

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

IN RE: L.H., Z.H., D.G., AND D.C. : APPEAL NOS. C-200215
C-200217
: TRIAL NO. F14-1668z
: *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.

Mother had four children that are at issue in this case. L.R. was born on November 9, 2011. Z.H. was born on April 9, 2013. D.G. was born on March 25, 2015. D.C. was born on March 3, 2017. On March 28, 2016, the Hamilton County Department of Job and Family Services (“HCJFS”) obtained custody of L.R., Z.H., and D.G. after the children were adjudicated dependent. HCJFS obtained custody of D.C. when the child was born. Petitioner, a family friend, sought custody of L.R., D.G., and D.C. Mother sought to retain custody of Z.H., D.G., and D.C. On April 23, 2018, HCJFS filed a motion seeking to terminate mother’s parental rights and to obtain custody of all four children.

The matter was tried before a magistrate, who awarded custody of L.R. to petitioner. Custody of Z.H., D.G., and D.C. was awarded to the agency. Mother objected to the magistrate’s decision as to Z.H., D.G., and D.C. Petitioner objected to the magistrate’s decision as to D.G. and D.C. HCJFS did not object to the magistrate’s decision. As a result, the custody of L.R. is no longer in dispute. The trial court overruled the objections of mother and petitioner, adopting the decision of the magistrate. Mother appealed the decision in the case numbered C-200215, raising two assignments of error. Petitioner appealed the decision in the case numbered C-200217, raising one.

In her first assignment of error, mother claims that the trial court erred when it terminated her parental rights to Z.H., D.G., and D.C because that decision was based upon insufficient evidence and was contrary to the manifest weight of the evidence. An examination into the sufficiency of the evidence requires this court to determine whether the juvenile court had sufficient evidence before it to satisfy the clear-and-convincing standard. *In re R.M.S.*, 1st Dist. Hamilton Nos. C-190378, C-190386 and C-190404, 2019-Ohio-4281, ¶ 27. When reviewing a challenge to the manifest weight of the evidence, we must review the record to determine whether the juvenile court lost its way and committed such a manifest miscarriage of justice that its judgment must be reversed. *Id.*

Before granting a motion for permanent custody, a juvenile court must find, by clear and convincing evidence, that one of the conditions in R.C. 2151.414(B)(1) applies, and that a grant of permanent custody is in the children's best interest. *In re H.R.H.*, 1st Dist. Hamilton No. C-200071, 2020-Ohio-3160, ¶ 16. Clear and convincing evidence is evidence sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 46.

We first hold that the trial court properly concluded that at least one of the conditions in R.C. 2151.414(B)(1) applied as to each child. There is no dispute that Z.H. and D.G. satisfied the condition under R.C. 2151.414(B)(1)(d), because they had been in the temporary custody of HCJFS for 12 or more months of a consecutive 22-month period at the time the motion for permanent custody was filed. With respect to D.C., the juvenile court, pursuant to R.C. 2151.414(B)(1)(a), found that D.C. could not or should not be placed with either parent within a reasonable time. In support of this finding, the juvenile court found, pursuant to R.C. 2151.414(E)(1), that mother failed to remedy the conditions that led to D.C.'s removal from the home. We hold that the juvenile court's findings under R.C. 2151.414(B)(1) and 2151.414(E)(1) were

supported by clear and convincing evidence, and that the finding was not contrary to the manifest weight of the evidence.

The juvenile court also determined that it was in the children's best interest to be placed in the permanent custody of HCJFS after considering all relevant factors, including but not limited to, those expressly set forth in R.C. 2151.414(D)(1). Those factors include (a) "[t]he interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers"; (b) "[t]he wishes of the child"; (c) "[t]he custodial history of the child"; (d) "[t]he child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency"; and (e) "[w]hether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

In this case, the trial court was concerned about mother's unstable housing and income, failure to address Z.H.'s substantial special needs, unhealthy relationships, and criminal history. The children were removed from mother's custody after concerns of domestic violence and neglect. Mother never established stable housing, having been evicted four times since 2015. She had been fired from her employment in a retail store for theft and remained unemployed since 2017. During a home visit, one of the children's fathers was in the home, even though mother had told case workers that the relationship had ended the prior year. The man was on probation for trafficking in heroin. She continued her relationship with the man and relied on him financially. During the visit, mother denied the worker access to certain areas of the residence. Mother participated in some of the services that were offered to her, but never completed any drug screenings.

After reviewing the record, we hold that the juvenile court's finding that it was in the best interest of the children to grant permanent custody to HCJFS is supported by clear and convincing evidence. The trial court expressly considered each statutory factor, explained how that factor applied with reference to the

evidence, and reached a decision that was neither based upon insufficient evidence nor contrary to the manifest weight of the evidence. We overrule mother's first assignment of error.

In mother's second assignment of error as well as petitioner's sole assignment of error, the parties claim that the trial court erred when it denied petitioner's request for custody of D.G. and D.C. When determining an award of legal custody, the juvenile court should base its decision on the best interest of the child. *In re F.B.D.*, 1st Dist. Hamilton No. C-180356, 2019-Ohio-2562, ¶ 11, citing *In re G/D Children*, 1st Dist. Hamilton Nos. C-180170 and C-180179, 2018-Ohio-3280, ¶ 25. We review a trial court's grant of legal custody for an abuse of discretion. *Id.* An abuse of discretion is "more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Thoma Opticians, Inc. v. Barnes, Dennig & Co.*, 151 Ohio App.3d 566, 2003-Ohio-673, 784 N.E.2d 1207, ¶ 13 (1st Dist.). While arbitrary or unconscionable decisions are exceedingly rare, a decision is unreasonable when "no sound reasoning process supports the decision." *Pieczonka v. Pieczonka*, 1st Dist. Hamilton No. C-170173, 2017-Ohio-8899, ¶ 7, quoting *In re Estate of Knowlton*, 1st Dist. Hamilton No. C-050728, 2006-Ohio-4905, ¶ 43.

As it did when determining mother's custody of the children, the trial court considered each of the statutory factors before denying petitioner's request for custody of D.G. and D.C. While the children knew petitioner, neither had ever been in petitioner's custody. They had lived with their foster family for over two years, they had bonded with that family, and the family plans to adopt the children. Petitioner did not seek custody of the children immediately because of a lack of funding for childcare. HCJFS offered training to petitioner so that petitioner could become a foster parent and get compensated for housing the children, but petitioner never acted on that offer. There was also a concern that petitioner would use mother for childcare based on comments petitioner made during the proceedings.

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The trial court considered all of the statutory factors to determine the best interest of the children as set forth in R.C. 2151.414(D). *See In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. On this record, we cannot say that the decision to deny petitioner’s request for custody was an abuse of discretion. We overrule mother’s second assignment of error and petitioner’s sole assignment of error. We affirm the judgment of the trial court.

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.

MOCK, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on September 23, 2020
per order of the court _____.

Presiding Judge