

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

IN RE: J.L.H. III. : APPEAL NO. C-180075
: TRIAL NO. F13-577Z
: *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.

Father appeals from the judgment of the Hamilton County Juvenile Court terminating his parental rights and granting permanent custody of his four-year-old son, J.L.H. III, to the Hamilton County Department of Job and Family Services (HCJFS).

In a single assignment of error, father argues that the trial court's judgment was not supported by the sufficiency or weight of the evidence, because he had stable housing, he had completed part of the case-plan services required by HCJFS, he had income, and his visits with J.L.H. III, although sporadic, had been appropriate.

When determining if the juvenile court's judgment terminating parental rights is supported by the evidence, this court employs separate tests for reviewing the weight and sufficiency of the evidence as articulated in *Eastley v. Volkman*, 132 Ohio St.3d 328, 2010-Ohio-2179, 972 N.E.2d 517, ¶ 11-12, 19. *See In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 15.

Here, HCJFS moved for permanent custody of J.L.H. III pursuant to R.C. 2151.414(B)(1)(a). Thus, to grant permanent custody of J.L.H. III to HCJFS, the juvenile court was required to find by clear and convincing evidence that J.L.H. III could not or should not be placed with his parents, based upon an analysis that one or more of the factors in R.C. 2151.414(E) applied, and that it was in his best interest that the agency be granted permanent custody. *See* R.C. 2151.414(B)(1); *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 22-23; *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 37-38.

With respect to the R.C. 2151.414(B)(1)(a) factor, the record supports the juvenile court's findings under both R.C. 2151.414(E)(1) and (2) that father suffered from chronic substance abuse, he had failed to fully engage in case-plan services to remedy his substance abuse during the almost two years that J.L.H. III had been in HCJFS's care, and his dependence on drugs had prevented the court from safely placing J.L.H. III with him within a reasonable time.

As part of his case-plan services, father was required to complete a diagnostic assessment of function. While father completed the assessment, he did not complete a required psychological exam. Father was also required to submit to random urine screens. The HCJFS caseworker testified that father had submitted to some random urine screens, but many of his screens had been inconclusive or positive for drugs. In August 2017, after HCJFS had moved for permanent custody, father pleaded guilty to receiving stolen property, theft, and carrying a concealed weapon, and was sentenced to three years of community control. Although father's probation officer reported that he was receiving substance-abuse treatment as part of his community control, the HCJFS caseworker testified that she doubted father's sobriety given his

recent positive urine screen for heroin, fentanyl, and marijuana, and his guilty plea to marijuana possession just days before the permanent-custody trial.

The HCJFS caseworker testified that father failed to maintain appropriate housing and income. Father admitted to the HCJFS caseworker that his social security benefits had ceased and his only source of income was selling heroin. Even though father had stable housing, the HCJFS caseworker testified that father lived with his parents, who also struggled with substance abuse. Paternal grandmother had recently pleaded guilty to possession of Xanax, and paternal grandfather had recently overdosed on drugs in the family home.

Finally, the case plan required father to visit J.L.H. III. The caseworker testified that father had visited with J.L.H. III only sporadically between January and December 2016. From December 2016 to February 2017, father had moved out of state and had no contact with J.L.H. III. Father returned home in March 2017, but he did not resume visits with J.L.H. III until September 22, 2017.

We next review the juvenile court's finding that granting permanent custody to HCJFS was in the best interest of J.L.H. III. The caseworker testified at the time of the permanent-custody trial, that J.L.H. III had been in the custody of HCJFS for almost two years. During that time, father had inconsistently visited with J.L.H. III and had not bonded with him. J.L.H. III had remained in the same foster home and his foster family had agreed to maintain him in their home until an adoptive placement could be made. Although J.L.H. III was too young to express his wishes, the guardian ad litem (GAL) supported a grant of permanent custody to HCJFS. Thus, we conclude that the juvenile court's best-interest finding is supported by sufficient evidence and is uncontroverted, as father presented no evidence to the contrary.

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Consequently, having reviewed the record, father's arguments, and the applicable law, we hold that the sufficiency and weight of the evidence supports the juvenile court's finding that a grant of permanent custody to HCJFS was in J.L.H. III's best interest and that R.C. 2151.414(B)(1)(a) had been met.

Father also argues that the juvenile court erred in denying paternal grandmother's petition for custody without a hearing. Paternal grandmother, however, has not appealed that denial, and we agree with HCJFS and the GAL that father does not have standing to challenge the juvenile court's judgment in this respect. *See In re T.W.*, 1st Dist. Hamilton No. C-130080, 2013-Ohio-1754, ¶ 8-10.

We, therefore, overrule father's sole assignment of error and affirm the judgment of the juvenile court.

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.

CUNNINGHAM, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on May 9, 2018

per order of the court _____
Presiding Judge