drug possession, trespassing, assault, domestic violence, and violation of protective orders relating to domestic violence.

In August 2013, HCJFS was awarded temporary custody of J.C. due to concerns of domestic violence between her parents. In August 2013, the juvenile court appointed a public defender to represent Father at the proceedings. After being adjudicated a dependent child, J.C. was returned to Mother’s custody with protective orders of

supervision. In February 2014, the juvenile court returned temporary custody of J.C. to HCJFS after Mother permitted unsupervised contact with Father. HCJFS implemented a family reunification plan and devoted substantial resources to remediating the problems facing J.C. and her parents. But the court again adjudicated J.C. dependent in May 2014.

On January 19, 2016, HCJFS filed a motion for permanent custody. Evidentiary hearings began in July 2016 and continued in September and October. The magistrate received testimony from three of J.C.'s HCJFS case workers, a specialist from the Family Access to Integrated Recovery agency who had assessed Father's behavioral progress, and from Mother and Father.

On December 1, 2016, the magistrate issued a detailed written decision granting HCJFS's motion for permanent custody. Father filed a brief general objection. At the objection hearing, Father argued that the magistrate had failed to guarantee his rights to counsel during the September and October 2016 hearings. The juvenile court overruled the objection, adopted the magistrate's decision and entered judgment granting HCJFS's motion for permanent custody. Father alone appealed.

In his first assignment of error, Father challenges the weight and the sufficiency of the evidence adduced to support the juvenile court's decision to award permanent custody to HCJFS. He also maintains that the court should have granted legal custody of J.C. to Father's niece, M.C.

The version of R.C. 2151.414 in effect when HCJFS moved for permanent custody provided that before a juvenile court may terminate parental rights and place a child in the permanent custody of a children-services agency, it must determine by clear and convincing evidence (1) that one or more of the conditions listed in R.C. 2151.414(B)(1) apply, and (2) that it is in the best interest of the child to grant permanent custody to the agency by considering the factors in R.C. 2151.414(D)(1). *See* former R.C. 2151.414; *see*

*also In re C.E.*, 1st Dist. Hamilton No. C-2015-Ohio-5710, ¶ 8; *In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 13.

Here, we cannot say that the juvenile court clearly lost its way and created a manifest miscarriage of justice when evaluating the evidence. *See In re A.B.* at ¶ 16. The juvenile court was entitled to reject Father's assertions that (1) he maintained a residence suitable for raising J.C., (2) no longer associated with J.C.'s mother, and (3) substantially complied with the case plan. Father had withheld information from HCJFS necessary for it to determine if Father's residence was safe and appropriate for J.C. He refused to give HCJFS case workers the address of his apartment or the name of his girlfriend who shared the dwelling. Although Father claimed that he no longer associated with J.C.'s mother, thus reducing the likelihood of the domestic violence that had prompted J.C.'s removal from the home, evidence indicated that Father had remained in contact with Mother. An assessment specialist testified that Father had refused to accept responsibility for the multiple instances of his violent behavior in the home and presented a high risk of future violent behavior. And while Father had completed portions of HCJFS's reunification plan, including the AMENDS program for domestic-violence offenders, Father had refused to attend the recommended individual counseling and drug screening. Since even substantial completion of a case plan does not, in and of itself, require that a child be reunified with a parent who has failed to remedy the conditions which led to removal in the first place, the juvenile court had substantial grounds to reject Father's assertions. *See In re I.K.*, 1st Dist. Hamilton No. C-150667, 2016-Ohio-659, ¶ 14.

After reviewing the record, we hold that the juvenile court's determinations are amply supported by the evidence. It is undisputed that the condition set forth in R.C. 2151.414(B)(1)(d) was met as J.C. had been in the temporary custody of HCJFS for 12 or

more months of a consecutive 22-month period. When HCJFS moved for permanent custody, J.C. had been in temporary custody over 23 consecutive months.

While the court was not required to make the further finding that J.C. could not or should not be placed with either parent, it nonetheless did so. Since Mother had not participated in reunification services and the record reflected Father's lack of behavioral changes and his failure to remedy the conditions that prompted J.C.'s removal, the court's determination was also amply supported. *See* former R.C. 2151.414(B)(1)(a); *see also In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, at ¶ 30-31.

We also conclude that the juvenile court did not lose its way in making a best-interests determination under former R.C. 2151.414(D)(1). The juvenile court examined each factor as it related to J.C. She had not been in either parents' custody for nearly three years. Although Father had made efforts to visit J.C., he testified that he stopped supervised visitation due to his work schedule and to the lack of air conditioning at the visitation facility. There were no other relatives suitable to care for J.C. While J.C. stated that she wished to live with her parents or a relative, the guardian ad litem recommended that permanent custody be granted to HCJFS after a failed temporary placement with Father's niece, M.C., and M.C.'s subsequent refusal of custody. Father had not fully engaged in the services provided to gain insight into J.C.'s specific needs, and had not demonstrated an ability to provide J.C. with long-term stability.

Based on this record, the juvenile court's determination that it was in J.C.'s best interest to terminate Father's parental rights so as to facilitate a secure and stable placement was amply supported by clear and convincing evidence and was not against the weight of the evidence. *See In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, at ¶ 28.

Moreover, the record reflects substantial, credible evidence on the elements of HCJFS's motion for permanent custody. Therefore, the juvenile court could have reasonably concluded that HCJFS had carried its burden and the award of custody to HCJFS was supported by sufficient evidence. See *id.* at ¶ 14-15.

Finally, Father argues that the juvenile court erred in failing to grant the guardian ad litem's now-withdrawn motion to award legal custody to J.C.'s adult cousin. But this argument also fails. Father does not have standing on appeal to assert the rights of another party. See *In re A.W.*, 1st Dist. Hamilton No. C-120787, 2013-Ohio-909, ¶ 3. The first assignment of error is overruled.

In his final assignment of error, Father argues that he was improperly denied his right to appointed counsel when the magistrate permitted him to proceed without counsel at two evidentiary hearings in September and October 2016. Throughout the proceedings, Father had received written notices from the juvenile court informing him that "if you are indigent," the court would appoint an attorney "to provide legal representation." Since mid-2013, Father had been represented by two separate court-appointed public defenders.

On August 19, 2016, Father appeared before the magistrate, and expressed displeasure with his second court-appointed attorney. Father asked that counsel be permitted to withdraw as Father now had "a good job" and wished to obtain private counsel. Despite concerns about delay raised by J.C.'s guardian ad litem and HCJFS, the magistrate continued the matter until September 12 for Father "to retain private counsel."

Neither Father nor counsel appeared at that hearing. On September 29, almost six weeks after his court-appointed counsel was permitted to withdraw, Father appeared at the continued evidentiary hearing. He explained that he was unable to pay the \$3,000 retainer that a private attorney had requested, "so I'm, gonna just represent myself." The

magistrate permitted Father to testify at the two hearings, and to question the other witnesses. As Father acknowledges, these hearings took place “after the bulk of [HCJFS’s] evidence [had been] presented.” Appellant’s Brief at 12.

If indigent, a parent has a constitutional and a statutory right to the assistance of appointed counsel in permanent-custody proceedings. *See State ex rel. Heller v. Miller*, 61 Ohio St.2d 6, 399 N.E.2d 66 (1980), paragraph two of the syllabus; *see also* R.C. 2151.352; Juv.R. 4(A). But the right to appointed counsel is not absolute. Waiver of the right may be inferred from the totality of the circumstances of an individual case, including the background, experience and conduct of the parent. *See In re Rachel G.*, 6th Dist. Lucas No. L-02-1306, 2003-Ohio-1041, ¶ 14; *see also In re G.S.*, 10th Dist. Franklin Nos. 10AP-734, 10AP-736, 10AP-737, and 10AP-738, 2011-Ohio-2487, ¶ 7. We note also that indigency is not a permanent condition, and that a prior finding of indigency is not a guarantee that a party continues to be indigent and eligible for appointed counsel. *See e.g., State ex rel. Sherrills v. Clerk of Courts of Franklin Cty.*, 92 Ohio St.3d 402, 403, 750 N.E.2d 594 (2001).

When, as here, a parent has been repeatedly informed of his right to appointed counsel, has had two separate public defenders appointed to represent him, has stated in open court that he has a good job and seeks to obtain private counsel, and, after two continuances, has appeared at a subsequent hearing without counsel and indicated his readiness to proceed, it is clear from the totality of the circumstances that he has waived any arguable right to appointed counsel. *See In re Moore*, 153 Ohio App.3d 641, 2003-Ohio-4250, 795 N.E.2d 149, ¶ 21 (3d Dist.). The third assignment of error is overruled.<sup>1</sup>

Therefore, we affirm the juvenile court’s award of permanent custody to HCJFS.

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<sup>1</sup> Father’s brief identified this argument as his third assignment of error even though he has not raised a second assignment of error.

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Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., ZAYAS and MYERS, JJ.**

To the clerk:

Enter upon the journal of the court on August 16, 2017  
per order of the court \_\_\_\_\_.  
Presiding Judge