

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

IN RE: S. CHILDREN	:	APPEAL NOS. C-170491 C-170502
	:	TRIAL NO. F13-2218Z
	:	<i>JUDGMENT ENTRY.</i>

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.

The mother and paternal grandmother of K.S. and W.S. appeal from the juvenile court's judgment granting permanent custody of the children to the Hamilton County Department of Job and Family Services ("HCJFS").

K.S. and W.S. were placed in the interim custody of HCJFS in November 2013. The agency moved for custody of the children because W.S. suffered a serious medical condition and required a heart transplant, but could not be placed on a transplant list because mother was homeless. The children were initially placed with paternal grandmother, who filed a petition for legal custody. However, due to conflict with mother, paternal grandmother informed HCJFS that she could not continue to care for the children, and they were placed in separate foster homes. K.S. and W.S. were adjudicated dependent, and temporary custody was granted to HCJFS. In April 2015, after receiving one extension of temporary custody, HCJFS moved to modify temporary custody to permanent custody. In October 2015, the children's guardian ad litem ("GAL") also filed a motion requesting that temporary

custody be modified to permanent custody. But in November 2015, HCJFS filed a motion to terminate temporary custody and to remand custody to mother.

Following a hearing that took place over the course of several months, the juvenile court magistrate determined that a grant of permanent custody to HCJFS was in the best interest of the children. The magistrate granted the GAL's motion to modify temporary custody to permanent custody, and he denied both paternal grandmother's petition for custody and HCJFS's motion to remand custody to mother. Mother, paternal grandmother, and HCJFS filed objections to the magistrate's decision. The juvenile court overruled the objections and adopted the magistrate's decision.

Mother has raised three assignments of error for our review. In her first assignment of error, she argues that the juvenile court erred in granting HCJFS's motion for permanent custody because its determination that a grant of permanent custody was in the children's best interest was against the weight of the evidence.

Under former R.C. 2151.414(B)(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.<sup>1</sup> *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 48. As a reviewing court, we must examine the record to determine if the juvenile court had sufficient evidence before it to satisfy the clear-and-convincing standard. *Id.* at ¶ 46. We may not substitute our judgment for that of the juvenile court where its judgment is supported by competent and credible evidence. *Id.*

In reviewing a challenge to the weight of the evidence, we weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and

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

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.

Here, the juvenile court found that, in accordance with R.C. 2151.414(D)(1), a grant of permanent custody was in the best interest of K.S. and W.S., and that the condition in R.C. 2151.414(B)(1)(d) had been satisfied because the children had been in the temporary custody of HCJFS for 12 or more months of a consecutive 22-month period. Mother solely challenges the best-interest finding.

Following our review of the record, we hold that the juvenile court's finding that a grant of permanent custody was in the best interest of the children was not against the weight of the evidence and was supported by competent and credible evidence. While the children were not old enough to express their own wishes for custody, the GAL argued vigorously for a grant of permanent custody to HCJFS. K.S. and W.S. have not resided with mother since November 2013. Mother has consistently visited with the children and is bonded with them during visits, but visitation has never progressed past the facilitated level. K.S. and W.S. are both bonded with their foster families, and both foster families expressed a desire to adopt. Both children are in great need of a permanent placement.

The magistrate approved a case plan for mother that included goals of obtaining stable housing and income, attending parenting classes and learning how to provide for the medical needs of her children, attending therapy to address mental-health concerns, and attending treatment for a cannabis addiction. Mother obtained stable housing and income and participated in a parenting-skills program, but the record indicates that she has not been fully involved in W.S.'s medical treatment and appointments.

While W.S.'s medical condition improved during the course of the proceedings and she is no longer in need of a heart transplant, she will be dependent on a pacemaker for life. W.S.'s cardiologist testified that W.S. will continue to need various therapies, and could become very ill if she experiences an interruption in her treatment. The record demonstrates that W.S.'s foster mother is adept at managing her treatment and medical appointments. Mother has failed to consistently attend W.S.'s medical appointments and often arrives late for the appointments. Further, mother has expressed resistance towards continuing or increasing therapy for W.S.

HCJFS section chief Aiesha Walker testified that mother engaged in, and either was discharged from or stopped attending, therapy at three different times during these proceedings. Walker further testified that mother missed several appointments for urine screens, which were required following mother's self-reported cannabis use. Of the screens attended, mother tested positive three times and negative three times. The agency stopped requesting that mother participate in urine screens in 2015, and Walker testified that the agency no longer had concerns about mother's substance abuse. However, mother's testimony revealed that she tested positive for marijuana in 2016, during the custody proceedings.

With respect to paternal grandmother, the record reveals that she chose to relinquish care of the children when they were first placed with her because of conflicts with mother. While the relationship between mother and paternal grandmother has improved, the record indicates that K.S. expressed fear of grandmother during his therapy sessions. And the custody assessor who approved paternal grandmother for placement following a home study had concerns about K.S.'s reaction to paternal grandmother, as he shut down and turned his back to the assessor upon being questioned about paternal grandmother.

The alleged father of K.S. and W.S. has a criminal record and was incarcerated during portions of these proceedings. Alleged father has not attempted

to participate in the court proceedings. An HCJFS caseworker expressed concern that mother and paternal grandmother allowed the alleged father to see the children despite the magistrate's order that he should not have contact with the children until he appeared before the court.

Because the juvenile court's determination that a grant of permanent custody was in the best interest of K.S. and W.S. was not against the weight of the evidence and was supported by competent and credible evidence, we hold that the court did not err in granting permanent custody of the children to HCJFS. Mother's first assignment of error is overruled.

In mother's second and third assignments of error, she argues that the juvenile court erred in denying the motion to remand custody to her, and that the juvenile court erred in terminating her parental rights when a suitable and less drastic alternative existed, specifically granting custody of the children to paternal grandmother. Paternal grandmother has raised a single assignment of error for our review, identical to mother's third assignment of error. We address these assignments together.

After a child is adjudicated dependent, a juvenile court may award legal custody of the child to any person who files a motion requesting legal custody or is identified in a motion as a proposed legal custodian. Former R.C. 2151.353(A)(3). In making a custody determination, the court must consider the best interest of the child. *See In re Allah*, 1st Dist. Hamilton No. C-040239, 2005-Ohio-1182, ¶ 10. The court's determination as to which placement option is in a child's best interest will not be reversed absent an abuse of discretion. *In re M., R., and H. Children*, 1st Dist. Hamilton No. C-170008, 2017-Ohio-1431, ¶ 30. In this context, the juvenile court abuses its discretion if its determination regarding the children's best interest is not supported by competent, credible evidence. *Id.*

Because the evidence in the record supports the juvenile court's determination that a grant of permanent custody was in the best interest of the children, it necessarily supports the court's decision to deny both paternal grandmother's petition for custody and HCJFS's motion to remand custody to mother. *See In re T.G.*, 4th Dist. Athens No. 15CA24, 2015-Ohio-5330, ¶ 31. Mother's second and third assignments of error and paternal grandmother's first assignment of error are overruled.

The judgment of the juvenile court is accordingly affirmed.

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.

**MOCK, P.J., ZAYAS and MYERS, JJ.**

To the clerk:

Enter upon the journal of the court on December 6, 2017  
per order of the court \_\_\_\_\_.

Presiding Judge