

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

IN RE: T.H., T.H., AND T.H. : APPEAL NOS. C-170463
C-170466
: TRIAL NO. F14-1344Z
: *JUDGMENT ENTRY.*

We consider these appeals 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); 1st Dist. Loc.R. 11.1.1.

The mother and father of T.H.1, T.H.2, and T.H.3,¹ appeal the juvenile court's grant of permanent custody to the Hamilton County Department of Job and Family Services ("HCJFS"). The children's guardian ad litem ("GAL") and HCJFS ask this court to affirm the juvenile court's judgment.

Mother and father each raise a single assignment of error, arguing that the juvenile court's decision granting permanent custody was contrary to the weight of the evidence and based upon insufficient evidence.

Under former R.C. 2151.414(B)(1),² a juvenile court may grant permanent custody to a children's services agency if it finds by clear and convincing evidence that it is in the child's best interest and that one of the conditions in (B)(1) applies. *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 48.

¹ Because the three children have the same initials, we designate them T.H.1, T.H.2, and T.H.3.

² We will apply the version of the statute that was in effect on the date that the motion for permanent custody was filed, which in this case was June 20, 2016. See *In re C.M.*, 1st Dist. Hamilton Nos. C-150365 and C-150396, 2015-Ohio-3971, ¶ 13.

In reviewing a juvenile court's determination on a permanent-custody motion, we must examine the record and determine if the juvenile court had sufficient evidence before it to satisfy the clear-and-convincing standard. *Id.* at ¶ 46. We will not substitute our own judgment for that of the trial court applying a clear-and-convincing standard where some competent and credible evidence supports the trial court's determination. *Id.*

In reviewing a challenge to the weight of the evidence, we weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 16, citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12.

In this case, the court determined in accordance with former R.C. 2151.414(D)(1) that the children's best interest would be served by awarding permanent custody to HCJFS. In addition, the court found that the conditions in former R.C. 2151.414(B)(1)(a) had been satisfied because the children could not be placed with either parent within a reasonable time or should not be placed with their parents. This finding required the court to determine by clear and convincing evidence that one or more of the factors in former R.C. 2151.414(E) existed.

In addition, the condition in former R.C. 2151.414(B)(1)(d) existed with respect to T.H.1 and T.H.2 because it was undisputed that they had been in temporary custody for more than 12 months of a consecutive 22-month period when HCJFS filed its motion for permanent custody. *See In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, at ¶ 52. T.H.3 was in the custody of HCJFS from his birth, seven months before the motion was filed, so the provision

did not apply to him. *See In re W.M.*, 1st Dist. Hamilton No. C-170003, 2017-Ohio-1398, ¶ 18.

After reviewing the extensive record in this case, we hold that the juvenile court did not err by awarding permanent custody to HCJFS. T.H.1 and T.H.2 and their older half-siblings³ were removed from mother's home in July 2014 because mother was arrested on child-endangering charges. At the time, T.H.1 was 3 years old and T.H.2 was a year and a half. Their half-siblings, aged 11 and 14, had reported to police that mother had beaten them with various objects, including poles and cords, and had used a stun gun on the 11-year-old. They also reported that they had witnessed domestic violence between mother and father. Both of the oldest children had scars and welts consistent with extreme physical discipline and abuse.

Mother was later convicted of the criminal charges and placed on community control. She was ordered to have no contact with any of her children. Thereafter, she was allowed supervised visitation at the Family Nurturing Center ("FNC") with T.H.1 and T.H.2. Father was allowed unsupervised weekend visits.

The juvenile court ordered mother to complete parenting classes, and ordered both parents to complete psychological evaluations and chemical-dependency assessments.

Although T.H.2 was almost two years old when he entered HCJFS custody, he was unable to walk or to feed himself, and his head was misshapen and flat due to mother's keeping him in a baby swing most of the time. The child required physical therapy to learn how to walk. T.H.1 had difficulty eating because he stuffed his

³ Mother's oldest two children, the half-siblings of T.H.1 and T.H.2, are not the subject of these appeals.

mouth, causing him to choke. Both children required speech therapy and the services of a feeding specialist.

After the older children were removed, the parents conceived T.H.3. When T.H.3 was born in November 2015, HCJFS immediately moved for an order of interim custody to protect him. Mother continued to have ongoing anger issues and aggressive behaviors. In addition, her psychological evaluation noted that mother continued to present a risk to her children and would require ongoing supervised contact with them. HCJFS also alleged that mother had little appreciation for her poor decision-making and minimized the extent of abuse that she had imposed on her children over time.

In December 2015, the court granted legal custody of mother's oldest two children to a relative.

Although mother had completed some parenting classes, she did not demonstrate that she had internalized the training when she visited her children. Her visitation with the children at FNC never progressed beyond "facilitated," the highest level of supervision, because she continually needed intervention by a facilitator. In addition, mother did not engage in individual therapy until October 2015, more than a year and a half after her children had been removed from her home.

The juvenile court was concerned that father had been involved in the lives of T.H.1 and T.H.2 well before they had been removed from the home, yet father had failed to recognize their severe developmental delays and had apparently failed to intervene when mother was using extreme corporal discipline on her oldest children. Although father had completed his case-plan services, he often was not actively

engaged in the services and, by his own admission, did not feel that he needed them. Despite the services, father continued to lack insight into his anger issues.

The court restricted father's visitation after allegations emerged that he had struck T.H.1 during a visit, injuring the child. However, despite being allowed supervised visitation, father saw the children only three times in a six-month period. In addition, father acknowledged that he had two other children whom he was unable to visit due to domestic-violence allegations by their mother.

As to T.H.1 and T.H.2, the juvenile court did not err in finding that the condition in former R.C. 2151.414(B)(1)(d) existed because it was undisputed that they had been in temporary custody for more than 12 months of a consecutive 22-month period when HCJFS filed its motion for permanent custody. In addition, the record contains sufficient evidence to support the juvenile court's finding under former R.C. 2151.414(E) that the children cannot be placed with either parent within a reasonable time and should not be placed with either parent. Despite the efforts of HCJFS, both parents continued to demonstrate a lack of understanding of child development and of their own issues surrounding domestic violence and parenting. *See* former R.C. 2151.414(E)(1) and (16).

In addition, we conclude that the juvenile court did not err in determining that an award of permanent custody to HCJFS was in the children's best interest. The court considered that the GAL supported an award of permanent custody; that T.H.1 and T.H.2 had been in agency custody and multiple foster homes since July 2014, and T.H.3, since his birth; and that the children needed a legally secure permanent placement. *See* former R.C. 2151.414(D)(1).

After reviewing the record, we hold that all of the court's findings as to the best-interest factors in former R.C. 2151.414(D)(1) and as to the former R.C.

2151.414(B)(1)(a) factor were supported by sufficient evidence and were not against the manifest weight of the evidence. *See In re C.F.*, 1st Dist. Hamilton Nos. C-150454 and C-150469, 2015-Ohio-4706, ¶ 12. Therefore, we hold that competent and credible evidence supported the juvenile court's award of permanent custody to HCJFS. *See In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, at ¶ 48. We overrule the assignments of error and affirm the juvenile court's judgment.

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.

MOCK, P.J., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on November 9, 2017

per order of the court _____.
Presiding Judge