

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

IN RE: D.M. : APPEAL NO. C-180066
C-180080
: TRIAL NO. F-15-0596-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.

Mother and father filed separate appeals from the judgment of the Hamilton County Juvenile Court terminating their parental rights and granting permanent custody of their son, D.M., to the Hamilton County Department of Job and Family Services (“HCJFS”). We affirm the court’s judgment.

Mother and father each present the same assignment of error alleging that the juvenile court's finding that permanent custody was in D.M.'s best interest was not supported by sufficient evidence and was against the manifest weight of the evidence. This court determines if the juvenile court's judgment terminating parental rights is supported by the evidence by using the tests for weight and sufficiency of the evidence articulated in *Easterly v. Volkman*, 132 Ohio St.3d 328, 2010-Ohio-2179, 972 N.E.2d 517, ¶ 11-12 and 19. See *In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 15-16.

HCJFS filed for permanent custody on March 8, 2016. R.C. 2151.414 was

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amended in October of 2016. The former version of R.C. 2151.414(B) provided that the juvenile court could grant permanent custody of a child to a public services agency if it found by clear and convincing evidence that (1) permanent custody is in the best interest of the child, and (2) that one of the five conditions in former R.C. 2151.414(B)(1)(a) through (e) applied.

The trial court granted HCJFS's motion on the basis that permanent custody to HCJFS was in D.M.'s best interest, and that D.M. could not be placed with either parent within a reasonable time. R.C. 2151.414(B)(1)(a). Pursuant to R.C. 2151.414(E)(1), the court found that neither parent had substantially remedied the conditions that had caused the child to be placed outside the child's home.

D.M. first entered the legal custody of HCJFS on April 15, 2015. Mother had substance-abuse issues during her pregnancy, and D.M. tested positive for opioids and methadone at his birth. The court found that mother initially had not participated in an assessment or substance-abuse treatment. Both mother and father did not pursue reunification, but wanted relatives to have custody. Initially, the court placed D.M. with relatives, but by February of 2016, the court had to authorize D.M.'s placement in foster care. In March 2016, neither parent had complied with case services, and HCJFS moved for permanent custody.

In June of 2017, mother testified that she was close to obtaining stable housing, had employment, and had obtained sobriety. In September of 2017, she testified that she had not obtained independent housing and had been arrested for a DUI in Kentucky. Father did not participate in case services. He tested positive for marijuana, did not participate in drug screens, did not attend drug treatment, parenting classes, or anger-management classes. Further, father was incarcerated for

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periods of time during the proceedings and advocated for his mother to be awarded custody.

As for juvenile court's finding that granting permanent custody to HCJFS was in the best interest of D.M., D.M. was doing well with his foster family, with whom he had lived since January of 2016. His foster family was willing to adopt him and give him permanence. At the time of the hearing, D.M. had been in the custody of HCJFS for almost two and one-half years. Based on our review of the record, we find that the trial court's decision was supported by clear and convincing evidence. We will not substitute our judgment for that of the trial court when its determinations are supported by competent and credible evidence. *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 46.

As for father's arguments alleging that his mother should have been granted custody, she did not appeal the denial of her petition for custody, and father does not have standing to challenge the court's decision in her place. *See In re T.W.*, 1st Dist. Hamilton No. C-130080, 2013-Ohio-1754, ¶ 8-10.

We, therefore, overrule mother's and father's assignments of error and affirm the judgment of the juvenile court awarding permanent custody to HCJFS.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

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

To the clerk:

Enter upon the journal of the court on May 23, 2018
per order of the court _____.
Presiding Judge