

IN RE: K.W., K.W., K.J., AND B.J. : APPEAL NOS. C-170219
C-170246
: TRIAL NO. F12-0858X
: *JUDGMENT ENTRY.*

Under former R.C. 2151.414(B)(1),¹ a juvenile court may grant permanent custody to a children's services agency if it finds by clear and convincing evidence that it is in the child's best interest and that one of the conditions in (B)(1) applies. *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 48. In reviewing a juvenile court's determination on a permanent-custody motion, we must examine the record and determine if the juvenile court had sufficient evidence before it

¹ We will apply the version of the statute that was in effect on the date that the motion for permanent custody was filed, which in this case was October 16, 2015. *See In re C.M.*, 1st Dist. Hamilton Nos. C-150365 and C-150396, 2015-Ohio-3971, ¶ 13.

to satisfy the clear-and-convincing standard. *Id.* We will not substitute our own judgment for that of the trial court applying a clear-and-convincing standard where some competent and credible evidence supports the trial court's determination. *Id.*

In reviewing a challenge to the weight of the evidence, we weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 16, citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12.

In this case, the court determined in accordance with former R.C. 2151.414(D)(1) that the children's best interest would be served by awarding permanent custody to HCJFS. In addition, the court found that the conditions in former R.C. 2151.414(B)(1)(a) had been satisfied because the children could not be placed with either parent within a reasonable time or should not be placed with their parents. This finding required the court to determine by clear and convincing evidence that one or more of the factors in former R.C. 2151.414(E) existed. We note that the court also found that the condition in former R.C. 2151.414(B)(1)(d) existed, but, as we explain below, that finding was neither correct nor necessary to its award of permanent custody.

After reviewing the extensive record in this case, we hold that the juvenile court did not err by awarding permanent custody to HCJFS. The children were initially removed from mother's home in December 2014 because mother was incarcerated on domestic-violence and child-endangering charges. Mother had gotten angry with father when he arrived for visitation with his children, and she had thrown a steaming cup of hot chocolate through an open car window at him. The hot liquid had injured father and both of the older children. When the children's guardian ad litem ("GAL") learned of the criminal charges and visited the children,

she found the home conditions to be deplorable. The home was roach-infested. The sinks were filthy. Several mattresses were on the floor with no sheets on them. A paring knife was lying on a bed. An infant tub filled with dirty water stood on the floor.

Mother was diagnosed with bipolar disorder and cannabis-use disorder. She admitted to using marijuana several times a day to alleviate her mental-health symptoms. She completed substance-abuse treatment while incarcerated from August to December 2015, but tested positive for marijuana usage soon after her release. Mother had not re-engaged with substance-abuse treatment or demonstrated a period of sobriety. In addition, mother failed to complete anger-management and parenting classes. She attended some mental-health counseling, but failed to complete it and failed to take prescribed medication. Mother had not progressed beyond the most restrictive supervised visitation with the children, and demonstrated “significant parenting deficits” during visits that had frequently required intervention. At one point, she threatened to kill the children as an expression of frustration with their behavior.

Mother was incarcerated at least three times during the pendency of the case. She was convicted of domestic violence, child endangering, and driving while under a license suspension. The trial court described mother as “habitually homeless,” with no employment prospects. During her testimony, mother acknowledged that she was not in a position to provide a home for the children.

Father was diagnosed with major depression, bipolar disorder, and cannabis dependence. Father had a criminal history that included assault, disorderly conduct, criminal damaging, violation of a court order, sexual battery, and child endangering. An assessment indicated that father had issues with impulse control, had severe symptoms of mental illness, and presented a high risk for violence. Although he had begun to obtain treatment for his mental-health issues, father refused to adhere to

the prescribed medication regimen. Father completed an anger-management class, but he was later convicted of domestic violence against a girlfriend.

Father had a significant history of marijuana use. He acknowledged that he used marijuana daily to cope with his mental-health symptoms, and he had several recent charges for marijuana possession. He claimed that he had stopped using marijuana, but failed to comply with random drug screens and to complete substance-abuse treatment.

Father lived in the basement of his father's home, which was deemed unsuitable for the children. HCJFS noted that a paternal great uncle with an extensive criminal record also lived in the home.

The record contains sufficient evidence to support the juvenile court's finding under former R.C. 2151.414(E) that the children cannot be placed with either parent within a reasonable time and should not be placed with either parent. Despite the efforts of HCJFS, both parents had significant histories of criminal behavior, substance abuse and mental illness that had not been remedied through offered services. *See* former R.C. 2151.414(E)(1) and (16).

In addition, we conclude that the juvenile court did not err in determining that an award of permanent custody to HCJFS was in the children's best interest. The court considered that the two older children wanted to be placed with their father; that the GAL supported an award of permanent custody; that, but for a few weeks in their paternal grandfather's home, the children had been in agency custody since December 2014; and that the children needed a legally secure permanent placement. *See* former R.C. 2151.414(D)(1). The court also considered other relevant facts, including those that supported its determination that the children could not be placed with the parents.

After reviewing the record, we hold that all of the court's findings as to the best-interest factors in former R.C. 2151.414(D)(1) and as to the former R.C.

2151.414(B)(1)(a) factor were supported by sufficient evidence and were not against the manifest weight of the evidence. *See In re C.F.*, 1st Dist. Hamilton Nos. C-150454 and C-150469, 2015-Ohio-4706, ¶ 12. Therefore, we hold that competent and credible evidence supported the juvenile court's award of permanent custody to HCJFS. *See In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, at ¶ 48. We overrule mother's sole assignment of error and father's second assignment of error.

In his first assignment of error, father argues that the juvenile court erred by finding that the children had been in the temporary custody of HCJFS for 12 of 22 months, under former R.C. 2151.414(B)(1)(d). Specifically, he argues that the agency's motion was filed less than 12 months after the children entered temporary custody, so the 12-of-22 provision did not apply. Here, both the magistrate and the court determined that the condition in (B)(1)(d) was met, finding that the children had been in the temporary custody of HCJFS for 12 or more months of a consecutive 22-month period. As pointed out by father, however, that finding was incorrect because only eight months had passed from the removal of the children from the home in December 2014 before the filing of the permanent-custody motion in October 2015. *See In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176 (a child must be in an agency's temporary custody for at least 12 months before the agency moves for permanent custody of the child on R.C. 2151.414(B)(1)(d) grounds).

However, father acknowledges that the magistrate and juvenile court also found under former R.C. 2151.414(B)(1)(a) that the children could not be placed with either parent within a reasonable time or should not be placed with either parent. Therefore, any error in the court's finding under former R.C. 2151.414(B)(1)(d) was harmless. We overrule father's first 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.

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

To the clerk:

Enter upon the journal of the court on August 2, 2017
per order of the court _____.
Presiding Judge