

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

IN RE: C.C. : APPEAL NOS. C-110712
C-110731
: TRIAL NO. F07-465Z
:
: *JUDGMENT ENTRY.*

We consider these consolidated appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

C.C., a minor, was adjudicated a dependent child eight months after her birth and was placed in the temporary custody of the Hamilton County Job and Family Services (“HCFJS”). C.C.’s guardian ad litem (“the GAL”) and the HCFJS now appeal from the judgment of the juvenile court adopting a magistrate’s decision denying HCJFS’s motion to modify temporary custody to permanent custody, and restoring custody to C.C.’s parents.

The right to raise one’s own child is a fundamental right. *See In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 28. And suitable parents have a paramount right to the custody of their minor children. *See In re W.W.*, 1st Dist. No. C-110363 and C-110402, 2011-Ohio-4912, ¶ 105, citing *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, ¶ 10. Nevertheless, a government agency has broad

authority to intervene when necessary for the child's welfare. *See In re C.F.* at ¶ 28-29, citing R.C. 2151.01(A).

The juvenile court “*may*” grant permanent custody of a child to an agency if the court finds by clear and convincing evidence that (1) permanent custody is in the best interest of the child and (2) one of four conditions set forth in R.C. 2151.414(B)(1)(a)-(d) applies. (Emphasis added.) R.C. 2151.414(B); *see In re W.W.* at ¶ 48. Both prongs must be supported by clear and convincing evidence. *See* R.C. 2151.414(B)(1); *see also In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 42, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

The GAL and the HCJFS, in briefs prepared in collaboration, raise the same assignment of error. They allege that the decision denying the HCJFS's motion to modify temporary custody to permanent custody was against the manifest weight of the evidence. The gravamen of their argument is that the magistrate and the juvenile court erred in weighing the evidence and in not finding that the R.C. 2151.414(B) factors had been established by the statutory clear-and-convincing standard.

After reviewing the entire record, we cannot say that the juvenile court, in reviewing the parties' objections and adopting the magistrate's decision, committed a manifest miscarriage of justice. *See Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 14-23, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *see also In re E.S.*, 1st Dist. Nos. C-100725 and C-100747, 2011-Ohio-586, ¶ 3 (a juvenile court's permanent-custody determination is a civil matter). When reviewing the weight of the evidence, we are guided by the principle that whether the case is “civil or criminal, the weight to be given the evidence and the credibility of

the witnesses are primarily for the trier of the facts.” *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

The evidence adduced before the magistrate was voluminous and often contradictory. The magistrate heard nine days of testimony and reviewed numerous case file documents. For example, the evidence established that C.C. had been in the temporary custody of HCJFS for 12 or more months of a consecutive 22 month period—one criterion for determining that C.C. could not be placed with her parents within a reasonable time. *See* R.C. 2151.414(B)(1)(d). HCJFS produced evidence that C.C.’s mother has had only limited success in completing programs designed to treat her mental illness. Her father did not complete a court-ordered anger-management course. And mother’s home had been the scene of at least two domestic violence issues, both in 2009. In the first, father assaulted mother, and in the second, an altercation broke out between C.C.’s father and the father of mother’s two older children. C.C. was not present during either incident.

But the magistrate also heard testimony that the parents had made substantial progress in addressing the many defects in their parenting skills. HCJFS’s January 2011 case plan provided that “both parents have responded to Agency involvement appropriately and have not been resistant to services.” Reports from the Family Nurturing Center, engaged by the HCJFS to supervise visitation, revealed that the parents had established a bond with C.C., that their parenting abilities were slowly improving over time, and that both parents were responsive to suggestions for improvement. Malita Sanderfer, the visitation facilitator, testified that C.C.’s mother is “usually very interactive” with C.C., selecting age appropriate toys and reading to her

child. Father consistently visited C.C. and was usually “very engaged” with her. C.C.’s mother completed various violence-prevention training programs.

C.C.’s parents have married. There was no evidence that either parent was currently abusing drugs. Despite mother’s previous homelessness, the parents had lived in their current home for over one year without incident. Father maintained steady employment for over one year, and the couple also received supplemental income assistance. The HCJFS case worker acknowledged that these improvements were relevant to analyzing their parenting skills and the risks to C.C. The parents’ pastor testified that he was engaged in long-term counseling with the parents with the goal of reducing the risk of family violence and achieving a good marriage. He maintained weekly contact with the couple and believed that they were making substantial progress.

While the HCJFS adduced significant evidence to support its motion, the magistrate specifically found that C.C.’s “[p]arents are not perfect but they have leaned on resources that appear to have gotten them on track and they have therefore remedied the situations that allowed [C.C.] to be out of the home.” The magistrate found that it was in the best interests of C.C. to deny the motion for permanent custody.

An experienced juvenile court judge reviewed the HCJFS’s and the GAL’s objections challenging the magistrate’s decision as being against the manifest weight of the evidence. He independently reviewed a transcript of all the evidence submitted to the magistrate. *See* Juv.R. 40(D)(3)(b). Acknowledging that the evidence “provided support for both sides,” the court concluded that the magistrate, sitting as the trier of fact, could reasonably have found that the parents had “substantially complied” with the reunification plan and had “remedied to a satisfactory extent the original concerns

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that lead to the removal of [C.C.]” We concur with the juvenile court’s determination that the magistrate’s decision is supported by the record. The assignments of error are overruled.

Therefore, we affirm the judgment of the juvenile court.

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

HILDEBRANDT, P.J., CUNNINGHAM and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on June 28, 2013

per order of the court _____.
Presiding Judge