

R.C. 2151.414(D)(2)(a)-(d)

It is well-settled that parents who are suitable persons have a paramount right to the custody of their 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.*

The trial court in this case awarded permanent custody to HCJFS under R.C. 2151.414(D)(2). That code section states,

If all of the following apply, permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency:

(a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist and the child cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent.

(b) The child has been in an agency’s custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.

(c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.

(d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

The R.C. 2151.414(D)(2)(a) Factor

Mother takes issue with the trial court's finding under R.C. 2151.414(D)(2)(a) that J.G. could not be placed with her within a reasonable time or should not be placed with her.

Mother claims that, in making its finding under R.C. 2151.414(D)(2)(a), the court "glossed over" or "outright ignored" evidence that she had completed some of the case-plan services recommended for her, that she regularly participated in visits with her child, that she had stable housing and income, that she had a support system, and that she is bonded with her child. We find no error.

Evidence adduced at trial established that mother had ten children, seven of whom were minors. Of the seven, four were in the care of relatives, and two had already been permanently committed to HCJFS custody. Despite mother's argument to the contrary, the record indicates that the trial court acknowledged the evidence favorable to her. The court found that mother took part in some of the case-plan services, that she regularly visited with her child, and that mother and child were bonded. The court afforded more weight, however, to the testimony of Francoise Perridon, a therapist at Cincinnati Children's Hospital. Perridon testified that mother had failed to complete parent/child therapy, and that, in the therapy sessions mother did attend, mother failed to take responsibility for her role in the removal of her other children. The court also found that mother's own testimony corroborated Perridon's conclusions. At trial, mother continued to deny any past wrongdoing in regard to her other children.

Section 2151.414(D)(2)(a) of the Revised Code first requires a court to find that at least one of the factors listed in R.C. 2151.414(E) exists. In this case, the court

found that R.C. 2151.414(E)(11) applied. While mother does not challenge the court's R.C. 2151.414(E)(11) finding, per se, this statute is pertinent to our analysis because it states that a court shall find that a child cannot be placed with a parent within a reasonable time or should not be placed with a parent where that parent "has had parental rights involuntarily terminated with respect to a sibling of the child * * * and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child." In other words, the court's R.C. 2151.414(E)(11) finding necessarily included the finding that mother challenges under R.C. 2151.414(D)(2)(a)—i.e., that J.G. could not be placed with her within a reasonable time or should not be placed with her.

Based in large part on Perridon's and mother's testimony, the court found that mother's "lack of insight and engagement with the therapeutic intervention establishes that she has not learned or is unable to learn from past behavior." Without the ability to learn from past behavior, the court concluded that mother had failed to establish that she could properly care for her child, and it ultimately found that J.G. could not be placed with mother within a reasonable time or should not be placed with her.

Upon our review of the record, there is no indication that the trial court's finding under R.C. 2151.414(D)(2)(a) is against the manifest weight of the evidence. 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.

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

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on May 10, 2017

per order of the court _____.

Presiding Judge