

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

IN RE: T.S. and S.E. : APPEAL NO. C-150468
: TRIAL NO. F12-2188X
:
: *JUDGMENT ENTRY.*

We consider this appeal 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.

Bringing forth one assignment of error challenging the sufficiency of the evidence, the mother of T.S. and S.E. appeals from the judgment of the Hamilton County Juvenile Court adopting the magistrate’s decision and granting permanent custody of T.S. and S.E. to the Hamilton County Department of Job and Family Services (“JFS”). We affirm.

Mother has five children, three of whom are not the subject of the custody proceedings and judgment under appeal. But she has had a history of contact with JFS involving these children. In 2007, an abuse allegation was substantiated when it was determined that mother had left two of the children at home alone without supervision. This was followed by another instance of substantiated abuse in 2010 when these two children were again found unsupervised and wandering about in the Lincoln Heights area of Cincinnati. All three children eventually were placed in the legal custody of their great grandmother.

In August 2012, T.S., born November 29, 2011, had been found alone around 1:00 a.m. on the streets of Lockland in Hamilton County. Consequently, mother was charged

with child endangerment, and later pleaded to a reduced charge of disorderly conduct. Mother was given a suspended sentence and placed on community control. However, on July 29, 2014, she was found guilty of violating the terms of community control and the suspended sentence of 22 days was imposed.

On October 24, 2013, T.S. was adjudicated abused, and S.E., born November 2, 2012, was adjudicated dependent. Following adjudication and a grant of temporary custody to JFS, the agency petitioned for permanent custody in October 2014, to facilitate the adoption of the children and the provision of a permanent home for them. The alleged father of T.S. had been excluded as her parent following DNA testing. S.E.'s father had been incarcerated on a burglary charge and was not expected to be released until 2016. The children's guardian ad litem filed a report supporting the termination of parental rights and the award of permanent custody to JFS. T.S. had been in the continuous care of a family friend since before her second birthday, and S.E. had been in the continuous care of a paternal relative from the time she was approximately three months old. They each had bonded with their respective caregivers and family members.

After mother had been charged with child endangerment involving T.S., she initiated treatment through Central Clinic. Following an assessment in November 2012, it was recommended that mother engage in individual therapy and medical somatic services to address her self-reported feelings of depression and anxiety. Mother began therapy, and a treatment plan was developed to help her with issues of anger management, impulse control, and coping skills.

In August 2013, mother requested and received a referral for case-management services to assist her in obtaining housing. In April 2014, mother was provided housing through Talbert House Shelter Care Plus, with the requirement that she maintain mental-health stability and refrain from substance abuse. While residing in the home, mother had

contact with law enforcement on two separate occasions when police were dispatched to the home to investigate domestic disputes, one of which involved mother and a family member. By August 2014, Central Clinic terminated mother's services and her case was closed due to her failure to meet with a case manager during a consecutive 90-day period.

During the custody proceedings, a case plan for mother had been implemented by JFS that directed mother to complete mental-health treatment, substance-abuse treatment, and parenting classes. The assigned JFS case manager testified that although mother successfully completed substance-abuse treatment and a parenting-education program through the Family Nurturing Center ("FNC"), she subsequently tested positive for marijuana in June 2014, and again in August 2014. Mother testified that she relapsed into substance abuse at this time "[b]ecause it was either put my hands on [the JFS case manager] or relapse. I am serious. I was at that point. She drove me to that point."

And her visitation with T.S. and S.E. never progressed beyond a supervised status with the FNC. FNC staff documented numerous incidents of mother's inappropriate behavior involving the children when visiting with them, and her failure to follow instructions offered by the FNC staff. These incidents had disrupted other families during their visitation time at the FNC, resulting in the filing of "incident reports" by the FNC.

With the termination of services through Central Clinic, Mother again requested referrals for substance-abuse and mental-health treatment. In August 2014, following an updated assessment, she was referred by the JFS case manager to Talbert House for individual therapy, substance-abuse treatment, case management, and medical and psychological evaluations.

At trial on January 26, 2015, the JFS case manager testified that mother had failed to engage any of these services and was not then involved in treatment for her ongoing mental-health issues or substance-abuse problems. She continued to demonstrate violent

and aggressive behavior, had not secured employment, and had no source of income. And because mother had tested positive for marijuana and had failed to engage mental-health and substance-abuse treatment services, the JFS case manager had concerns that mother had comprised her housing arrangements with Talbert House Shelter Care Plus.

Following the custody trial, the magistrate issued her decision terminating mother's parental rights and granting JFS's petition for permanent custody of T.S. and S.E. Mother timely objected. The juvenile court conducted a hearing on the objections, reviewed the record and the magistrate's decision, and adopted the decision as its final judgment on July 14, 2015.

Mother argues in her sole assignment of error that the juvenile court's judgment was not supported by sufficient competent evidence.

"Sufficiency of the evidence" is a term of art meaning that legal standard which is applied to determine whether evidence is legally sufficient to support a judgment. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). When reviewing a challenge to sufficiency in a civil proceeding, the question to be answered is whether the record demonstrates that some evidence exists on each element. *See Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 19; *see also In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 14-15. It is a test of adequacy, and a question of law regarding whether the evidence is sufficient to support the judgment. *Eastley* at ¶ 11.

The termination of parental rights is governed by R.C. 2151.414. Before a juvenile court may terminate parental rights and place a child in the permanent custody of the moving agency, it must find by clear and convincing evidence that (1) the child's best interest would be served by a grant of permanent custody to the agency, and that (2) one of the conditions enumerated in R.C. 2151.414(B)(1)(a) through (e) has been met. R.C.

2151.414(B); *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 9.

After reviewing the entire record, we conclude that the juvenile court's best-interests determination under R.C. 2151.414(D), and its determination under R.C. 2151.414(B)(1)(a) that T.S. and S.E. could not be placed with either parent within a reasonable time and should not be placed with either parent are supported by sufficient evidence that is clear and convincing.

In this case, the children had not been in mother's custody for almost two years. They had bonded with their respective caregivers. T.S.'s father is unknown, and S.E.'s father is unavailable due to his conviction for burglary and subsequent incarceration. Mother's visitation with T.S. and S.E. never progressed beyond a supervised status. She has no employment, and no other source of income. And mother's ongoing mental-health issues, her anger and aggression issues, and her unaddressed substance-abuse issues prevent her from being able to provide the children with long-term stability. The children's guardian ad litem recommended that permanent custody with JFS was in their best interests to facilitate their adoption and provide for their legally secure and stable placement.

Therefore, we overrule mother's 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.

HENDON, P.J., CUNNINGHAM and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on November 20, 2015
per order of the court _____.

Presiding Judge