

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

IN RE: J.L. : APPEAL NO. C-180375
: TRIAL NO. F16-204-Z
:
: *JUDGMENT ENTRY.*

We consider this appeal 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.

We first address the motion filed by the guardian ad litem (“GAL”) asking this court to dismiss this appeal. On September 21, the GAL asked this court to dismiss this case based on deficiencies in the structure and format of father’s brief and on father’s lack of standing to appeal. We overrule the motion because father has standing to appeal the grant of permanent custody of his son to the Hamilton County Department of Job and Family Services (“HCJFS”) and we accept the brief as filed. *See* R.C.2151.414(A)(1); 1st Dist. Loc.R. 16.1.

Father appeals the judgment of the Hamilton County Juvenile Court awarding permanent custody of his child J.L. to HCJFS. J.L. was first adjudicated dependent after he and one of his siblings, both of whom lived with father, disclosed that they had been physically and sexually abused by him. Police also discovered little food and furniture in the home, that father was frequently intoxicated, and that

he urinated on the children. J.L.'s mother had little contact with him, and the contact they did have was initiated by J.L.

The magistrate found that permanent custody was in J.L.'s best interest after finding that J.L. could not be placed with either parent within a reasonable time, and that he should not be placed with either parent because J.L.'s father was in prison for sexual battery and felonious assault and his mother had abandoned him. Father objected to the magistrate's decision based on the admission of two exhibits consisting of the magistrate's prior decisions in the case. The objection was overruled by the trial court, which then adopted the magistrate's decision.

Father presents three assignments of error for this court to review. The first assignment of error alleges that the trial court's decision was erroneous because the record did not contain clear and convincing evidence to support a finding of permanent custody.

The record demonstrates that J.L. could not be placed with father within a reasonable time. Father's attorney and HCFJS's attorney stipulated to the fact that father was going to be incarcerated for 17 years. J.L.'s father had been convicted of sexual assault and felonious assault, and the victims were J.L. and his sibling. Mother had been engaging in therapeutic visitation sporadically and then stopped altogether. J.L. had been in HCJFS custody for approximately two years. There were no relatives with whom to place him, but J.L. had bonded with his foster parents and wished to remain with them. Based upon our review of the record, there was clear and convincing evidence to support the juvenile court's award of permanent custody. *See In Re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912 ¶ 46. Father's first assignment of error is overruled.

Father's second assignment of error alleges that the trial court erred in overruling father's objection because the magistrate should not have admitted into evidence two exhibits. These were the magistrate's decisions from J.L.'s dependency adjudication and from his temporary custody disposition. Father wanted "certain language" stricken from the magistrate's permanent custody decision. The language he objected to recited the facts from the prior hearings that detailed the physical and sexual abuse that J.L. and his sibling had endured. Those factors were determined by the same magistrate in the prior court proceedings. Father claims that those facts were not necessary for the permanent-custody determination, and that they may cause harm to him in further legal proceedings.

We find there to be no abuse of discretion in the admission of the exhibits but note that they were unnecessary because they were already part of the record before the magistrate. *See Rusin v. Buehrer*, 2017-Ohio-8411, 99 N.E.3d 1120, ¶ 25 (1st Dist.). "[T]he court shall consider all relevant factors" when determining whether to grant permanent custody. R.C. 2151.414(D) and (E). Those factors include considering the evidence elicited in a dependency hearing. *In Re: J.H.*, 12th Dist. Clinton Nos. CA2015-07-014 and CA2015-07-015, 2016-Ohio-640, ¶ 62. In addition, the trial court can take judicial notice of the proceedings before it. *See Evid.R. 201(C)*; *Torbeck v. Torbeck*, 1st Dist. Hamilton No. C-010022, 2001 WL 1251219 *1 (Sept. 28, 2001) (the trial court can take judicial notice of its own actions and orders in earlier stages of the case). As for the facts recited by the magistrate in her decision, they were elicited in the prior proceedings and appropriately included in the decision to grant HCJFS permanent custody. Father's second assignment of error is overruled.

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Father's third assignment of error is that the trial court erred by failing to rule on father's request to be present at the second day of trial and then allowing the trial to resume and be concluded without his presence. This error is not demonstrated by the record. The transcript of proceedings indicates that the hearing took place in one day, February 28, and that father's counsel waived father's appearance. The third assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

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.

MOCK, P.J., ZAYAS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on November 1, 2018
per order of the court _____.
Presiding Judge