

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

IN RE: D.M. & J.M. : APPEAL NO. C-190261
: TRIAL NO. F14-000257Z
:
: *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar. 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); 1st Dist. Loc.R. 11.1.1.

Mother appeals the Hamilton County Juvenile Court’s judgment adopting the magistrate’s decision granting permanent custody of her two minor children, D.M. and J.M., to the Hamilton County Department of Job and Family Services (“HCJFS”). We affirm.

In early 2014, medical personnel at Cincinnati Children’s Hospital Medical Center (“CCHMC”) expressed concern over the children’s failure to gain weight. The then-20-year-old mother failed to follow up with the hospital and the children ultimately were diagnosed with non-organic failure to thrive and were admitted to CCHMC for treatment. D.M. was two years old and weighed 21 pounds; J.M. was five months old and weighed only eight pounds. Under the hospital’s care, both children quickly gained weight.

On February 11, 2014, HCJFS was granted interim custody of the children. Following their hospital stay, the children were discharged to a foster family with whom they have remained for over five years. The children were adjudicated neglected and dependent in July 2014.

HCJFS offered reunification services to mother, including parenting-skills classes, diagnostic assessments, individual therapy, income and housing-stability assistance, domestic-violence-avoidance classes, supervised visitation through the Family Nurturing Center (“FNC”), and drug screenings “to rule-out drug-abuse concerns.” Mother completed a parenting class as early as September 2014, yet continued to struggle with parenting skills and the stress of a turbulent relationship with her domestic partner, Jemina, throughout this case.

On February 1, 2016, HCJFS moved to end temporary custody and sought permanent custody. Custody hearings, originally scheduled for June 2016, were delayed by the appearance of D.M.’s father in the proceedings, by the motion for legal custody made by the children’s maternal grandmother, and by mother’s inconsistent progress under her case plan. The custody hearings were ultimately held on four days in February and August 2018. The HCJFS caseworker, mother, a police officer who investigated an episode where mother had assaulted her niece, the children’s foster mother, an FNC visit facilitator, and the grandmother testified at the hearings.

On November 29, 2018, the magistrate issued a written decision denying grandmother’s legal-custody motion, and granting permanent custody of the children to HCJFS. Mother filed a bare-bones objection to the decision. The juvenile court reviewed a complete record of the proceeding before the magistrate, overruled the objection, adopted the magistrate’s decision without taking additional evidence, and entered judgement for HCJFS on its motion for permanent custody. Mother alone appealed.

In her sole assignment of error, mother argues the juvenile court’s determination that it was in the best interest of the children to grant permanent custody to HCJFS was based on insufficient evidence and was against the manifest weight of the evidence.

The termination of parental rights is governed by R.C. 2151.414. Under R.C. 2151.414(B), the juvenile court may grant a motion for permanent custody if the court determines, by clear and convincing evidence, that permanent custody is in the best interest of the child and that one of the conditions set forth in R.C. 2151.414(B)(1) applies.

We will not substitute our own judgment for that of the juvenile court where there is competent and credible evidence supporting the court's custody determinations. *See In re W.W.*, 1st Dist. Hamilton No. C110363, 2011-Ohio-4912, ¶ 46; *see also In re E.-J.*, 1st Dist. Hamilton No. C-190007, 2019-Ohio-1519, ¶ 26. In weighing the evidence, we must always be mindful of the presumption in favor of the finders of fact, here the magistrate and the juvenile court. *See In re A.B.*, 1st Dist. Hamilton No. C-150307, 2015-Ohio-3247, ¶ 15-16.

After reviewing the record, we hold that the juvenile court properly granted permanent custody of the children to HCJFS. First, the magistrate and the juvenile court found that the children's custodial history satisfied the condition set forth in R.C. 2151.414(B)(1)(d)—that the children had been in the temporary custody of HCJFS for 12 or more months of a consecutive 22-month period prior to the permanent-custody motion. HCJFS moved for permanent custody on February 1, 2016, approximately 21 months after the children had entered temporary custody. This finding is largely undisputed and is supported by ample, competent, and credible evidence of record. *See In re A.M.*, 1st Dist. Hamilton No. C-190027, 2019-Ohio-2028, ¶ 19.

Once the court has made a “twelve of twenty-two” finding, it need only determine whether permanent custody in HCJFS was in the children's best interest. *See* R.C. 2151.414(B)(1) and 2151.414(D)(1). The record also supports the magistrate's and the juvenile court's finding that it was in the children's best interest to be placed in the permanent custody of HCJFS.

For more than five years, the children have been in the care of a foster family. The children have formed strong bonds with the foster family, and D.M. has expressed a desire to remain with them. The children's guardian ad litem also recommended that the children remain with the foster family, which intends to adopt the children.

Mother has made only inconsistent efforts to overcome the problems that have caused the children to remain in foster care. See *In re J.G.S.*, 1st Dist. Hamilton No. C-180611 and C-180619, 2019-Ohio-802, ¶ 39. As the HCJFS caseworker testified: "We want to try to give mother the opportunity to try – to try to do everything that she could. * * * We could see periods of – periods of stability and then an instability – something would happen, some – some incident would happen and then we would start – it would start all over again."

Since the HCJFS moved for permanent custody in early 2016, mother has failed to visit the children during a five-month period in 2017, and has often cancelled other visits on short notice. Mother cancelled six of her last 11 visits at FNC. While mother had been permitted supervised visits with the children at her home, the in-home visits were ended due to concerns that mother was unable to protect the children from unauthorized visitors at her home. Mother never again advanced beyond supervised visitation at FNC—the most restrictive type of visitation.

Following a 2016 diagnostic assessment, individual therapy was provided to mother. In 2017, the Central Clinic terminated her therapy sessions for poor attendance. HCJFS provided additional counseling, but mother missed five of her last six appointments, including a final visit scheduled for March 28, 2018. Mother testified that the sessions were "just too much," and that "I didn't need the sessions" anymore.

Mother engaged in violent altercations with her niece, and with Jemina's daughter as late as August 2017. Despite Jemina's often harsh discipline of the children, mother

continued to permit her to interact with them. And mother continued to use marijuana. She tested positive for marijuana use in 2016 and 2017. And in early 2018, more than two years after the permanent-custody motion, mother again tested positive for marijuana use.

Thus the record contains ample, competent, and credible evidence to support the juvenile court's grant of permanent custody to HCJFS. Therefore, we overrule mother's sole assignment 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., BERGERON and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on August 9, 2019
per order of the court _____.
Presiding Judge